8-21-2007

[Boulder Revised Code 1981]

Boulder

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INSTRUCTION SHEET: BOULDER, Colorado
Supplement No. 93/July, 2007
Includes Ordinances: 7515, 7517 and 7535

Note: the library does not have superseded pages
this is a snapshot of the code in July 2007

Place this Instruction Sheet in front of Code Book.

REMOVE PAGE HEADED	INSERT NEW PAGE HEADED
Preamble	Preamble
TITLE 2:	
2-7-5, (b) Exceptions And Items Not **and following two pages**	2-7-5, (b) Exceptions And Items Not **and following two pages**
TITLE 9:	
9-1-2, management system regulations	9-1-2, management system regulations
9-2-3, (B) Would not substantially or	9-2-3, (B) Would not substantially or **and following page**
9-6-3, must be terminated within five years	9-6-3, must be terminated within five years **and following page**
9-7-4, evidence, photographic documentation	9-7-4, evidence, photographic documentation
9-8-2, (e) District-Specific Standards	9-8-2, (e) District-Specific Standards
9-9-11, (3) An outdoor garden or landscaped	9-9-11, (3) An outdoor garden or landscaped
9-9-12, (G) The irrigation system shall be	9-9-12, (G) The irrigation system shall be
9-9-17, (H) The exception would not cause	9-9-17, (H) The exception would not cause
9-10-3, (2) Maintaining A Nonstandard **and following page**	9-10-3, (2) Maintaining A Nonstandard
9-15-8, the alteration of the building which **and following page**	9-15-8, the alteration of the building which **and following page**
9-16-1, within the property including areas	9-16-1, within the property including areas
9-16-1, (graphic) Figure 29: Yards for	9-16-1, (graphic) Figure 29: Yards for
TITLE 10:	
10-2.5-2, "Public nuisance" means the **and following two pages**	10-2.5-2, "Public nuisance" means the **and following three pages**
TITLE 12:	
12-2-1, Chapter 2 Landlord-Tenant Relations **and following page**	12-2-1, Chapter 2 Landlord-Tenant Relations **and following page**

PREAMBLE

This city code of the City of Boulder, as supplemented, contains ordinances up to and including ordinance 7535, passed August 21, 2007. Ordinances of the city adopted after said Ordinance supersede the provisions of this city code to the extent that they are in conflict or inconsistent therewith. Consult the city office in order to ascertain whether any particular provision of the code has been amended, superseded or repealed.

Sterling Codifiers, Inc.
Coeur d'Alene, Idaho

CODE PREFACE

The Boulder Revised Code 1981 ("B.R.C. 1981") represents the first recodification of the code since 1965, when the code was reorganized into 51 chapters. The 1981 revision was designed to be substantive as well as organizational. The existing 51 chapters were reorganized into 14 general subject matter titles, containing altogether 97 chapters. By virtue of this organization and a thorough, up-to-date index prepared by Sterling Codifiers, B.R.C. 1981 should be easier for the public and the city government to use. Beyond reorganization, however, the code was completely redrafted to provide a consistent legislative format and style. Most important, every chapter in the code was substantively reviewed by city staff to determine whether it conforms to practice, meets current legal requirements, and serves the city's needs. When staff identified substantive changes that should be discussed, it generally proposed those changes to City Council at a study session, thus compiling a substantial legislative record. Some such proposals also were discussed with members of the public at large at administrative hearings. Council policy directions were incorporated into ordinances, each of which was separately adopted by the City Council following public hearings.

This process has been lengthy, involving opportunities for policy debate among city staff and councilmembers and for citizen involvement in various forms. When the code revision is complete, the effort will have consumed more than three years. The result is a code that is thoroughly reexamined, is internally uniform and consistent, and provides as much as possible the City Council's current thinking on the best set of laws appropriate to govern the City of Boulder. The law is an evolutionary matrix of shared values, which is often outdated as soon as it is enacted and needs constant scrutiny. B.R.C. 1981 has already been amended in the process of revision and will continue to be amended as changes are needed. But it will provide a useful organizational, structural, and stylistic framework upon which to legislate in the future.

Throughout this effort, I have had the able assistance of my staff: Patricia A. Butler, Assistant City Attorney (who supervised the project); Jane W. Greenfield, Deputy City Attorney; and the other Assistant City Attorneys, Walter W. Fricke, Ruthanne Gartland, Sally J. Kornblith, Alan E. Boles, and Edward R. Byrne. The most valuable contributor to this project was Jacki Albers, who had the patience and skill to type and correct draft after draft. In addition, I am grateful to the City Manager, Robert G. Westdyke, for his support for this effort and to all of the department heads and other city staff who participated in this lengthy and sometimes apparently thankless process. Finally, I want to thank the members of the Boulder City Council, Mayor Ruth A. Correll, Deputy Mayor Linda Jourgenson, and Councilmembers J. Gregory Lefferdink, Annette E. Anderson, Beverly Sears, Homer Page, Homer Ball, Philip Stern, and Spencer W. Havlick, who authorized this project and worked through it seriously and tirelessly. I also appreciate the support and efforts of former Councilmembers George W. Boland, Paul Danish, Gwen Dooley, and Richard C. Meckley. It is my earnest hope that B.R.C. 1981 will stand as a monument to their foresight and judgment and a valuable legacy for the future governance of the City of Boulder.

Joseph N. de Raismes
CITY ATTORNEY

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OF THE CITY OF BOULDER, COLORADO

ARTICLE XII. OPEN SPACE

THE CHARTER
OF THE CITY OF BOULDER, COLORADO[1]

PREAMBLE

We, the people of the City of Boulder, under the authority of the constitution of the State of Colorado, do ordain and establish this charter for the municipal government of the City of Boulder, Colorado.

ARTICLE I. CORPORATE NAME, BOUNDARIES, POWERS, RIGHTS, AND LIABILITIES

Sec. 1. Name–boundaries.

The municipal corporation, heretofore and now existing as a city of the second class in Boulder County, State of Colorado, and known as the City of Boulder, shall remain and continue to be a body politic and corporate under this charter, with the same name and boundaries, and with power to change either name or boundaries in the manner authorized by law.

Sec. 2. Corporate powers–rights–liabilities.

The City of Boulder, as its name and limits now are, or may hereafter be,

(a) Shall have perpetual succession, and shall own, possess, and hold all property, real and personal, now owned, possessed, or held by the said City of Boulder, and shall assume, manage, and dispose of all trusts in any way connected therewith;

(b) Shall succeed to all the rights and liabilities, and shall acquire all benefits, and shall assume and pay all bonds, obligations, and indebtedness of the said City of Boulder; by that name may sue and defend, plead, and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, lease, and enjoy or sell and dispose of real and personal property; and where property is acquired by condemnation, the city shall have the power to acquire an excess over that needed for the purpose or improvement for which such property is acquired, and to sell or lease such excess property with restrictions in order to protect the purpose for which the same was acquired;

(c) May receive bequests, gifts, and donations of all kinds of property, with or without conditions, or in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purpose of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust;

(d) Shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate waterworks, light

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1. *Indicates those sections in which reference to gender were neutralized by Ord. No. 4602, November 3, 1981.

plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefor, for the use of said city and the inhabitants thereof; and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist, and which said city may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city, which may enforce such purchase by proceedings at law, as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the tax-paying electors, at any special or general election, in any amount, within the limit fixed by this charter, necessary to carry out any of said powers or purposes[1];

(e) Shall have the power to conduct and engage in, lease, or contract in connection with such business, enterprises, pursuits, and activities as may be determined to be for the common welfare and benefit of the inhabitants of the city, including the acquirement, establishment, and operation within or without the city limits of telephone systems, gas works, ice plants, municipal coal yards and mines, municipal stores and markets, park grounds and systems, and places of recreation, amusement, and instruction, and the ornamentation and improvement of any or all such grounds, systems, and places;

(f) Shall have power to regulate and provide rules for the proper construction and maintenance of ditches, canals, and waterways within the city and upon all city property wherever located for the protection of the lives and property of the inhabitants; and

(g) Shall have all powers not denied to said city by the constitution of the State of Colorado, including all powers, privileges, and functions, expressed or implied, which, by or pursuant to the constitution or laws of said state, have been, or could be, granted to or exercised by any city of the first or second class; it being the intention of this article to grant and confirm to the people of the City of Boulder the full right of self-government, in both local and municipal matters, and the enumeration herein of certain powers shall not be construed to deny to said city, and to the people thereof, any right or power essential or proper to the full exercise of such right.

(h) All powers of the city shall, except as otherwise provided in this charter, be vested in its elective officers, subject to distribution and delegation of such powers as provided in this charter or by ordinance.

ARTICLE II. THE LEGISLATIVE BODY: ITS POWERS AND DUTIES

Sec. 3. Legislative officers–the council[2].

The legislative officers of the city shall consist of nine council members elected from the city at large, and collectively called the council.*

Sec. 4. Qualifications of council members.

No person shall be eligible to office as council member unless, at the time of the election, such person is a qualified elector as defined by the laws of the State of Colorado, at least twenty-

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1. This subsection is restricted to bonds to pay for specified public utilities, local in use and extent. This paragraph was manifestly intended to apply only to bonds issued, and made payable by the city in its corporate capacity. Sanborn v. Boulder, 74 Colo. 358, 221 P. 1077 (1923).

2. Sections 3, 4, 5, and 13 were repealed by Ord. No. 1819 (1954), § 1, adopted by electorate on October 26, 1954. New councilmanic districts were established by Ord. No. 1834 (1954), § 1, adopted by the city council on November 16, 1954. Subsequently, Ord. No. 1819 repealing Sections 3, 4, 5, and 13 was declared void in Howard v. City of Boulder, 132 Colo. 401, 290 P.2d 237 (1955). Ord. No. 1834 was repealed by Ord. No. 1909 (1955), adopted by the city council on October 18, 1955.

one years of age, and shall have resided in the City of Boulder for one year immediately prior thereto. (Amended by Ord. No. 1978 (1956), § 1, adopted by electorate on October 2, 1956. Further amended by Ord. No. 3925 (1973), § 1, adopted by electorate on September 11, 1973. Further amended by Ord. No. 6006 (1998), § 2, adopted by electorate on November 3, 1998.)*

Sec. 5. Terms of office–election–recall.

The terms of office for council members shall be four years and two years as hereinafter provided: the four candidates receiving the highest number of votes shall be elected for four-year terms, and the candidate receiving the fifth highest number of votes shall be elected for a two-year term.

If there shall be vacancies to be filled at a general municipal election, other than those occurring due to the expiration of a regular term, the vacancy term shall be for two years, and additional council members shall be elected until there shall be a council of nine council members.

The terms of all council members shall begin at 10:00 a.m. on the third Tuesday in November following their respective elections. All council members shall be subject to recall as provided by this charter. (Amended by Ord. No. 1978 (1956), § 4, adopted by electorate on October 2, 1956. Further amended by Ord. No. 4597 (1981), § 1, adopted by electorate on November 3, 1981. Further amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 6. Council judge of election.

Subject to review by the courts, the council shall be the judge of the qualifications and election of its own members.

Sec. 7. Compensation.

Council members shall receive as compensation $100.00 per meeting at which a quorum of city council is present, not to exceed four meetings per calendar month, plus an annual escalation each January 1 in a percentage equivalent to any increase over the past year in the Consumer Price Index (All Items) for the statistical area which includes the city maintained by the United States Department of Labor, Bureau of Labor Statistics; this amendment shall become effective January 1, 1990. (Amended by Ord. No. 5221 (1989), § 1, adopted by electorate on November 7, 1989.)*

Sec. 8. Vacancies.

A vacancy shall exist in the council whenever a duly elected council member fails to qualify within ten days after notice of the election, dies, resigns, removes from the city, is absent from five consecutive regular meetings of the council unless formally excused therefrom, is convicted of a crime or felony while in office, or is judicially declared a lunatic; or, in case of a recall, no successor is elected, or if elected, fails to qualify.

In case of vacancy, the remaining council members shall, by majority vote, by resolution call for a special election to fill the vacancy, to be held on a Tuesday within sixty days of the vacancy, except that:

(a) Any vacancy occurring less than one hundred twenty-one days prior to a general municipal election but more than seventy-five days before that election shall be filled at that election and not by special election;

(b) If the seat of a council member which will not otherwise be on the ballot at the next general municipal election becomes vacant within seventy-five days before that election, the council shall provide for a special election to occur on the second Tuesday after the first Monday in January of the next year;

(c) Any vacancy occurring less than one hundred twenty-one days prior to a state primary or general election but more than seventy-five days before that election shall be filled at a special election held on the day of that election;

(d) Any vacancy occurring within seventy-five days before a state primary election shall be filled at a special election to occur on the first Tuesday after the first Monday in November of that year; and

(e) Any vacancy occurring within seventy-five days before a state general election shall be filled at a special election to occur on the first Tuesday after the first Monday in January of the next year.

The nomination of candidates to be voted for at such special election, the publication of notice, and the conduct of the same shall all be in conformity with the provisions of this charter relating to elections, but the council shall, in the resolution calling for the special election, adjust the times for checking petitions, correcting or replacing signatures, completion and filing of petitions, withdrawal from nomination, and certification and filing of the list of candidates, as may reasonably be required to accommodate the date set for the election. (Amended by Ord. No. 5813 (1996), § 2, adopted by electorate November 5, 1996.)*

Sec. 9. Meetings of council.

At 10:00 a.m. on the third Tuesday in November following each general municipal election, the council shall meet at the usual place of holding meetings, at which time the newly elected council members shall take office. Thereafter the council shall meet at such times as may be prescribed by ordinance or resolution and shall meet in regular session at least once in each calendar month. The mayor, acting mayor, or any five council members may call special meetings upon at least twelve hours' written notice to each council member, served personally on each, or left at each member's place of residence.

All meetings of the council or committees thereof shall be public. The council shall cause to be kept a complete journal of its proceedings, and any citizen shall have access to the same at all reasonable times.

The council may appoint a committee of not more than two council members and any number of non-council members to screen applications for city manager, city attorney, and municipal court judge, to evaluate the performance of the persons occupying such positions, and to consider recommending disciplinary actions relating to such persons. Such committee may conduct its business in private, provided that the council as a whole takes action to determine finalists at a public meeting, to determine compensation at a public meeting, and to take disciplinary action at a public meeting. (Amended by Ord. No. 4597 (1981), § 1, adopted by electorate on November 3, 1981. Further amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993. Further amended by Ord. No. 7296 (2003), § 1, adopted by electorate on November 4, 2003.)

Sec. 10. Rules-quorum.

The council may determine its own rules of procedure, may compel attendance of members, and may punish members for misconduct.

Five council members shall constitute a quorum, but a smaller number may adjourn from time to time.*

Sec. 11. General powers of council.

All legislative powers conferred upon the City of Boulder by the provisions of this charter, except those which may from time to time be exercised by the people through direct legislation, and all other powers of every nature conferred upon the city, except those otherwise delegated by this charter or by ordinance, shall be and are hereby vested in the council.

Sec. 12. Specific duties of council[1].

The council shall choose and appoint a city manager, a city attorney, a police magistrate, and an auditor for such independent audits as are in this charter required or authorized to be made by order of the council, and such advisory boards or commissions as may be desired or are elsewhere provided for by this charter; but no member of the council shall act or be chosen as manager.

The council shall cause to be made at least annually, and at such other times as it may deem necessary, an audit of all financial accounts of the city.

The council shall consider all recommendations and reports from time to time presented by the city manager, or by any of the advisory commissions or the departments of planning and parks, and shall accept or reject the same within thirty days from the date of filing thereof with the council.

Sec. 13. Powers expressly withheld from council.

Except for purposes of inquiry, the council shall deal with the administrative service solely and directly through the city manager, and neither council, its members, nor committees shall either dictate the appointment, retention or removal or direct or interfere with the work of any officer or employee under the city manager. Any such dictation, attempted direction, or interference on the part of any member of the council shall be punishable in the manner deemed appropriate by the other members of the council, which may include removal from office. (Amended by Ord. No. 6008 (1998), § 2, adopted by electorate on November 3, 1998. Further amended by Ord. No. 6009 (1998), § 2, adopted by electorate on November 3, 1998.)

Sec. 14. Selection and term of office of mayor.

The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election. The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.*

Sec. 15. Powers and duties of mayor.

The mayor shall have all the powers, rights, and privileges of a council member. The mayor shall preside at meetings of the council and perform such other duties consistent with the office as may be imposed by this charter or by the council. The mayor shall have no power of veto. The mayor shall be recognized as the official head of the city for all ceremonial purposes, by the courts for serving civil processes, and by the governor for military purposes. In time of emergency, the mayor shall, if the council so orders, take command of the police and maintain and enforce the laws, temporarily superseding the city manager in police affairs. The mayor shall be ex officio a

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1. In 1993 the voters amended the Charter to change the title of the "police magistrate" in Sections 86, 87 and 150 to "Municipal Court Judge."

member of all council committees. During the mayor's absence or disability, the mayor's duties shall be performed by an acting mayor, appointed by the council from its own number.*

Sec. 16. Legislative procedure.

The council shall act only by ordinance, resolution, or motion. All legislative enactments must be in the form of ordinances; all other procedure may be in the form of resolutions or motions. The enacting clause of all ordinances passed by the council shall be in these words: "*Be it ordained by the city council of the City of Boulder.*" All ordinances and resolutions shall be confined to one subject clearly expressed in the title, and ordinances making appropriations shall be confined to the subject of appropriations. The final reading shall be in full, unless the measure shall have been printed and a copy thereof furnished to each council member prior to such reading. The ayes and noes shall be taken upon the passage of all ordinances, resolutions, or motions and entered upon the journal of council proceedings, and every ordinance, resolution, or motion shall require on final passage the affirmative vote of a majority of the council members present. Should any council member being present refuse to vote on any measure, said member's vote shall be recorded in the affirmative; and no council member shall be excused from voting except on matters involving the consideration of said member's official conduct or where said member's financial interests are involved.*

Sec. 17. Emergency measures[1].

No ordinance shall be passed finally on the date it is introduced, except in cases of emergency, for the preservation of the public peace, health, or property, and then only by a two-thirds vote of the council members present. The facts showing such urgency and need shall be specifically stated in the measure itself. No ordinance making a grant of any franchise or special privilege shall ever be passed as an emergency measure.*

Sec. 18. Publication of ordinances[1].

Every proposed ordinance shall be published once in full with all amendments in final form in a daily newspaper of the city, at least ten days before its final passage. Within five days after such final passage, it shall be again published once in a daily newspaper, and shall not take effect until thirty days after final passage, except that an emergency ordinance shall take effect upon passage, and be so published on the following day; and except that the tax levy ordinance, the annual appropriation ordinance, any ordinance providing for a vote by or submission to the people, and ordinances ordering improvements initiated by petition and to be paid for by special assessments shall take effect immediately upon publication.

Sec. 18A. Publication by reference.

When the council deems it appropriate, publication of the title of an ordinance, or the title of an amendment thereto, together with a statement that the published text is available for public inspection and acquisition in the office of the city clerk, shall be sufficient publication. Publication by title shall be deemed to meet all requirements of Section 18. (Added by Ord. No. 1632 (1951), § 1, adopted by electorate on November 6, 1951. Amended by Ord. No. 4773 (1983), § 1, adopted by electorate on November 8, 1983.)

Sec. 19. Amendment or repeal.

No ordinance or section thereof shall be amended, superseded, or repealed except by an ordinance regularly adopted.

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1. The Supreme Court held in Tanner v. City of Boulder, 158 Colo. 173, 405 P.2d 939 (1965), that ordinances adopted as emergency measures need not be published in final form prior to the adoption of such ordinances.

Sec. 20. Ordinances granting franchises.

No proposed ordinance granting any proposed franchise shall be put upon its final passage within sixty days after its introduction, nor until it has been published not less than once a week for two consecutive weeks in one daily newspaper of the city in general circulation. (Amended by Ord. No. 4773 (1983), § 1, adopted by electorate on November 8, 1983.)

Sec. 21. Record of ordinances.

A true copy of every ordinance when adopted shall be numbered and recorded in a book marked "Ordinance Record," and a certificate of adoption and publication shall be authenticated by the certificate of the publisher and by the signatures of the mayor and city clerk. The ordinances adopted by the vote of the qualified electors of the city shall be separately numbered and recorded, commencing with "people's ordinance No. 1."

ARTICLE III. ELECTIONS

Sec. 22. Municipal elections defined.

A general municipal election shall be held in the City of Boulder on the first Tuesday in November of every odd numbered year, and shall be known as the general municipal election. All other municipal elections shall be known as special municipal elections. (Amended by Ord. No. 7412 (2005), § 2, adopted by electorate on March 8, 2005.)

Sec. 23. Nomination by petition–requirements of petitions.

All elective officers of the city shall be nominated by petition which shall consist of the candidate's consent, the prayer and signatures of the petitioners, and the city clerk's certificate of petition. Each petition shall be on a separate paper, of uniform size, to be provided by the city clerk, and shall contain the name of but one candidate. No elector shall sign petitions for more candidates than the number of places of that particular designation to be filled at the election; and should an elector do so, said elector's signature shall be void as to the petition or petitions which said elector last signed.*

Sec. 24. Candidate's affidavit of consent.

Before any petition is filed with the city clerk, the candidate whose name appears on said petition shall appear before the city clerk and take the oath (or affirmation) which appears on the form of petition herein set forth.

Sec. 25. Requirements for signing petitions.

Before signing a petition of nomination, each person shall take oath (or affirmation) before the city clerk that the representations set forth in the petition are true and shall sign such person's name thereto in a space designated by the city clerk, together with such person's residence, street and number, place of business, and the date of signing.*

Sec. 26. City clerk's certificate of petition.

When a petition of nomination shall have been signed by not less than twenty-five and not more than thirty-five qualified and duly registered electors, and not later than the seventy-first day before the pending municipal election, the city clerk shall check such petition with the official registration list, determine its sufficiency, and, if sufficient, shall append the clerk's certification of petition, and file the completed petition in the clerk's office, together with the date and certificate of the filing thereof. The petition may be amended to correct or replace signatures which the clerk finds not in apparent conformity with the requirements of this charter and any applicable ordinance at any time prior to the sixty-sixth day before the election. (Amended by

Ord. No. 3925 (1973), § 1, adopted by electorate on September 11, 1973. Further amended by Ord. No. 5576 (1993), § 1, adopted by electorate on November 2, 1993.)*

Sec. 27. Form of nomination petition[1].

CANDIDATE'S CONSENT

State of Colorado,)
County of Boulder,)ss.
City of Boulder.)

I, (name of candidate), do solemnly swear (or affirm) that I am a qualified elector of the City of Boulder and that on the date of the next general municipal election, I will be not less than twenty-one years of age and will have been a resident of the City of Boulder for one year immediately prior thereto and that if legally nominated, I will stand as candidate for council member at the general municipal election to be held on _____, A.D. _____.

_____
(Candidate's signature)

Subscribed and sworn to before me this _____ day of _____, A.D. ____.

_____
City Clerk

(CITY SEAL)

ELECTORS' PETITION

We, the undersigned electors of the City of Boulder, hereby nominate _____, whose residence is _____, whose place of business is at _____, for office of _____, to be voted upon at the election to be held in the City of Boulder on the _____ day of _____, ____, and we individually swear (or affirm) that we are qualified to vote for a candidate for the above office, and that we have not signed more nomination petitions of candidates for this office than there are persons to be elected thereto; and we further swear (or affirm) that we join in this petition for the nomination of the above named person upon the condition that the said _____ has not become a candidate as the nominee or representative of, nor because of any promised support from, any political party, or from any person or firm or combined interests in any measure or franchise.

No.	*Names of Electors*	*Residence*	*Place of Business*	*Date of Signature*	*Check Mark by Clerk*
1.					
2.					
3.					
35.					

1. This section should also have been amended by Ord. No. 1978 (1956), § 1, adopted by electorate on October 2, 1956, which changed the residency requirement for councilmembers from five to three years.

CITY CLERK'S CERTIFICATION OF PETITION

State of Colorado,)
County of Boulder,)ss.
City of Boulder.)

I hereby certify that each and every person whose signature appears on this petition personally appeared before me on the day and date set opposite such person's name, was duly sworn as to the matters set forth in said petition, and signed such person's name as petitioner for the purpose above set forth; and I further certify that I have examined the official registration list of persons qualified to vote at the next ensuing municipal election named in such petition; that (state the number) of the above petitioners appear as duly qualified and registered electors in the City of Boulder; and that to the best of my knowledge and belief this petition is _____ sufficient.

In testimony whereof, I have hereunto set my hand and the seal of the City of Boulder this (twenty-second day before election) day of _____, A.D. _____.

_____
City Clerk.

*(CITY SEAL)**

(Amended by Ord. No. 3925 (1973), § 1, adopted by electorate on September 11, 1973. Further amended by Ord. No. 6006 (1998), § 2, adopted by electorate on November 3, 1998.)

Sec. 28. Time of completing the petition.

A petition of nomination shall be completed and filed in the office of the city clerk not earlier than ninety-one nor later than seventy-one days before the election. (Amended by Ord. No. 3925 (1973), § 1, adopted by electorate on September 11, 1973. Further amended by Ord. No. 5576 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 29. Withdrawal from nomination.

Any person having been duly and regularly nominated as herein provided, may, prior to the sixty-sixth day preceding the election for which such person has been nominated, withdraw from such nomination by filing with the city clerk a sworn statement of such withdrawal. (Amended by Ord. No. 3925 (1973), § 1, adopted by electorate on September 11, 1973. Further amended by Ord. No. 5576 (1993), § 1, adopted by electorate on November 2, 1993.)*

Sec. 30. Preservation and filing of petitions.

The city clerk shall preserve and file in the clerk's office for a period of six years all petitions of nomination and all certificates, acceptances, and withdrawals belonging thereto.*

Sec. 31. Election notices.

The city clerk shall prior to the fifty-fifth day before the election certify a list of the candidates so nominated for office at such election, whose names are entitled to appear upon the ballot as being the list of candidates nominated as required by this charter, together with the offices to be filled at such election, designating whether such election shall be for a full or unexpired term; and the clerk shall file in the clerk's office said certified list of names with residence and business addresses and the offices so to be filled, and the clerk shall cause to be published a notice calling such election, for five successive days before such election, in one daily newspaper of general circulation and published in the City of Boulder, which notice shall contain a list of said names of candidates, with residence, place of business, the offices to be filled, the time when and the places at which such election shall be held. (Amended by Ord. No. 3925 (1973),

§ 1, adopted by electorate on September 11, 1973. Further amended by Ord. No. 4773 (1983), § 1, adopted by electorate on November 8, 1983. Further amended by Ord. No. 5576 (1993), § 1, adopted by electorate on November 2, 1993.)*

Sec. 32. General election regulations.

The provisions of any and all laws of the State of Colorado now or hereafter in force, except as the council may otherwise by ordinance provide, or as may be otherwise herein provided, relating to the qualification and registration of electors, the manner of voting, the duties of election officers, and all other particulars in respect to the management of elections, insofar as the same may be applicable, shall govern all municipal elections; provided, that the city council, exclusive of such members thereof as are candidates at the then pending election, shall constitute the general canvassing and election board and shall meet and duly canvass the election returns, as certified by the precinct or district election officials, which returns and certifications shall be in accordance with the provisions of this charter. If at any time the number of council members eligible to serve on the general canvassing and election board be less than five, it shall be the duty of the city council at a regular meeting prior to the day of election, by resolution duly entered on its records, to designate a sufficient number of qualified electors, not candidates at such election, to sit with the eligible members of the council on such board so that the said board in sitting shall never consist of less than five; and, provided further, that the city council of the present existing government of the City of Boulder, together with such qualified electors as may be by them designated, shall constitute the general canvassing and election board for the purpose of canvassing and determining the result of the first election to be held hereunder. Said board shall have power to appoint such clerks and assistants as may be necessary to canvass the vote. The council shall make the necessary appropriation to meet the expenses of such clerks and assistants.

The city clerk or a duly authorized assistant shall act as secretary of the board of canvassers, and shall spread the result on a record kept for the purpose, and shall issue such certificates, under the seal of the city, as the circumstances may warrant and necessitate.*

Sec. 33. Voting machines.

In all general and special municipal elections held in the City of Boulder for any purpose whatsoever, the ballots or votes may be cast, registered, recorded, and counted by means of voting machines. No voting machine shall be used, purchased, or leased by the City of Boulder unless it shall be so constructed as to fulfill the following requirements: that it affords each elector an opportunity to vote in absolute secrecy; that it is closed during the progress of the voting so that no person can see or know the number of votes registered for any candidate or for whom the elector has voted; that it be capable of containing on the face thereof the form of ballot made up and arranged substantially in the manner prescribed hereinafter for the election of council members, for voting on initiated or referred measures, for voting on the question of issuance of bonds, for voting on the granting of franchises, for voting on the amendments to the charter or for any other purpose; that it prevents the voter from voting for a candidate or on a question for whom or on which such voter is not lawfully entitled to vote; that it enables each voter to vote for all candidates for whom such voter is entitled to vote and prevents such voter from voting for any candidate for any office more than once unless such voter is lawfully entitled to cast more than one vote for each candidate, and in that event permits such voter to cast only as many votes for that candidate as such voter is by law entitled, and no more; that it be provided with at least twenty pairs of "for" and "against" counters for voting on questions or propositions to be submitted in accordance with law, with the operating of voting devices therefor; that such machine will correctly register by means of exact mechanical counters each vote cast for candidates whose names appear on the ballot labels or for questions appearing thereon; that each machine be provided with a lock or locks, the keys of which cannot be interchangeably used, and by locking of which any movement of the operating mechanism can be prevented, so that it cannot be tampered with or manipulated for any fraudulent purpose; that the machine is susceptible of being closed during the progress of the voting so that no person can see or know the number of votes regis-

tered for any candidate; that there shall be a counter on each machine, the registering face of which can be seen at all times from the outside of the machine, which will show during the election the total number of voters who have operated the machine at that election; that it shall have a protective counter or other device, the register of which cannot be reset, which shall record the cumulative total number of movements of the operating mechanism. The provisions of any and all state laws now or hereinafter in force relating to the use of voting machines at elections, except as the council may otherwise by ordinance provide, shall govern the management of voting machines in elections.

All the provisions of this charter relating to elections and any and all laws of the State of Colorado now or hereafter in force and not inconsistent with the provisions of this charter shall apply to all elections held in election districts or precincts where voting machines are used. Any provisions of this charter heretofore in force which conflict with the use of voting machines as herein set forth shall not apply to precincts in which an election is conducted by the use of voting machines. Nothing in this charter, however, shall be construed as prohibiting the use of separate paper ballots, if need be, for the purpose of conducting any special or general municipal election in the City of Boulder. (Repealed by Ord. No. 1474 (1947), § 1, adopted by electorate on November 4, 1947. Re-enacted by Ord. No. 1826 (1954), § 1, adopted by electorate on October 26, 1954.)[1]*

Sec. 34. Electors–form and marking of ballot.

The members of the city council shall be elected by votes cast by qualified electors as provided by the laws of the State of Colorado and the charter and ordinances of the City of Boulder. The form of ballot at such election shall be such that all of the duly nominated candidates for council shall be listed on a single ballot in alphabetical order with a reference to the surname of said candidates, and voting shall be by placing a cross (X) opposite the name of each candidate voted for, not to exceed the total number of council members to be elected. If any ballot shall contain more cross-marked candidates than there are council members to be elected, said ballot shall be void and not counted. (Repealed and re-enacted by Ord. No. 1474 (1947), § 1, adopted by electorate on November 4, 1947.)*

Sec. 35. Counting ballots.

There shall be but one list of candidates for both the full regular terms to be filled and any parts of terms to which there is a vacancy which is to be filled. The candidates having the highest number of votes to the number that there are full regular terms to be filled shall be declared elected to those terms. If there is a vacancy term or terms to be filled, then the candidate or candidates having the next highest number of votes to the number that there are vacancy terms to be filled shall be declared elected, the one having the highest number of votes to fill the longest vacancy term and the one having the next highest to have the next longest vacancy term, until all vacancy terms are filled. There shall be no choice or preference between voting for candidates, but all votes shall be of equal value, and every voter shall be allowed to vote for as many council members as there are council members to be elected. (Repealed and re-enacted by Ord. No. 1474 (1947), § 1, adopted by electorate on November 4, 1947.)*

Sec. 36. Expenditure of money on elections.

(Amended by Ord. No. 2263 (1959), § 1, adopted by electorate on November 3, 1959.)*
(Repealed by Ord. No. 5219 (1989), § 1, adopted by electorate on November 7, 1989.)

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1. This section was enacted as Section 32 in Ord. No. 1826 but was codified as Section 33 in the Code of the City of Boulder, 1955.

ARTICLE IV. DIRECT LEGISLATION

The Initiative

Sec. 37. Power to initiate ordinances.

The people shall have the power at their option to propose ordinances, including ordinances granting franchises or privileges, and other measures, and to adopt the same at the polls, such power being known as the initiative. A petition, meeting the requirements hereinafter provided and requesting the council to pass an ordinance, resolution, order, or vote (all of these four terms being hereinafter included in the term "measure") therein set forth or designated, shall be termed an initiative petition and shall be acted upon as hereinafter provided.

Sec. 38. Preparation of initiative petitions.

Signatures to initiative petitions need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place. All such papers pertaining to any one measure shall have written or printed thereon the names and addresses of at least five registered electors who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named. All such papers shall be filed in the office of the city clerk as one instrument. Attached to every such instrument shall be a certificate signed by the committee of petitioners, or a majority of them, stating whether the petition is intended to be a "five per cent petition" or a "fifteen per cent petition". (Amended by Ord. No. 4598 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 39. Filing of petition.

Within ten days after the filing of the petition the city clerk shall ascertain by examination the number of registered electors whose signatures are appended thereto and whether this number is at least five per cent or fifteen per cent, as the case may be, of the number of registered electors of the city as of the day the petition was filed, and the clerk shall attach to said petition a certificate showing the result of said examination. If by the city clerk's certificate, of which notice in writing shall be given to one or more of the persons designated, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate by filing supplementary petition papers with additional signatures. The city clerk shall within ten days after such amendment make like examination of the amended petition, and if the clerk's certificate shall show the same to be insufficient, the city clerk shall file the petition in the clerk's office and shall notify each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose. (Amended by Ord. Nos. 4598 and 4599 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 40. Submission of petition to council.

If the petition shall be found to be sufficient, the city clerk shall so certify and submit the measure to the council at its next meeting, and the council shall at once read and refer the same to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the measure before the committee to which it is referred. Thereafter the committee shall report the measure to the council, with its recommendation thereon, not later than thirty days after the date upon which such measure was submitted to the council by the city clerk. Upon receiving the measure from the committee the council shall at once proceed to consider it and shall take final action thereon within thirty days from the date of such committee report.

Sec. 41. Election on initiated measures.

If the council shall fail to pass the measure or shall pass it in a form different from that set forth in the petition, then if the petition was a "fifteen percent petition" the measure shall be submitted by the council to the vote of the electors at the next general municipal election or state general election occurring not less than fifty-six days after the date of the final action by the council, and if no general municipal election or state general election is to be held within six months from such date, then the council shall call a special election to be held not less than thirty nor more than forty-five days from such date. If the petition was a "five percent petition" the measure shall be submitted at the earlier of the next general municipal election or at a special municipal election to be called and held in conjunction with the next state general election occurring not less than fifty-six days after the date of the final action by the council if the petition was certified by the city clerk to the council no less than one hundred twenty days before such general or special municipal election. But if, within thirty days after the final action by the council on the measure, a supplemental petition shall be filed with the city clerk signed by a sufficient number of additional registered electors asking for the submission of the measure so that the original petition when combined with such supplementary petition shall become a "fifteen percent petition," then the council shall call a special election to be held not less than thirty nor more than forty-five days after the receipt of the city clerk's certificate that a sufficient supplementary petition has been filed. The sufficiency of any such supplementary petition shall be determined, and it may be amended, in the manner provided for original petitions. For an election to be required as an initiative petition, said committee of petitioners shall, by unanimous vote of the members of the committee legally competent to act at such time, certify to the city clerk the requirement of submission and the measure in the form desired, which must be in the form set forth in the petitions, within ten days after the date of final action on such measure by the council. Upon receipt of the certificate and certified copy of such measure, the city clerk shall certify the fact to the council at its next meeting, and such measure shall be submitted by the council to the vote of the electors in a general or special municipal election as hereinbefore provided. (Amended by Ord. No. 4598 (1981), § 1, adopted by electorate on November 3, 1981. Further amended by Ord. No. 5577 (1993), § 1, adopted by electorate on November 2, 1993. Further amended by Ord. No. 5907 (1997), § 1, adopted by electorate on November 4, 1997.)*

Sec. 42. Initiative ballots.

The ballots used when voting upon any such measure shall state the substance thereof, and below it the two propositions "for the measure" and "against the measure." Immediately at the right of each proposition there shall be a square in which by making a cross (X) the voter may vote for or against the measure. If a majority of electors voting on any such measure shall vote in favor thereof, it shall thereupon become an ordinance, resolution, order, or vote of the city as the case may be.

The following shall be the form of the ballot:

TITLE OF MEASURE

(With general statement of substance thereof.)

For the measure	
Against the measure	

The Referendum

Sec. 43. Power of referendum.

The people shall have power at their option to approve or reject at the polls any measure passed by the council or submitted by the council to a vote of the electors, excepting, however,

measures levying a tax for or appropriating money to defray the general expenses of the city government or any existing department or commission thereof; also, excepting measures creating improvement districts and levying special assessments in payment therefor; also, measures ordering the construction of public improvements and levying assessments on the property specially benefited thereby, for the payment thereof. Such power shall be known as the referendum; which power shall be invoked and exercised as herein provided. All measures, save those hereinabove specifically excepted, submitted to the council by initiative petition and passed by the council without change or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other measures.

Sec. 44. Referendum petition.

If, within thirty days after final passage of any measure by the council, a petition signed by registered electors of the city to the number of at least ten percent of the registered electors of the city as of the day the petition is filed be filed with the city clerk requesting that any such measure, or any part thereof, be repealed or be submitted to a vote of the electors, it shall not, except in the case of an emergency measure, become operative until the steps indicated herein have been taken. (Amended by Ord. Nos. 4598 and 4599 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 45. Signatures to petition.

The signatures thereto need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended thereto is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place. All such papers shall be filed in the office of the city clerk as one instrument. A referendum petition need not contain the text of the measure designated therein and of which the repeal is sought.

Sec. 46. Certificate of petition.

Within ten days after the filing of the petition the city clerk shall ascertain whether or not the petition is signed by registered electors of the city to the number of at least ten percent of the registered electors of the city as of the day the petition was filed, and the clerk shall attach to such petition a certificate showing the result of such examination. If by the city clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate by the filing of supplementary petition papers with additional signatures. The city clerk shall within ten days after such amendment make like examination of the amended petition and certify the result thereof. (Amended by Ord. Nos. 4598 and 4599 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 47. Referendum election.

If the petition be found sufficient, the council shall proceed to reconsider such measure, or such part thereof, as the petition shall specify. If upon such reconsideration such measure, or such part thereof, be not repealed or amended as demanded in the petition, the council shall provide for submitting the same, by the method herein provided, to a vote of the electors at the next municipal election occurring not less than thirty days after the receipt by the council of the city clerk's certificate, and such measure, or such part thereof, shall thereupon be suspended from going into effect until said election and shall then be deemed repealed unless approved by a majority of those voting thereon. Or the council by two-thirds vote may submit such measure or part thereof with like effect to the electors at a special election to be called by said council not less than thirty days after the receipt of said city clerk's certificate.

Sec. 48. Title of ballots.

Proposed measures and charter amendments shall be submitted by ballot title. There shall appear upon the official ballot a ballot title which may be distinct from the legal title of any such proposed measure or charter amendment and which shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such measure or charter amendment. The ballot title shall be prepared by the committee of the petitioners if for an initiated or a referendum measure, or by a committee of the council when submitted by the council.

Sec. 49. Form of ballots.

The ballots used when voting upon such measure shall designate the same, and below it the two propositions, "for the measure" and "against the measure."

Sec. 50. Emergency measures subject to referendum.

Measures passed as emergency measures shall be subject to referendum like other measures, except that they shall not be suspended from going into effect while referendum proceedings are pending. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed, as regards any further action thereunder, and all rights and privileges conferred by it shall be null and void; provided, however, that such measure so repealed shall be deemed sufficient authority for any payment made or expense incurred in accordance with the measure previous to the referendum vote thereon.

Sec. 51. Official publication.

Every measure or charter amendment submitted to the voters in any election shall be published at least once in a daily newspaper of the city. (Amended by Ord. No. 1632 (1951), § 8, adopted by electorate on November 6, 1951.)

Sec. 52. Number of measures initiated or referred.

Any number of measures may be initiated or referred for a vote at the same election, in accordance with the provisions of this charter.

Sec. 53. Conflict of measures.

If two or more measures adopted or approved at the same election conflict in any of their provisions, they shall go into effect in respect to such of their provisions as are not in conflict and the one receiving the highest affirmative vote shall prevail insofar as their provisions conflict.

Sec. 54. Repeal of initiated or referred measures.

No ordinance that has been passed by vote of the people under the initiative or has received a favorable vote of the people under the referendum shall be repealed except by an ordinance submitted to a vote of the people.

The Recall

Sec. 55. Recall of elective officers.

The holder of any elective office may be removed by the qualified electors of the city. The procedure to effect such removal from office shall be as follows:

Sec. 56. Petition for recall.

A petition signed by electors qualified to vote for a successor to the incumbent sought to be removed equal in number to at least twenty-five per cent of the last preceding vote cast within the city for all candidates for governor shall be addressed to the council and filed with the city clerk. The city clerk shall provide blank forms for such petitions. The city clerk, upon issuing such forms to any person, shall enter the name of the person to whom issued, the date of such issuance, and the number of such forms issued in a record to be kept in the clerk's office for that purpose and shall certify on each of said forms under the clerk's seal the name of the person to whom issued and the date of issuance. No petition shall be filed unless it shall bear such certificate of the city clerk. All petitions shall be returned and filed with the city clerk within thirty days from the issuance of such blank forms. The petition shall contain a substantial statement of the grounds upon which the removal is sought. The signatures to the petition need not all be appended to one paper, but each person shall add to such person's signature such person's place of residence, giving the street and number. The circulator of each such paper shall make affidavit before an officer competent to administer oaths that the statements contained therein are true and that each signature appended to the paper is the genuine signature of the person whose name it purports to be. All papers composing said petition shall be assembled and filed as one instrument, with endorsements thereon of the names and addresses of three persons designated as filing said petition; provided, that prior to the issuance of any blank forms of petitions for removal, an affidavit shall be made by one or more qualified electors, which affidavit shall state the name of the officer or officers sought to be removed and the grounds upon which the removal is sought, and such affidavit shall be filed with the city clerk.*

Sec. 57. Petition may be amended or new petition made.

Within ten days from the filing of said petition the city clerk shall ascertain by examination thereof and of the registration books and election returns whether the petition is signed by the required number of qualified electors and shall attach thereto a certificate showing the result of such examination. The clerk shall, if necessary, be allowed extra help.

If the certificate shows the petition to be insufficient, the clerk shall, within five days, so notify in writing one or more of the persons designated on the petition as filing the same; and the petition may be amended at any time within ten days from the filing of the certificate. The city clerk shall, within ten days after such amendment, make like examination of the amended petition and attach thereto a certificate of the result. If still insufficient or if no amendment is made, the clerk shall return the petition to one of the persons designated thereon as filing it, without prejudice, however, to the filing of a new petition for the same purpose.*

Sec. 58. Elections under recall petitions unless officer resigns.

If the petitions and amended petitions shall be found by the city clerk to be sufficient, the clerk shall submit the same with the clerk's certificate to the council without delay, and the council shall, if the officer sought to be removed does not resign within five days thereafter, thereupon order an election to be held on a Tuesday fixed by them not less than thirty nor more than forty days from the date of the city clerk's certificate that a sufficient petition was filed; provided, however, that if any other municipal election is to occur within sixty days from the date of the city clerk's certificate, the council may, at its discretion, postpone the holding of the removal election to the date of such other municipal election. If a vacancy occurs in said office after a removal election has been ordered, the election shall, nevertheless, proceed as in this article provided.*

Sec. 59. Candidates–elections.

The nomination of candidates to be voted for at such recall election, the publication of notice, and the conduct of the same shall all be in conformity with the provisions of this charter relating to elections. There shall be printed on the official ballot, as to every officer whose recall is to be

voted on, the words, "*Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?*" Following such question shall be the words "*Yes*" or "*No*", on separate lines, with a blank space at the right of each, in which the voter shall indicate, by marking a cross (X), the voter's vote for or against such recall.

On such ballots, under each question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person sought to be recalled; but no vote cast shall be counted for any candidate for such office, unless the voter also voted for or against the recall of such person sought to be recalled from said office.

When more than one official is sought to be recalled, if the term of office of all such incumbents expires at the same time, all nominations shall be considered as being to elect a successor or successors to any or all of such incumbents as may be recalled.

If more than one official is sought to be recalled, and the terms of all do not expire at the same time, then the nominating petitions must specify the unexpired term for which the nominee is candidate.*

Sec. 60. Removal upon recall.

When a canvass of the returns of a recall election shows that any officer has been recalled, the officer's term of office shall thereupon terminate.*

Sec. 61. No recall for six months.

No recall petition shall be filed against any officer who has not actually held office for at least six months; provided, that second or further recall petitions for the same officer shall require signatures of qualified electors equal to at least thirty-five per cent of the last preceding vote cast within the city for all candidates for governor.*

Sec. 62. Incapacity of recalled officers.

Any person who has been removed from office by recall, or who has resigned from such office while recall proceedings were pending against such person, shall not be appointed to any office within one year after such removal by recall or resignation.*

ARTICLE V. ADMINISTRATIVE SERVICE

The City Manager

Sec. 63. The city manager–qualifications and appointment.

The city manager shall be the chief executive and administrative officer of the city. As such, the manager shall possess, have, and exercise all the executive and administrative powers vested in the city. The manager shall be chosen by the council solely on the basis of executive and administrative qualifications. The choice need not be limited to the inhabitants of the city or state.

The city manager shall devote full time and business interest to the management of the city's affairs, and shall not, during the manager's term of office, be an employee of, or perform any executive duty for any person, firm, corporation, or institution other than the City of Boulder. The manager's salary shall be fixed by the council; and the manager shall be required to give a bond, for the faithful performance of the duties of the office, in such amount as the council may determine. The manager shall be appointed for an indefinite period, and shall be removable by the council at pleasure. If removed at any time after six months of service, the manager may demand written charges and a public hearing on the same before the council, and the same shall be given the manager prior to the date on which the manager's final removal shall take effect.

Pending such hearing, the council may suspend the manager from office; and during such suspension, or in case of the manager's absence or disability from any other cause, the council shall designate some properly qualified person, other than a member of the council, to perform the duties of the office.*

Sec. 64. Special powers and duties as city manager.

The city manager shall have the special powers and duties hereinafter enumerated, and shall be directly responsible to the council for the proper administration thereof, to-wit:

(a) To see that all laws and ordinances governing the city are enforced;

(b) To appoint and to remove at pleasure, except as otherwise in this charter provided, all directors of departments and all subordinate officers and employees in such departments in both classified and unclassified service, such appointments and removals to be made upon the basis of merit and fitness alone, including proper subordination;

(c) To exercise control and supervision over all departments herein created, except as otherwise in this charter provided;

(d) To make a monthly report to the council, and to attend all meetings of the council with the right to take full part in the discussion, but having no vote;

(e) To recommend to the council for adoption such measures as the manager deems necessary or expedient;

(f) To keep the council fully advised as to the financial condition of the city;

(g) To see that all franchise rights and provisions are justly enforced;

(h) To prepare and submit to the council an annual budget as by this charter required;

(i) To submit to the council at each meeting thereof an order of business covering the manager's recommendations; and

(j) To perform such other duties as may be prescribed by this charter or required of the manager by ordinance or resolution of the council.*

Sec. 65. Administrative departments.

The following administrative departments are hereby created:

(a) Department of public works;
(b) Department of finance and record;
(c) Department of parks and recreation;
(d) Department of public safety; and
(e) Department of planning.

Upon the recommendation of the city manager, the city council may by ordinance create additional administrative departments. (Amended by Ord. No. 1632 (1951), § 2, adopted by electorate on November 6, 1951. Further amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)[1]

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1. Subsection (d) of this section should also have been amended by Ord. No. 1753 (1953), § 1(b), adopted by electorate on November 3, 1953, which created the department of recreation.

Sec. 66. Directors of departments.

A director for each department shall be appointed by the city manager, except as hereinafter provided. Such directors shall serve until removed by the city manager or until their respective successors have been appointed and duly qualified. Each director shall be chosen on the basis of general executive and administrative experience and ability and of special education, training, and experience in the class of work which is to be administered; provided that the director of public works shall be an engineer with training and experience in municipal engineering. Each director shall conduct the affairs of each respective department in accordance with the provisions of this charter, the city ordinances, and the rules and regulations made therefor by the city manager and shall be immediately responsible to the city manager for the conduct of the subordinate officers and employees of the respective department; for the performance of its business; and for the custody and preservation of the books, records, papers, and property under the director's control. Directors of departments shall prepare departmental estimates, which shall be open to public inspection, and they shall make all other reports and recommendations in writing concerning their respective departments at such intervals or other times as may be requested by the city manager.

Whenever the city manager removes the director of any department, the manager shall make a written report to the council of such removal, containing a full statement of the reasons therefor. (Amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)*

Sec. 67. Departments of public works and public utilities.

(a) Department of public works. There is hereby created a department of public works, the director of which will be subject to the supervision and control of the city manager in all matters and the general powers and duties of which shall be as established by ordinance adopted by the city council.

(b) Department of public utilities. There is hereby created a department of public utilities, the director of which will be subject to the supervision and control of the city manager in all matters, and the general powers and duties of which shall be as established by ordinance adopted by the city council. (Amended by Ord. No. 2729 (1963), § 1, adopted by electorate on November 5, 1963.)[1]

Department of Finance and Record

Sec. 68. General powers and duties.

The director of finance and record shall be ex-officio the city clerk, city treasurer, purchasing agent, and clerk of the council with power to take acknowledgments and administer oaths, under seal of the city, for all municipal purposes. Subject to the supervision and control of the city manager in all matters, the director shall keep and supervise all accounts and have custody of all public moneys of the city; purchase, store, and distribute supplies needed by the various departments, officers, boards, or commissions of the city; collect special assessments; issue licenses; collect license fees; make and keep a journal of proceedings of the council; have custody of all public records of the city not specifically entrusted to any other department by this charter or by ordinance; and perform such other duties pertaining to such department as are in this charter specified, or may be by ordinance required, or be assigned by the city manager.

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1. This section as published in the Charter and Code of Boulder, Colorado, 1925 differs from that published in the Code of the City of Boulder, 1955. As there is no ordinance authorizing the change, it appears that it was made when the section was codified in the 1955 Code.

Until otherwise provided by the city manager, the city clerk of the City of Boulder holding such office at the time this charter shall take effect shall be acting director of finance and record, in charge of all other city officers or employees whose present duties are embraced within the scope of this department as in this charter defined.*

Department of Public Health

Sec. 69. General powers and duties.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 69A. Public health and hospital fund.

(Added by Ord. No. 1219 (1929), § 1, adopted by electorate on November 5, 1929.)

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Department of Recreation

Sec. 70. Director.

(Amended by Ord. No. 1753 (1953), § 1(b), adopted by electorate on November 3, 1953.)
(Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 70A. Advisory recreation board.

(Added by Ord. No. 1753 (1953), § 1(b), adopted by electorate on November 3, 1953.)
(Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 70B. Appropriation for recreation.

(Added by Ord. No. 1753 (1953), § 1(b), adopted by electorate on November 3, 1953.)
(Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 71. Tax levy for department.

(Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Department of Public Safety

Sec. 72. General powers and duties.

The city manager shall, until otherwise by charter amendment provided, be ex-officio director of public safety. Such director shall be the executive head of the divisions of fire and police, with power to direct the activities of either or any of such divisions; and with power to appoint, transfer, or remove any and all of the officers and employees therein.

Except as otherwise in this charter provided, the city manager shall in times of public danger or emergency have power to deputize, appoint, and administer the oath of office to any necessary and additional firefighters, police officers, or patrol officers, as the nature of the emergency may require, during the period of such public danger or emergency.

The city manager shall be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, ventilation, and occupancy of buildings, as may be ordained by the council or established by general law. The city manager shall be charged with the enforcement of all laws and ordinances relating to weights and measures, and shall report to the proper United States or state authorities, as the case may be,

any violation of federal or state laws relating to weights, measures, or the sale of any class of merchandise, supplies, foodstuffs, fuels, materials, necessities of life, or commodities of any nature whatsoever. The city manager shall report to proper authorities any violations of liquor or other general laws within the city's jurisdictional limits. Except as in this charter provided, the manager shall direct all activities and enforce all ordinances pertaining to the safety of the general public upon the streets, public lands, places, or parks, within public or private buildings, or elsewhere within the jurisdiction of the City of Boulder.

The city manager shall appoint a city probation officer, to work in cooperation with the department of public welfare in all correctional, juvenile, or reformatory matters, activities, and institutions of the City of Boulder.

Until otherwise provided by the city manager, and until the appointment of such, the city marshal of the City of Boulder holding such office at the time this charter shall take effect shall be acting director of public safety, but not city manager, in charge of all other city officers or employees whose present duties are embraced within the scope of this department as in this charter defined.*

Sec. 73. Relief funds.

The council may by ordinance provide for relief funds for the employees of the department and provide for the administration of such funds as may be created by ordinance or laws of the state.

Department of Planning

Sec. 74. Planning board.

There shall be a city planning board which shall consist of seven members appointed by the city council. The appointive members shall be qualified electors of the city, shall not hold any other office under this charter except as provided in Section 84A, shall serve without pay, and shall be removable by the council for cause.

The council shall remove any appointive member who displays lack of interest, or fails, upon due notice, and continuously for three months, to attend meetings of the board without formal leave of absence. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951. Further amended by Ord. No. 2728 (1963), § 1, adopted by electorate on November 5, 1963.)

Sec. 75. Term of office–vacancies.

The term of office of each board member shall be five years. The council shall fill all vacancies.

The board shall have power to make rules for the conduct of business and shall keep accounts and records of its transactions. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951. Further amended by Ord. No. 2728 (1963), § 1, adopted by electorate on November 5, 1963. Further amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 76. Organization and procedure of planning board.

The board shall choose a chair, a vice chair, and a secretary who may or may not be a member of the board. If not a member, the compensation of the secretary, if any, shall be fixed by the council. If a director of planning has been appointed, the director may be designated as secretary. The board shall have regular meetings once a month, and special meetings may be called at any time by the chair and two members. Four members shall constitute a quorum, and

an affirmative vote of at least four shall be necessary to authorize any action of the board. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)*

Sec. 77. Director of planning.

A director of planning, who shall be qualified by special training and experience in the field of city planning, may be appointed on a part-time or full-time basis by the city manager and shall be removable by the city manager. The director of planning shall be the regular technical advisor of the board and shall have administrative direction of the planning department. The director may be designated as the secretary of the planning board and authorized to perform other necessary functions. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)*

Sec. 78. Functions.

The planning department shall:

(a) Prepare and recommend to the city council a general plan, with necessary maps, plats, charts, and descriptive and explanatory materials, for the physical improvement and development of the city, including therein,

(1) The general location, character, and extent of streets, bridges, parks, waterways, and other public ways, grounds, and spaces;

(2) The general location of public buildings and other public property, within and without the city limits, including watersheds, water systems, reservoirs, sewer and drainage systems, facilities for the sanitary disposal of garbage and other wastes, airports, vehicle parking facilities, and all other public properties and facilities necessary for the proper development of the city;

(3) The general location and extent of public utilities, including public transportation facilities, whether publicly or privately owned;

(4) The removal, relocation, widening, extension, narrowing, vacation, abandonment, or change of use of existing or future public ways, grounds, spaces, buildings, property, or utilities;

(5) An adequate and equitable system of financing public improvements;

(b) Review the general plan periodically and recommend to the city council desirable amendments and additions to the plan;

(c) Submit annually to the city manager, not less than sixty days prior to the date for submission of the city manager's proposed budget to the city council, a list of recommended capital improvements to be undertaken during the forthcoming six-year period;

The list shall be arranged in order of preference, with recommendations as to which projects shall be completed each year. Each list of capital improvements shall be accompanied by a six-year capital budget indicating estimated costs and methods of financing all improvements;

(d) Prepare and recommend to the city council a zoning plan dividing the city into building districts or zones and regulating the uses of land and the height, area, bulk, and uses of public and private buildings and structures;

(e) Prepare and recommend to the city council minimum housing ordinances, building codes, and other measures necessary to promote the health, safety, and general welfare of the people of the city;

(f) Prepare and recommend to the city council regulations governing the process of land subdivision;

(g) Exercise control over all public improvements in accordance with the provisions of Section 80;

(h) Exercise control over platting, opening, and annexing subdivisions in accordance with the provisions of Sections 81 and 82;

(i) Cooperate with other governmental planning agencies on all planning matters affecting the city;

(j) Encourage proper planning by all departments of the city, request necessary assistance from other departments, and integrate, to the extent possible, the planning activities of other departments into the general plan of the city; and

(k) Within its budget appropriations, contract when necessary with city planners and other consultants for technical services. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)

Sec. 79. Notice of pending plans or ordinances.

Any officer or department whose duty it is to prepare ordinances and resolutions relating to the location of any public improvement, which may be considered by the planning board a part of the comprehensive plan – including specifically the location of any public building, or the location, extension, widening, enlargement-ornamentation, or parking of any street, boulevard, alley, parkway, playground, or other public grounds, or the vacation of any street, or any other alteration of the city plan of streets and highways, or the location of any bridge, tunnel, or subway, or of any surface, underground or elevated railway or public utility, or any ordinance relating to housing, building codes or zones – shall, prior to the submission to the proper board or officer of the municipality of the ordinance or resolution required to be adopted before such proceedings are instituted, give notice to the board of the pendency (before the officer or department) of proceedings with reference to any of the above matters. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)

Sec. 80. Improvements to conform with plan.

Whenever the planning board shall have made a general plan of the municipality or of any portion thereof in accordance with Section 78 of this charter, no public improvement shall be authorized to be constructed in the city until approved by the board; provided, that in case of disapproval, the board shall communicate its reasons to the council and to the director of that department which has control of the construction of the proposed improvement; and the council by majority vote shall have the power to overrule such disapproval. If the reasons for disapproval are not given to the council and to said department director within twenty days after the plans for the public improvement are submitted to the board, such plan shall be deemed to be approved by the board. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)

Sec. 81. Approval of plats.

All plans, plats, or replats of lands laid out in building lots and streets, alleys, or other portions of the same intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, and located within the city limits shall be submitted to the planning board and be approved by it before such plans or plats shall be recorded. And no such plan or plat shall be entitled to record in any public office unless the same shall bear thereon, by endorsement or otherwise, the approval of the board. The disapproval of any such plan, plat, or replat by the board shall be deemed a refusal of the proposed dedication shown thereon. The approval of the board shall be deemed an acceptance of the proposed dedication but

shall not impose any duty upon the city concerning the maintenance or improvement of any such dedicated parks until the proper authorities of the city shall have made actual appropriation of the same by entry, use, or improvements; and owners and purchasers shall be deemed to have notice of the published plans, maps, and reports of the board affecting such property within its jurisdiction. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)

Sec. 82. Admission of subdivision.

All plans and plats of tracts or additions sought to be annexed or admitted to the city shall be first submitted to the planning board for approval. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)

Sec. 83. Reports of department.

The department shall make annual reports to the council upon the request of the council. A representative of the board shall have a right to appear before the council to make its recommendations and shall be given due hearing. (Amended by Ord. No. 1632 (1951), § 4, adopted by electorate on November 6, 1951.)

Sec. 84. Height limit.

All buildings and other structures throughout the city shall be limited to a height not exceeding fifty-five feet. This height limit shall not apply to spires, belfries, cupolas, or domes not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical appurtenances usually carried above the roof level so long as they do not take up more than twenty-five percent of the roof area, nor to light poles at government-owned recreation facilities, nor to light and traffic signal poles in the right-of-way, nor to service and transmission line electrical utility poles. "Height" means the vertical distance from the lowest point within twenty-five feet of the tallest side of the structure to the uppermost point of the roof.

The purposes of this height limitation are to promote the health, safety, and general welfare of the community; to secure safety from fire, panic, wind turbulence, and other dangers; to provide adequate light and air to abutting properties and the neighborhood; to prevent the overcrowding of land; to avoid undue concentration of population; to prevent the encroachment of privacy; to lessen traffic congestion in the streets; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to insure personal safety by encouraging intensive use at the sidewalk level; to encourage the most appropriate use of land; to conserve and enhance property values; to preserve the integrity and character of established neighborhoods; to preserve scenic views of the mountain backdrop, which are a unique asset to the community and provide a distinctive character and setting for the city and which provide an attraction to tourists, visitors, and students of the University of Colorado; and to protect a public investment of over $3,000,000.00 in the mountain backdrop.

Notwithstanding anything to the contrary in this Section 84, the following provisions shall apply solely to that portion of the area known as Boulder Crossroads which is delineated by (i) the northern boundary line of Arapahoe Avenue, (ii) the southern boundary line of Canyon Boulevard as extended eastward to 30th Street, (iii) the eastern boundary line of 28th Street, and (iv) the western boundary line of 30th Street:

Subject to approval through the development review process, "height" shall be defined as the vertical distance measured from the Federal Emergency Management Agency's flood protection elevation at 28th Street of 5,288 feet, as determined in accordance with the North America Vertical Datum of 1988, to a plane above such elevation. (Amended by Ord. No. 1219 (1929), § 1, adopted by electorate on November 5, 1929. Further amended by Ord. No. 1632 (1951), § 5, adopted by electorate on November 6, 1951. Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961. New section 84 added by Res. No. 24a (1971), § 2, adopted by

electorate on November 2, 1971. Amended by Ord. No. 5220 (1989), § 1, adopted by electorate on November 7, 1989. Further amended by Ord. No. 6013 (1998), § 2, adopted by electorate on November 3, 1998.)

Sec. 84A. Board of zoning adjustment.

There shall be a board of zoning adjustment with such powers, jurisdiction, and authority as the city council shall by ordinance provide relating to zoning matters. The membership, terms of office, method of appointment and all other matters relating to the board of zoning adjustment shall be as the city council shall by ordinance provide. (Added by Ord. No. 1632 (1951), § 6, adopted by electorate on November 6, 1951. Amended by Ord. No. 3513 (1969), § 1, adopted by electorate on November 4, 1969.)

Sec. 84B. Disposition of park properties.

(Added by Ord. No. 1632 (1951), § 7, adopted by electorate on November 6, 1951. Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on November 6, 1961.)

The City Attorney

Sec. 85. City attorney.

The city attorney shall be a duly licensed member of the bar of Colorado. The attorney shall be the legal advisor of the council and of all other city officials and of all boards and commissions. The council may also employ special counsel and assistants to the city attorney.*

The Municipal Court

Sec. 86. Municipal court judges.

The council shall appoint, evaluate, and compensate, with power to remove, for cause, the presiding judge of the municipal court. The council may, by ordinance or contract, specify the manner of appointment, supervision, evaluation, and compensation of temporary and associate judges and of referees. (Amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993. Further amended by Ord. No. 7295 (2003), § 1, adopted by electorate on November 4, 2003.)

Sec. 87. Jurisdiction of municipal court.

Said municipal court shall have exclusive original jurisdiction to hear, try, and determine all charges of misdemeanor as declared by this charter, and all causes arising under any of the ordinances of the city for a violation thereof. There shall be no trial by jury, and there shall be no change of venue from said court. (Amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

ARTICLE VI. FINANCE AND RECORD

Sec. 88. Fiscal year same as calendar year.

The fiscal year of the city shall commence on the first day of January and end on the last day of December of each year.

Sec. 89. Collection and custody of public moneys.

The director of finance and record shall have charge of the revenues and records of the city except as otherwise provided by this charter or by ordinance. All taxes, special assessments, and license fees accruing to the city shall be received or collected by officers of the department of

finance and record. All moneys received by any officer or employee of the city or in connection with the business of the city shall be paid promptly into the city treasury.

The council shall by ordinance provide a system for the prompt collection and regular payment, custody, and deposit of all city moneys; shall require reasonable interest on daily balances; and shall require surety bonds of all depositors of city moneys. Deposits shall be made daily and in the name of the city.

Sec. 90. System of accounting.

The council shall by ordinance provide a system of accounting for the city, not inconsistent with the provisions of this charter, which may be recommended by the city manager, to conform as nearly as possible with the uniform system of municipal accounting.

Sec. 91. Assessment, levy, collection of taxes–equalization.

The council may by ordinance provide a system for the assessment, equalization, levy, and collection of all city taxes, not inconsistent with the provisions of this charter. Until the council shall otherwise by ordinance provide, the statutes of the State of Colorado now or hereafter in force shall govern the making of assessments by the assessor of the county in which the city is situated; the making of equalization by the board of county commissioners of said county; and the collection and payment to the city of taxes by the treasurer of said county for and on behalf of the city, as also in respect of the certification and collection of all delinquent charges, assessments, or taxes.

Sec. 92. Certificate of assessment.

Until the council shall otherwise by ordinance provide, existing laws respecting the duty of the county assessor to certify the total amount of property assessed within the limits of the city to the council as soon as the assessment roll is ready each year for the extension of taxes shall remain in full force and effect.

Sec. 93. Annual budget.

Not later than three months before the end of each fiscal year, the city manager shall prepare and submit to the council an annual budget for the ensuing fiscal year, based upon detailed estimates furnished by the several departments and other divisions of the city government, according to a classification as nearly uniform as possible. The budget shall present the following information:

(a) An itemized statement of the appropriations recommended by the city manager for estimated expenses and for permanent improvements for each department and each division thereof for the ensuing fiscal year, with comparative statements in parallel columns of the appropriations and expenditures for the current and last preceding fiscal year and the increases or decreases in the appropriations recommended;

(b) An itemized statement of the taxes required and of the estimated revenues of the city from all other sources for the ensuing fiscal year with comparative statements in parallel columns of the taxes and other revenues for the current and last preceding fiscal year and of the increases or decreases estimated or proposed;

(c) A statement of the financial condition of the city; and

(d) Such other information as may be required by the council.

Copies of such budget shall be printed and available for public distribution not later than two weeks after its submission to the council; and a public hearing shall be given thereon by the council or a committee thereof before action by the council.

The council shall, in adopting the said budget, estimate and declare the amount of money necessary to be raised by tax levy, taking into account the amounts available from other sources to meet the expenses of the city for the ensuing year, based on the budget so adopted. Said budget and estimate as finally adopted shall be signed by the mayor and city clerk and made a part of the public records of the city.

Sec. 94. Tax levy.

Upon said estimate the council shall forthwith proceed to make by ordinance the proper levy in mills upon each dollar of the assessed valuation of all taxable property within the city, such levy representing the amount of taxes for city purposes necessary to provide for payment during the ensuing fiscal year of all properly authorized demands upon the treasury; and until the council shall otherwise by ordinance provide, it shall thereupon cause the total levy to be certified by the clerk to the county assessor, who shall extend the same upon the tax list of the current year in a separate column entitled "the City of Boulder taxes" and shall include said city taxes in a general warrant to the county treasurer for collection. The levy shall never exceed thirteen mills on the dollar for all general city purposes upon the total assessed valuation of said taxable property within the city. The foregoing limitation of thirteen mills shall not apply to taxes levied by the council for the payment of any interest, sinking fund, or principal of any bonded indebtedness of the city now existing or hereafter created nor to special assessments for local improvements.

If the council fails in any year to make said tax levy as above provided, then the rate last fixed shall be the rate for the ensuing fiscal year.

The amount required to make payment of any interest, sinking fund, or principal of bonded indebtedness shall always be included in and met by tax levy, except as otherwise provided for in this charter. (Amended by Ord. No. 1403 (1943), § 1, adopted by electorate on November 2, 1943.)

Sec. 95. Appropriations.

Upon the basis of the budget as adopted and filed, and including the levies required to be made by this charter, the several sums shall forthwith be appropriated by ordinance to the several purposes therein named for the ensuing fiscal year. Said ordinance shall be adopted not later than the first day of December in each year and shall be entitled "The Annual Appropriation Ordinance."

Sec. 96. Implementation of revenue and expenditure limitations[1].

Revenues and expenditures of the city shall not be limited by the revenue and expenditure limitations of paragraph 7(b) of Article X, Section 20 of the Colorado Constitution, nor shall related emergency reserves be required, and the city is authorized to collect, retain, and expend all revenues of the city free from such revenue and expenditure limitations or any that may be enacted in the future, except by amendment of this charter by the electors of the city. (Amended by Ord. No. 5818 (1996), § 2, adopted by electorate on November 5, 1996.)

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1. Section 96 (Special appropriations for 1918) was repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993. The current Section 96 was enacted by Ord. No. 5818 (1996) § 2, adopted by electorate on November 5, 1996.

Sec. 97. Limitation of city indebtedness.

Except as otherwise in this charter provided, no bonds shall be issued for any purpose, except in pursuance of an ordinance authorizing the same, which ordinance shall be irrepealable until the indebtedness therein provided for, and the bonds issued in pursuance thereof, shall have been fully paid; and no bonds, other than refunding bonds, shall be issued unless the question of issuing the bonds shall be submitted to the vote of the qualified electors of the city and a majority of those voting thereon shall vote in favor of issuing such bonds. "Qualified electors of the city" means those duly qualified to vote at a general or special election in the city unless the city council for sufficient reason shall by ordinance calling the election restrict or limit such group.

The city shall not become indebted for any purpose or in any manner to any amount which, including existing indebtedness, shall exceed three percent of the assessed valuation of the taxable property within the city, as shown by the last preceding assessment for city purposes; provided, however, that in determining the limitation of the city's power to incur indebtedness there shall be included only those bonds or other indebtedness payable solely from the proceeds of ad valorem taxes. Bonds or other securities payable in whole or in part from revenue to be derived from water, sewer, electric light and power, gas, or other public utilities, projects, enterprises, works, or ways from which the city will derive the revenue, or from sales, use, or other excise taxes, or from franchise fees or taxes, or from any other fees and charges shall not be included in determining the outstanding indebtedness of the city. Such bonds or other securities may be additionally secured by a pledge of the full faith and credit of the city without being required to be included in such computation of indebtedness. (Amended by Ord. No. 821 (1919), § 1, adopted by electorate on November 4, 1919. Further amended by Ord. No. 3513, (1969), § 1, adopted by electorate on November 4, 1969.)

Anything contained in this charter to the contrary notwithstanding, the council shall be authorized, without approval by vote of the qualified electors of the city, to create and incur indebtedness of the city and issue bonds to evidence the same payable from and pledging funds and revenues earmarked and committed by charter provision or by ordinance approved by vote of the qualified electors of the city to the purpose for which said bonds are to be issued prior to the issuance thereof, for the following purposes:

For acquisition of open space real property or interest therein payable from and pledging that portion of the proceeds of the city's sales and use tax earmarked and committed for such purposes; provided that no indebtedness or issue of bonds for such purpose shall be issued without approval by vote of the qualified electors of the city unless, at the time such bonds are issued, the projected average annual debt service coverage shall be at least 1.35:1; provided further, however, that refunding bonds may be issued without approval by vote of the qualified electors of the city. For purposes of this paragraph, "projected average annual debt service coverage" shall mean the average annual debt service on all bonds outstanding under this paragraph (including without limitation the bonds proposed to be issued and any refunding bonds, but excluding bonds refunded thereby), divided by the average annual net revenues and funds reasonably anticipated to be available for the payment of said indebtedness during the term of bonds outstanding and proposed to be issued under this paragraph. Net revenues and funds reasonably anticipated to be available for payment of such indebtedness shall mean the open space fund (or similar fund) balance at the end of the prior fiscal year, plus for each year thereafter during such term the earmarked and committed sales and use tax revenues less expenses anticipated to be paid therefrom (such sales and use tax revenues and expenses) to be based upon those in the prior fiscal year, and adjusted to reflect the actual tax rates then in effect for each such subsequent year. Indebtedness incurred and bonds issued pursuant to this paragraph may be additionally secured by a pledge of the full faith and credit of the city. (Amended by Ord. No. 3743 (1971), § 1, adopted by electorate on November 2, 1971. Further amended by Ord. No. 5820 (1996), § 2, adopted by electorate on November 5, 1996.)

Sec. 97A. Urban renewal financing.

Anything contained in this charter to the contrary notwithstanding, the council shall be authorized, for the purpose of cooperating with or assisting an urban renewal authority created and existing within the city, and without approval by vote of the qualified electors of the city, to grant, loan, or pledge to such authority all or any portion of incremental ad valorem property tax proceeds or incremental sales and use tax proceeds or both levied and collected for the benefit of the city within an urban renewal area as to which an urban renewal plan has been adopted by the city council and to create and incur indebtedness and issue bonds, both indebtedness and bonds to be payable solely from such incremental ad valorem property tax proceeds or incremental sales and use tax proceeds or both. As used in this paragraph, the term "incremental ad valorem property tax proceeds" shall mean that portion of such taxes produced by the levy at the rate fixed each year by the council upon that portion of the valuation for assessment of taxable property within an urban renewal area which is in excess of the valuation for assessment of such taxable property last certified prior to the effective date of the ordinance of the council authorizing such loan, grant, pledge, incurrence of indebtedness, or issuance of bonds or, as to an area later added to an urban renewal area, the effective date of the ordinance of the council including such area within the urban renewal area. As used in this paragraph the term "incremental sales and use tax proceeds" shall mean that portion of the proceeds of the city sales and use tax collected within an urban renewal area, if any, in excess of the amount of such proceeds collected within such area for the city's fiscal year next preceding the effective date of the ordinance of the council authorizing such grant, loan, pledge, incurrence of indebtedness, or issuance of bonds or, as to an area later added to the urban renewal area, the effective date of the ordinance of the council including such area within the urban renewal area. Anything contained in this charter to the contrary notwithstanding, bonds or other evidences of indebtedness issued, or any grant, loan, or pledge by the city pursuant to the provisions of this paragraph of incremental ad valorem property tax proceeds or incremental sales and use tax proceeds or both shall not be included in determining the outstanding indebtedness of the city for purposes of limitations imposed by the charter on the creation of indebtedness. In addition, such bonds or other evidences of indebtedness may be sold at public or private sale as determined by the council. This Section 97A and the powers granted to the council herein shall not be limited by any other section of the charter, including without limitation the provisions of the last paragraph of Section 97 hereof. (Added by Ord. No. 4420 (1979), § 1, adopted by electorate on June 12, 1979.)

Sec. 98. Term of bonds–disposal of bonds.

The term of any bond issues and the rate of interest shall be fixed by the ordinance submitting the question to the qualified taxpaying electors of the city. When issued, bonds shall be sold to the highest responsible bidder, but in no case for less than par, and in all cases to the best advantage of the city.

Sec. 99. Refunding bonds.

The provisions of the laws of the State of Colorado relating to refunding bonds are made and declared to be in full force and effect in the city until the council shall otherwise by ordinance provide.

Sec. 100. Water and sewer revenues.

Revenues derived from the operation of the water and sewer systems shall be used exclusively for the maintenance, operation, and extension of either or both of such systems and for interest on and discharging of principal of debt and other obligations incurred in the acquirement, construction, and improvement of either or both of such systems. (Amended by Ord. No. 1907 (1955), § 1, adopted by electorate on November 8, 1955.)

Sec. 101. Payment of claims.

No demand for money against the city shall be approved, allowed, audited, or paid unless it shall be in writing, dated, and sufficiently itemized to identify the expenditure and shall first be audited by the director of the department creating the same. The director of finance and record may require an affidavit in support of any claim submitted, and the council may by ordinance require that all claims be sworn to. All warrants drawn upon the city treasury shall be signed by the city manager and countersigned by the director of finance and record, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable.

Sec. 102. Transfer of balances.

At any time after the passage of the annual appropriation ordinance and after at least one week's public notice, the council may transfer unused balances appropriated for one purpose to another purpose and may by ordinance appropriate available revenues not included in the annual budget. This provision shall not apply to the water, park, and library funds.

Sec. 103. No liability without appropriations.

No liability shall be incurred by any officer or employee of the city, except in accordance with the provisions of the annual appropriation ordinance or under continuing contracts and loans authorized under the provisions of this charter. Neither the council nor any officer or employee of the city shall have authority to make any contract involving the expenditure of public money or impose upon the city any liability to pay money, unless and until a definite amount of money shall have been appropriated for the liquidation of all pecuniary liability of the city under or in consequence of such contract that will mature during the period covered by the appropriation. Such contract shall be ab initio null and void as to the city for any other or further liability; provided, first, that nothing herein contained shall prevent the council from providing for payment of any expense, the necessity of which is caused by any casualty, accident, or unforeseen contingency arising after the passage of the annual appropriation ordinance; and second, that the provisions of this section shall not apply to or limit the authority conferred in relation to bonded indebtedness nor for moneys to be collected by special assessments for local improvements.

Sec. 104. Duties of purchasing agent.

As purchasing agent, the director of finance and record shall procure all supplies ordered by the city manager in such manner as the latter may direct; shall also procure supplies for the city manager or for any department or advisory commission upon requisition therefor; such requisition shall be in writing, shall state the quality, quantity, and kind of material required, whether urgency demands that the order be made by wire, whether the supplies should come by express or otherwise, and the probable cost thereof, in detail, if known. Such requisition shall have the endorsement of the city manager. Whenever the purchasing agent considers it practical and advantageous, the purchasing agent shall advertise for competitive proposals for any supplies in a public newspaper, or by circular letters, or other means, sent to several competitive dealers.

When competitive bids are called for, the same shall be sealed and opened by the purchasing agent at a specified time in the presence of the city manager and the director of the department or chair of the commission for which the supplies are required. All bidders shall be invited to be present at the opening of the bids and may inspect the same. All bids, proposals, advertisements, circulars, and correspondence relating to the purchase of supplies, with samples submitted, if any, shall be preserved for three years as matters of public record. The right to reject any and all bids shall be reserved.*

Sec. 105. Audit of accounts.

Upon the death, resignation, removal, or expiration of the term of any officer of the city, other than the director of finance and record, the said director shall make an audit and investigation of the accounts of such officer and shall report to the city manager and council.

As soon as practicable after the close of each fiscal year, an annual audit shall be made of all the accounts of all city officers and commissions; and upon the death, resignation, removal, or expiration of the term of the director of finance and record, an audit shall be made of said director's accounts. Such audits shall be made by qualified public accountants, selected by the council, who have no personal interest, direct or indirect, in the financial affairs of the city or any of its officers or employees. The council may at any time provide for an examination or audit of the accounts of any officer or department of the city government.

Whenever the council questions the accounts of the city manager or any portion of the administrative service under the manager's control, the manager shall have full power, at the city's expense, to select and employ a competent accountant, who has no interest, directly or indirectly, in the affairs of the city or of its officers or employees, to check and audit the accounts in question.*

ARTICLE VII. PUBLIC WORKS AND PUBLIC IMPROVEMENT DISTRICTS

Sec. 106. Power to construct or otherwise acquire improvements and create improvement districts.[1]

The city shall have the right, power, and authority to construct or otherwise acquire public works and public improvements, including but not limited to the acquisition of land and any other real or personal property necessary or desirable therefor, under the provisions of the laws of the State of Colorado governing such matters or as may be provided by charter or as the council may by ordinance provide.

The council may create public improvement districts for the construction and other acquisition of anything in the nature of local or other type public improvements conferring special benefits upon real property under the provisions of the laws of the State of Colorado applying to such districts or under such provisions as may be provided by charter or as the council may by ordinance provide. The city shall have the right, power, and authority to: provide for the creation of local public improvement districts by order of the council, subject, however, to protest by the owners of a majority of all property benefited and constituting the basis of assessment as the council may determine, except in case the city shall pay one-half or more of the total cost of the improvements made; provide the manner of assessment of costs against all property which the council shall determine specially benefited by any such works or improvements; provide for the issuance of bonds for the purpose of paying for such improvements with power to sell or otherwise issue the same to defray all or a portion of the costs of any such works or improvements; and provide for the creation of special funds for the payment of the bonds of any such district or districts which may be delinquent. (Amended by Ord. No. 2171 (1958) §1, adopted by electorate on December 2, 1958.)

Sec. 106A. Surplus and deficiency fund.

Where all outstanding bonds have been paid in a public improvement district created after January 1, 1954, and any money remains to the credit of said district, it shall be transferred to a

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1. There is no requirement in this section that the issuance of the bonds be subject to the approval even of the owners of frontage in the district. Sanborn v. Boulder, 74 Colo. 358, 221 P. 1077 (1923).

special surplus and deficiency fund, and whenever there is a deficiency in any improvement district to meet payment of outstanding bonds, it shall be paid out of said fund. Whenever a public improvement district created after January 1, 1954 has paid and cancelled four-fifths of its bonds outstanding, and for any reason the remaining assessments are not paid in time to take up the final bonds of the district and there is not sufficient money in said special surplus and deficiency fund, then the city shall pay said bonds when due and reimburse itself by collecting the unpaid assessments due said district. (Added by Ord. No. 1753 (1953), § 1(a), adopted by electorate on November 3, 1953.)

Sec. 106B. Exemption from property tax limitation.

Should the city pay any bonds which it is authorized to pay under Section 106A, the limitation on the amount of tax levy provided in Section 94 of this charter shall not apply to taxes levied for the payment of such bonds and the interest thereon. (Added by Ord. No. 1753 (1953), § 1(a), adopted by electorate on November 3, 1953.)

Sec. 106C. Authority to acquire property.

In addition to all other power which it has to acquire property, the City of Boulder is hereby authorized to purchase or otherwise acquire property on which there are delinquent taxes and/or special assessments. The city may also dispose of any property acquired under this authority. (Added by Ord. No. 1753 (1953), § 1(a), adopted by electorate on November 3, 1953.)

Sec. 107. Sidewalks, curbs, trees.

Until and unless otherwise provided by charter amendment or by ordinance, the laws of the State of Colorado relating to the construction, care, and maintenance of sidewalks, curbs, gutters, and sewers shall be in full force and effect. The council shall also have the power to provide by special assessment or otherwise, with or without petition, for the parking, ornamentation and lighting of streets and the planting, care and removal of grass, plants, shrubs, and trees along, in, upon or over streets, boulevards, public ways, and places. The council shall, before January 1, 1919, pass an effective ordinance relating to the proper planting, selection, trimming, and care of street trees and shrubs and parkings[1], and shall provide proper penalties for violation thereof.

ARTICLE VIII. FRANCHISES AND PUBLIC UTILITIES

Sec. 108. Franchises granted upon vote.

No franchise shall be granted by the city except upon the vote of the qualified taxpaying electors, and the question of its being granted shall be submitted to such vote upon deposit with the director of finance and record of the expense (to be determined by the director of finance and record) of such submission by the applicant for said franchise.

Sec. 109. No exclusive grants–ordinance in plain terms.

No exclusive franchise shall ever be granted; and no franchise shall be renewed before one year prior to its expiration. No franchise, right, privilege, or license shall be considered as granted by any ordinance except when granted therein in plain and unambiguous terms; and any and every ambiguity therein shall be construed in favor of the city and against the claimant under said ordinance.

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1. [Sic]; per the Charter of the City of Boulder, 1917.

Sec. 110. Franchises specify streets.

All franchises or privileges hereafter granted to street or other railroads and to other transportation systems shall plainly specify the particular streets, alleys, avenues, and other public property, or parts thereof, to which they shall apply. All other franchises may be in general terms and apply to the city generally.

Sec. 111. Terms not longer than twenty years–compensation.

No franchise, lease, or right to use the streets or the public places or property of the city shall be granted by the city, except as in this charter provided, for a longer period than twenty years. Every grant of a franchise shall fix the amount and manner of the payment of the compensation to be paid by the grantee for the use of the same, and no other compensation of any kind shall be exacted for such use during the life of the franchise; but this provision shall not exempt the grantee from any lawful taxation upon the grantee's property, nor from any licenses, charges, or impositions not levied on account of such use.*

Sec. 112. Franchises provide for safety, etc.

The grant of every franchise or privilege shall be subject to the right of the city, whether in terms reserved or not, to make all regulations which shall be necessary to secure in the most ample manner the safety, welfare, and accommodation of the public, including among other things the right to pass and enforce ordinances to require proper and adequate extensions of the service of such grant and to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of the franchise; and the right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient, and proper service, extensions, and accommodations for the people and insure their comfort and convenience.

Sec. 113. No franchise leased, except.

No franchise granted by the city shall ever be leased, assigned, or otherwise alienated without the express consent of the city, and no dealing with the lessee or assignee on the part of the city to require the performance of any act or payment of any compensation by the lessee or assignee shall be deemed to operate as such consent. No such franchise shall ever be assigned to any foreign corporation.

Sec. 114. No extension or enlargement of franchises, except.

No extension or enlargement of any franchise or grant of rights or powers previously granted to any corporation, person, or association of persons shall be made except in the manner and subject to all the conditions provided for in this article for the making of original grants and franchises; provided, however, that the provisions of this article shall not apply to the granting by ordinance of revocable licenses or privileges for sidetrack or switch privileges to railway companies for the purpose of reaching and affording railway connection and switch privileges to the owners or users of any industrial plant; it being the intention to permit the city to grant such revocable licenses or privileges to railway companies whenever in its judgment the same is expedient, necessary, or advisable and whenever the application for such privileges is accompanied by the assent in writing of the owners of the major part in extent of the front feet of the lots or tracts of land of the block fronting on each side of any street, or parts of a street, over or on which it is desired to lay or construct such sidetracks or switches.

Sec. 115. Revocable permits.

The council may grant a permit at any time, in or upon any street, alley, or public place, provided such permit is revocable by the council at its pleasure at any time, whether such right to revoke be expressly reserved in every permit or not.

Sec. 116. Provision for common use of tracks, poles, etc.

The city, by and through its council, shall have the power to require any corporation holding a franchise from the city to allow the use of its tracks, poles, and wires by any other corporation to which the city shall grant a franchise, upon the payment of a reasonable rental therefor, and any franchise or right which may hereafter be granted to any person or corporation to operate a street railway within the city or its suburbs shall be subject to the condition that the city shall have the right to grant to any other person or corporation desiring to build or operate a street railway or interurban railway within or into the city the right to operate its cars over the tracks of said street railway in so far as may be necessary to enter the city and to reach the section thereof used for business purposes; provided, that the person or corporation desiring to operate its cars over the lines of said street railway shall first agree in writing with the owner thereof to pay it reasonable compensation for the use of its tracks and facilities. And if the person or corporation desiring to use the same cannot agree with said owner of said street railway as to said compensation within sixty days from offering in writing so to do and as to terms and conditions of the use of said tracks and facilities, then the council shall, by resolution, after a fair hearing to the parties concerned, fix the terms and conditions of such use and the compensation to be paid therefor, which award of the council, when so made, shall be binding on and observed by the parties concerned.

Sec. 117. Special privileges to mail carriers, police officers, and firefighters.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 118. Issuance of stock.

Every ordinance granting any franchise shall prohibit the issuing of any stock on account thereof by any corporation holding or doing business under said franchise to an amount in excess of the sum which shall be fixed for said purpose by the council whenever requested so to do by the holder of said franchise. The said sum as fixed by the council shall consist of the following items only, to-wit:

(a) The sum necessarily expended by the grantee of said franchise in obtaining the same from the city; and

(b) The sum which is, in the opinion of the council, reasonably sufficient to compensate said grantee for the time and services given by the grantee in obtaining said franchise.

Any violation of the terms of this section shall at the option of the city operate as a forfeiture of said franchise.*

Sec. 119. Railroad to elevate or lower tracks.

The council shall by ordinance require any railroad company, whether operating by steam, electric, or other motive power, to elevate or lower any of its tracks running over, along, or across any of the streets or alleys of the city, whenever, in the opinion of the council, the public safety or convenience requires.

Sec. 120. City manager to maintain general supervision–reports–inspection.

The city manager shall maintain general supervision over all public utility companies in so far as they are subject to municipal control. The manager shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law and may report to the council, recommending the revocation, cancellation, or annulment of all franchises that may have been granted by the city or which have become in whole or in part or which for any reason are illegal or void and not binding upon the city.

The manager shall require every person or corporation operating under a franchise or grant from the city to submit to the council within sixty days after the first day of January of each year an annual report, verified by the oath of the president, the treasurer, or the general manager thereof, showing in detail:

(a) The amount of its authorized capital stock and the amount thereof issued and outstanding.

(b) The amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding.

(c) An itemized statement of its receipts and expenditures for the preceding calendar year.

(d) The amount paid as dividends upon its stock and as interest upon its bonds and other indebtedness.

(e) The amount paid as salaries to its officers and the amount paid as wages to its employees.

(f) A full description of its property and franchises, stating in detail how each franchise claimed was acquired and the book value thereof; and

(g) Such other information as may be required by the council.

Such reports shall be in the form and cover the period prescribed by the council; and the council shall have the power, either in person or by experts or employees duly authorized by it, to examine the books and affairs of any such person, persons, or corporation and to compel the production before it of books and papers pertaining to such reports or other matters.

Any such person, persons, or corporation failing to make any such reports shall be liable to a penalty of $100.00 and an additional penalty of $100.00 for each and every day thereafter during which such person shall fail to file such a report, to be sued for and recovered in any court of competent jurisdiction.

The city manager shall have the power, either personally or through the city's inspectors or employees duly authorized by the council, to enter into or upon and to inspect the buildings, plants, power houses, and all properties of any such person, persons, or corporation and shall inspect the properties of such person, persons, or corporation at least once a year and shall immediately thereafter report to the council a detailed and complete statement of such inspection.*

Sec. 121. Oversight of franchise for use of water reserved to city.

Every franchise, right, or privilege which has been or which may be hereafter granted conveying any right, permission, or privilege to the use of the water belonging to the city or to its water system shall always be subject to the most comprehensive oversight, management, and control in every particular by the city; and the rights of the city to such control for municipal purposes are retained by the city in order that nothing shall ever be done by any grantee or assignee of any such franchise, right, or privilege which shall in any way interfere with the successful operation of the waterworks of the city, or which shall, or which shall tend to, divert, impair, or render the same inadequate for the complete performance of the trust for the people under which such waterworks are held by the city.

Sec. 122. License tax.

The city shall have the power to license or tax street cars, telephones, gas meters, electric meters, water meters, or any other similar device for measuring service, and also telephone,

telegraph, electric light and power poles, subways, and wires. The said license or tax shall be exclusive of and in addition to all other lawful taxes upon the property of the holder thereof.

Sec. 123. Power to regulate rates and fares.

All power to regulate the rates, fares, and charges for service by public utility corporations is hereby reserved to the people, to be exercised by them by ordinance of the council or in the manner herein provided for initiating or referring an ordinance. Any right of regulation shall further include the right to require uniform, convenient, and adequate service to the public and reasonable extensions of such service and of such public utility works.

Sec. 124. City may purchase–procedure.

Every grant of a franchise or right shall provide that the city may, upon the payment therefor of its fair valuation to be made as provided in the grant, purchase and take over the property and plant of the grantee in whole or in part.

The procedure to effect such purchase shall be as follows:

When the council shall by resolution direct that the city manager shall ascertain whether any such property or part thereof should be acquired by the city, or in the absence of such action of the council, when a petition subscribed by ten per cent of the qualified taxpaying electors requesting that the city manager shall ascertain whether any such property or part thereof should be acquired by the city shall be filed with the clerk, the city manager shall forthwith carefully investigate said property and report to the council:

(a) At what probable cost said property may be acquired; and

(b) What, if any, probable additional outlays would be necessary to operate the same.

Sec. 125. Matters in charter not to impair right of council to insert other matters in franchise.

The enumeration and specification of particular matters in this charter which must be included in every franchise or grant shall never be construed as impairing the right of the council to insert in such franchise or grant such other and further matters, conditions, covenants, terms, restrictions, limitations, burdens, taxes, assessments, rates, rentals, charges, controls, forfeitures, or any other provision whatever, as the council shall deem proper to protect the interests of the people.

Sec. 126. Books of record and reference.

The city manager shall provide and cause to be kept in the office of the city clerk the following books of record and reference:

(a) A franchise record, indexed and of proper form, in which shall be transcribed accurate and correct copies of all franchises or grants by the city to any person, persons, or corporation owning or operating any public utility. The index of said record shall give the name of the grantee and thereafter the name of any assignee thereof. Said record shall be a complete history of all franchises granted by the city and shall include a comprehensive and convenient reference to actions, contests, or proceedings at law, if any, affecting the same.

(b) A public utility record, for every person, persons, or corporation owning or operating any public utility under any franchise granted by the city, into which shall be transcribed accurate and correct copies of each and every franchise granted by the city to said person, persons, or corporation, or which may be controlled or acquired by them or it, together with copies of all annual reports and inspection reports, as herein provided, and such other matters of information

and public interest as the city manager may from time to time acquire. All annual and inspection reports shall be published once in one daily newspaper of general circulation published in the city or printed and distributed in pamphlet form, as the council may deem best, and in case annual reports are not filed and inspections are not made as provided, the city manager shall in writing report to the council the reasons therefor, which report shall be transcribed in the record of the person, persons, or corporation owning or controlling said franchise or grant and published in the city or printed and distributed in pamphlet form as the council may deem best. (Amended by Ord. No. 4773 (1983), § 1, adopted by electorate on November 8, 1983.)

The provisions of this section shall apply to all persons or corporations operating under any franchise now in force or hereafter granted by the city.

Sec. 127. Books of account of city-owned utilities–examinations.

The city, when owning any public utility, shall keep the books of account for such public utility distinct from other city accounts, and in such manner as to show the true and complete financial result of such city ownership, or ownership and operation, as the case may be. Such accounts shall be so kept as to show the actual cost to the city of the public utility owned; all cost of maintenance, extension, and improvement; all operating expenses of every description, in case of such city operation; the amounts set aside for sinking fund purposes; if water or other service shall be furnished for the use of such city owned or operated public utility without charge, the accounts shall show, as nearly as possible, the value of such service and also the value of such similar service rendered by the public utility to any other city department without charge; such accounts shall show reasonable allowance for interest, depreciation, and insurance, and also estimates of the amount of taxes that would be chargeable against such property if owned by a private corporation. The council shall cause to be printed annually for public distribution a report showing the financial results, in form as aforesaid, of such city ownership or ownership and operation. The accounts of such public utility, kept as aforesaid, shall be examined at least once a year by an expert accountant, who shall report to the council the result of the examination. Such expert accountant shall be selected in such manner as the council may direct, and said accountant shall receive for the services such compensation, to be paid out of the income or revenue from such public utility, as the council may prescribe.*

Sec. 128. Free water.

No free water service shall hereafter be given to any person, persons, firms, corporations, or institutions whatever other than the corporate City of Boulder.

Sec. 128A. Water not to be supplied to certain described areas; exceptions.

The City of Boulder shall not supply water for domestic, commercial, or industrial uses to land lying on the westward side of the following described line, except as specifically stated herein. This provision shall not deny city water to areas which were a part of the City of Boulder on the effective date of this measure, July 21, 1959, nor to taps being supplied by said city in other areas at said effective date, on July 21, 1959.

Said line begins at the intersection of the contour line of 5,750 feet U.S. Geological Survey datum with the north line of Section 30, Township 1 South, Range 70 West of the 6th P.M.; thence northerly along said contour line to the first intersection north of Baseline Road of this line and the Boulder city limits as they existed as of May 5, 1959; thence north along the Boulder city limits as said limits existed as of May 5, 1959, to the most northerly intersection of said city limits and Anderson Ditch; thence westerly along the Anderson Ditch to a point that bears south 82°23'07" west, 1,533.2 feet from the intersection of the centerline of Arapahoe Avenue and the north-south centerline of Section 36, Township 1 North, Range 71 West of the 6th P.M.; thence south 00°31'00" west, 113.9 feet; thence north 77°32'00" west, 407.6 feet; thence south 22°29'20" west, 123.8 feet; thence north 65°48'00" west, 297.4 feet; thence north 07°09'00" east, 176 feet, more or less to the contour line of 5,454 feet U.S. Geological Survey datum; thence westerly along

said contour line to its intersection with Anderson Ditch; thence westerly along Anderson Ditch to the western boundary of Section 36, Township 1 North, Range 71 West of the 6th P.M.; thence due north to the middle line of Colorado Highway No. 119; thence easterly along the middle line of said Colorado Highway No. 119 to a point where said middle line intersects the Farmers Ditch; thence northeasterly along the Farmers Ditch to its intersection with the Boulder city limits as they existed as of May 5, 1959; thence northerly along said Boulder city limits to their intersection with Alpine Avenue projected westerly; thence easterly on said city limits to a point 150 feet west of the center of 3rd Street; thence north to the westward projection of Kalmia Avenue; thence westerly along this projection to its intersection with the contour line of 5,650 feet U.S. Geological Survey datum; thence northerly on said contour line 5,650 feet U.S. Geological Survey datum to its intersection with the north boundary of Section 13, Township 1 North, Range 71 West of the 6th P.M.; thence westerly on this line to its intersection with the contour line of 5,750 feet U.S. Geological Survey datum; thence north indefinitely on said contour line 5,750 feet U.S. Geological Survey datum.

Provided, however, that notwithstanding the above-stated restrictions on the supply of water service, city water service can be extended to the following described tract or tracts of land, if and only if said tract or tracts of land are used to carry out the purposes and functions of the University Corporation for Atmospheric Research, the National Center for Atmospheric Research or the National Science Foundation:

(a) Tract No. 1: The west 2,750 feet of Section 7, Township 1 South, Range 70 West of the 6th P.M.

(b) Tract No. 2: The northeast quarter and the southeast quarter of Section 12, Township 1 South, Range 71 West of the 6th P.M.

Provided further, that the city water service can be extended to the following described tract or tracts of land:

Tract A: Lots 16, 16A, 17, 17A, 18 and 18A, all in Block One, Canon Park Subdivision, County of Boulder, according to the recorded plat thereof, provided that said service shall be restricted to service for one single-family residence.

Provided, further, that subject to certain conditions contained in a Memorandum of Agreement, which may be modified by the property owner and the City Council, but which shall provide, at a minimum, for the dedication of a Scenic Easement restricting the size, height, location, extent, and use of all structures on the property to the conditions existing as of May 21, 1991, water service may be extended to the restaurant known as the Flagstaff House and to the single-family residence located on the following described land, consisting of Tracts A and B, to wit:

Tract A: A tract of land located in the south half of the northwest quarter of Section 36, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

Commencing at the center of said Section 36, from which the north quarter corner of said Section 36 bears north 00°40'20" west, thence south 81°48'22" west, 752.87 feet to the approximate centerline of Boulder County, Road No. 56 (Flagstaff Road); thence north 00°26'02" west, 300.85 feet to the TRUE POINT OF BEGINNING;

Thence south 89°30'15" west, 442.67 feet;

Thence north 00°11'44" west, 245.00 feet;

Thence south 89°30'15" west, 180.00 feet;

Thence south 00°11'44" east, 445.00 feet to the east-west centerline of said Section 36;

Thence north 89°30'15" east, 623.50 feet along the east-west centerline of said Section 36 to a point on a line from which the true point of beginning bears north 00°26'02" west;

Thence north 00°26' 02" west, 200 feet to the TRUE POINT OF BEGINNING.

Tract B: A tract of land located in the northeast quarter of the southwest quarter of Section 36, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

Commencing at the center of said Section 36, from which the north quarter corner of said Section 36 bears north 00°40'20" west, thence south 81°48'22" west, 752.87 feet to the approximate centerline of Boulder County Road No. 56 (Flagstaff Road) and the TRUE POINT OF BEGINNING;

Thence south 58°31'06" west, 28.00 feet along the approximate centerline of said Boulder County Road No. 56;

Thence south 60°49'49" west, 94.05 feet along the approximate centerline of said Boulder County Road No. 56 to a point of curve to the left;

Thence southwesterly, 68.54 feet along the arc of said curve and along the approximate centerline of said Boulder County Road No. 56, said arc having a radius of 107.03 feet, a central angle of 36°41'25" and being subtended by a chord that bears south 42°29'07" west, 67.37 feet;

Thence south 24°08'24" west, 57.22 feet along the approximate centerline of said Boulder County Road No. 56;

Thence north 20°31'59" west, 113.85 feet;

Thence north 37°03'30" west, 138.42 feet;

Thence north 54°30'35" west, 64.55 feet;

Thence north 81°23'16" west, 35.55 feet to the east-west centerline of said Section 36;

Thence north 89°30'15" east, 385.21 feet along the east-west centerline of said Section 36 to a point on a line, from which the True Point of Beginning bears south 00°26'02" east;

Thence south 00°26'02" east, 100.85 feet to the TRUE POINT OF BEGINNING.

Provided, further, that this section 128A shall not apply to water supplied to fire departments or districts, Boulder County, the State of Colorado, or the United States for immediate use for firefighting purposes and for storage in fire trucks and in cisterns for such purposes, from up to three locations on the Lakewood Pipeline at the Cold Spring Road/Nederland area, the Primos Hill area, and the Sugar Loaf area in addition to the established locations of the Betasso Water Treatment Plant and Lakewood Reservoir, with an aggregate limit of 45,000 gallons of storage in cisterns, located at the point of supply, pursuant to policies and conditions approved by the City Council, consistent with the intent of this section. (Added by Ord. No. 2244 (1959), § 1, adopted by electorate on July 21, 1959. Amended by Ord. No. 2391 (1961), § 1, adopted by electorate on January 31, 1961. Further amended by Ord. No. 4452 (1979), § 1, adopted by electorate on November 6, 1979. Further amended by Ord. No. 4606 (1981), § 1, adopted by electorate on November 3, 1981. Further amended by Ord. No. 5402 (1991), § 1, adopted by electorate on November 5, 1991. Further amended by Ord. No. 7076 (2000), § 1, adopted by electorate on November 7, 2000.)

Sec. 129. Franchises in parks.

(Repealed by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

ARTICLE IX. ADVISORY COMMISSIONS

Sec. 130. General provisions concerning advisory commissions.

At any time after the organization of the council elected under the provisions of this charter, the council by ordinance may create and provide for such advisory commissions as it may deem advisable; provided, that a library commission is hereby created, and the council shall, within ninety days from its organization, appoint the members thereof.

Each of such commissions, including the library commission, shall be composed of five electors, appointed by the council, not all of one sex, well known for their ability, probity, public spirit, and particular fitness to serve on such respective commissions. When first constituted, the council shall designate the terms for which each member is appointed so that the term of one commissioner shall expire on December 31 of each year; and thereafter the council shall by March of each year appoint one member to serve for a term of five years. The council shall have the power to remove any commissioner for non-attendance to duties or for cause. All vacancies shall be filled by the council. When first appointed and annually thereafter following the council's appointment of the commissioner, each commission shall organize by appointing a chair, a vice-chair, and a secretary; all commissioners shall serve without compensation, but the secretary of any commission, if not a member, may receive a salary to be fixed by the council; any commission shall have power to make rules for the conduct of its business. All commissioners shall serve until their successors are appointed.

All commissions shall hold regular monthly meetings. Special meetings may be called at any time upon due notice by three members. Three members shall constitute a quorum, and the affirmative vote of at least three members shall be necessary to authorize any action by the commission.

All commissions shall keep accounts and records of their respective transactions, and at the end of each quarter or more often, if requested by the council, and at the end of each fiscal year shall furnish to the council a detailed report of receipts and expenditures and a statement of other business transacted.

The chair of a commission shall preside at the meetings thereof and sign, execute, acknowledge, and deliver for the commission all contracts and writings of every kind required or authorized to be signed or delivered by the commission. The signature of the chair shall be attested by the secretary.

The commissions shall have the right to the floor of the council to speak on plans and expenditures proposed or to appeal for a decision in a failure to agree with another commission or the manager.

Wherever there shall be suitable accommodations in the city building, the offices of the commissions shall be maintained there. (Amended by Ord. No. 6007 (1998), § 2, adopted by electorate on November 3, 1998.)*

Civil Service Commission

Sec. 131. Council may create.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 132. General powers of library commission.

Under the direction of the city manager the library commission shall have control of the public library, branches thereof, and reading rooms that may at present exist or that may be hereafter established or acquired; and all leases of grounds and buildings for such purposes; of the administration of gifts and trusts; and power to do any and all things necessary or expedient in connection with library purposes.

Sec. 133. Title and custody of property.

The title to all property, real and personal, now owned or hereafter acquired by purchase, gift, devise, bequest, or otherwise for the purpose of the library or reading rooms, when not inconsistent with the terms of its acquisition, shall vest in the City of Boulder, and the commission shall take charge of and have the management and custody of the same.

Sec. 134. Powers of the commission acting with the city manager.

The commission, with the approval of the city manager, and by a majority vote of all its members, to be recorded in its minutes with ayes and noes, shall have power:

(a) To make and enforce all rules, regulations, and bylaws necessary for the administration, government, and protection of the library and reading rooms and branches thereof and all property belonging thereto or that may be loaned thereto.

(b) To administer any trust declared or created for such library and reading rooms and branches thereof and provide memorial tablets and niches to perpetuate the memory of those who may make valuable donations thereto.

(c) To define the powers and prescribe the duties of all the officers and employees.

(d) To purchase books, journals, publications, and other supplies.

(e) To order the drawing and payment upon vouchers, certified by the chair and secretary to the city manager, of money from the library funds, for any liability or authorized expenditure.

(f) To establish such branches of the library and reading rooms as the growth of the city may justify.*

Sec. 135. Library appropriation.

The city council shall make an annual appropriation, which shall amount to not less than the return of one-third of a mill tax levied upon each dollar of assessed valuation of all taxable property in the City of Boulder. All revenue from such tax, together with all other moneys collected by the librarian or that may be derived by gift, devise, bequest, or otherwise, for library purposes, shall be paid into the city treasury and be designated as the "Library Fund"; and be applied to the purposes herein authorized. If such payment into the treasury should be inconsistent with the conditions and terms of any such gift, devise, or bequest, the library commission shall provide for the safety of the same and the application thereof to the use of the library, branches thereof, and reading rooms, in accordance with the terms and conditions of such gift, devise, or bequest.

Sec. 136. Library reports.

In addition to the matters required by this charter to be reported annually by the library commission, there shall also be a statement of the number of books and periodicals on hand, the

number of visitors, and such other information as the city manager may deem to be of general interest.

ARTICLE X. MISCELLANEOUS PROVISIONS

Sec. 137. Amendments.

This charter may be amended as provided in article XX of the constitution of the State of Colorado.

Sec. 138. Persons incapacitated to hold office.

No person holding a county office, except a duly elected and qualified justice of the peace, shall hold any elective or appointive office under this charter; and no member of any advisory department or commission shall hold any other office under this charter except as herein provided.

Sec. 139. Eight-hour day.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 140. When charter shall take effect.

For the purpose of nominating and electing officers as provided herein, this charter shall take effect from and after the time of its filing in the office of the secretary of state as required by article XX of the constitution. For the purpose of exercising the powers of the city, establishing departments, divisions, and offices, and distributing the functions thereof, and for all other purposes, it shall take effect on January 1, 1918, except as herein provided.

Sec. 141. License for sale of liquor forbidden.

(Repealed by Ord. No. 3287 (1967), § 2, adopted by electorate on November 7, 1967.)

Sec. 142. Salaries of officers and employees.

The compensation of all appointive officers and salaried employees shall be fixed by the council.

Sec. 143. Oath of office.

Every officer or salaried employee shall, before entering upon the duties of the office, take, subscribe, and file with the city clerk an oath or affirmation to support the constitution of the United States, the constitution of the State of Colorado, and the charter and ordinances of the City of Boulder, and faithfully to perform the duties of the position upon which said officer or employee is about to enter.*

Sec. 144. Official bonds.

Until the council shall otherwise by ordinance provide, the general laws of the State of Colorado relative to surety bonds shall remain in full force and effect and shall apply to any office created or authorized by this charter. Any officer or employee required to give bond shall not be qualified for the office or employment until such bond has been duly approved by the council and filed with the city clerk, who shall have custody thereof.*

Sec. 145. Publicity of accounts and records.

All accounts and records of every office and department of the city shall be open to the public at all reasonable times under reasonable regulations, except such records and documents where the disclosure of the information contained therein would tend to defeat the lawful purpose of the officer or department withholding them from access to the public.

Sec. 146. Proof of charter and ordinances.

This charter or any ordinance may be proved by a copy thereof, certified to by the city clerk under the seal of the city; or when printed in book or pamphlet form, and purporting to be printed by authority of the city, the same shall be received in evidence in all courts without further proof.

Sec. 147. Terms of present officers terminate, when.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 148. Outgoing officers.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 149. Present ordinances continue in force.

(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 150. Definition of misdemeanor.

The term "misdemeanor" as used in this charter shall mean a violation thereof or of any ordinance of which the municipal court shall have jurisdiction and shall not have the meaning attached to it in the statutes of the state. (Amended by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 151. Penalty for violation.

Any person who shall violate any of the provisions of this charter for the violation of which no punishment has been provided herein shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $100.00, by imprisonment in the city jail not exceeding three months, or by both fine and imprisonment.

Sec. 152. Construction of words.

Whenever such construction is applicable, words used in this charter importing singular or plural number may be construed so that one number includes both; and the word person may extend to and include firm and corporation; provided, that these rules of construction shall not apply to any part of this charter containing express provisions excluding such constructions or where the subject matter or context is repugnant thereto. (Amended by Ord. No. 4602 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 153. Construction of charter.

This charter shall be construed as a whole and shall receive a liberal construction to carry out the intents and purposes herein set forth. In the event any section or part of a section shall be declared unconstitutional or invalid, the validity of the remaining sections and parts of sections shall not be affected thereby.

ARTICLE XI. PARKS AND RECREATION

Sec. 154. Creation of a department of parks and recreation.

There shall be a department of parks and recreation.

As used in this charter, "park land," "park property," and "recreation facilities" means all lands donated to the city for park or recreation purposes, acquired by the city through purchase, dedication, deed, or condemnation for park or recreation purposes, or purchased or improved in whole or in part with funds from the permanent park and recreation fund. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961. Amended by Ord. No. 5574 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 155. Functions of the department.

Under the direction, supervision and control of the city manager, the department of parks and recreation:

(a) Shall supervise, administer, and maintain all park property and recreation facilities.

(b) Shall supervise, administer, and execute all park and recreation programs, plans, functions, and activities of the city.

(c) Shall prepare and submit to the parks and recreation advisory board written recommendations on those matters where this article requires a recommendation from said board prior to council or department action.

(d) May, at the request of the parks and recreation advisory board, prepare and submit to the board information and recommendations on such park and recreation matters as are not provided for by (c) above.

(e) May request advice on any park and recreation matter from the parks and recreation advisory board. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 156. Organization of the department.

The chief administrative officer of the department shall be the director of parks and recreation. The director shall be appointed by the city manager for an indefinite period and shall be removable by the city manager. The said director, working under the direction, supervision, and control of the city manager, shall be responsible for performing and carrying out the activities of the department and for supervising all department personnel and equipment.

The city manager may appoint a superintendent of parks and a superintendent of recreation. Any such appointments shall be for an indefinite period, and said superintendents shall be removable by the city manager.

The superintendent of parks, working under the direction, supervision, and control of the director of parks and recreation, shall perform all activities of the department related to parks.

The superintendent of recreation, working under the direction, supervision, and control of the director of parks and recreation, shall perform all activities of the department related to recreation.

The city manager may employ such other subordinate personnel as the manager determines are required to carry out the activities of the department. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)*

Sec. 157. Creation of the parks and recreation advisory board.

There shall be a parks and recreation advisory board consisting of seven members appointed by the city council. The members of the board shall be residents of the city, shall not hold any other office in the city, and shall serve without pay. The council may appoint such ex-officio members to the board for such terms as it deems advisable. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 158. Term of office of board members–removal–vacancies.

The term of each board member shall be five years, provided, however, that in appointing the original members of the board, the city council shall designate one member to serve until December 31, 1961, two members to serve until December 31, 1962, one member to serve until December 31, 1963, two members to serve until December 31, 1964, and one member to serve until December 31, 1965.

The council may remove any board member who displays lack of interest or who fails to attend board meetings for three consecutive months without formal leave of absence.

The council shall fill all vacancies. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 159. Organization and procedure of the board.

The board shall choose a chair and a secretary. The director of parks and recreation may be designated as secretary by the board.

The board shall have regular meetings once a month. Special meetings may be called at any time by three members of the board upon giving of at least twenty-four hours' notice of said special meeting to the board members.

Four members of the board shall constitute a quorum. Unless otherwise expressly provided herein, an affirmative vote of a majority of the members present shall be necessary to authorize any action by the board.

The board shall keep minutes and records of its meetings and transactions.

Except for such provisions as are herein expressly provided for, the board shall have power to make reasonable rules for the conduct of its business. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)*

Sec. 160. Functions of the board.

The parks and recreation advisory board shall not perform any administrative functions unless expressly provided in this charter. The board:

(a) Shall make recommendations to the council concerning the disposal of park lands pursuant to Section 162 of this charter.

(b) Shall make recommendations to the council concerning any expenditure or appropriation from the permanent park and recreation fund pursuant to Section 161 of this charter.

(c) Shall make recommendations to the council concerning the grant or denial of any license or permit in or on park lands, pursuant to Section 164 of this charter.

(d) Shall review the city manager's proposed annual budget as it relates to park and recreation matters and submit its recommendations concerning said budget to the council.

(e) May, at the request of the council or the department of parks and recreation, prepare and submit to the council, city manager, or the department recommendations on such park and recreation matters as are not provided for by paragraphs (a), (b), (c) and (d) above.

(f) May request information and recommendations from the department pursuant to the provisions of Section 155(d) above.

The city council and the parks and recreation department shall not act on any of the matters set forth in paragraphs (a), (b), (c) and (d) above without securing a recommendation from the board as above provided; however, the council and department may act on the matters set forth in paragraphs (c) and (d) above without a board recommendation if the board fails to submit its recommendation to the council within thirty days after request therefor is made by the council.

The board's recommendation shall not be binding upon the city council unless expressly provided by this charter. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 161. Permanent park and recreation fund.

There shall be a permanent park and recreation fund. This fund shall consist of the following:

(a) An annual levy of nine-tenths of one mill on each dollar of assessed valuation of all taxable property within the city.

(b) Gifts and donations to the fund.

(c) Proceeds of the sale of any park or recreation property or equipment whether real, personal, or mixed.

(d) Appropriations made to the fund by the city council.

Expenditures from this fund shall be made only upon the favorable recommendation of the parks and recreation advisory board and appropriation by the council. Said fund shall not be used for any purpose other than the acquisition of park land or the permanent improvement of park and recreation facilities.

Any portion of the fund remaining unexpended at the end of any fiscal year shall not in any event be converted into the general fund nor be subject to appropriation for general purposes. Money appropriated from the fund which is not expended in whole or in part shall be returned to the fund and shall not be subject to appropriation for general purposes. Money appropriated from the general fund for park or recreational purposes which is not expended for the purpose designated shall be returned to the general fund. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 162. Disposal of park properties.

Park lands may be disposed of by the city council, but only upon the affirmative vote of at least four members of the parks and recreation advisory board. An advisory recommendation, which shall not be binding on the council, shall be obtained from the planning board prior to the disposition or lease of park lands. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961. Amended by Ord. No. 5574 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 163. Acquisition of park land.

The council may acquire park land for the city, provided that the council shall not make any expenditure of money for the purpose of acquiring park lands without first securing a recommendation from the planning board and the parks and recreation advisory board. Provided, however, that the council can act without such recommendations if said boards fail to submit their recommendation to the council within thirty days after request therefor is made by the council. The recommendations of the said boards shall not be binding on the council except that the recommendation of the parks and recreation advisory board concerning expenditures from the permanent park and recreation fund shall be binding on the council pursuant to Section 161 of this charter. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

Sec. 164. Franchises, leases, permits, and licenses in parks.

No franchise shall ever be granted in or on park lands except on vote of the qualified taxpaying electors in accordance with the provisions of article VIII of the charter of the city.

The council may by motion grant leases, permits, or licenses in or on park lands, but only upon the affirmative vote of at least four members of the parks and recreation advisory board. The council may, by ordinance, delegate all or any part of this authority to the parks and recreation advisory board to approve such leases, permits, or licenses. The parks and recreation advisory board may, by motion, subdelegate all or any part of its delegated authority to approve such leases, permits, or licenses to the city manager. The city manager may enter into standard commercial licensing agreements for automatic food vending machines on park lands without the approval of the parks and recreation advisory board or the council.

The term of any license or permit granted hereunder shall not exceed five years, and any such license or permit so granted shall be revocable by the council at its pleasure at any time, whether such right to revoke be expressly reserved in such permit or license. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961. Amended by Ord. No. 5574 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 165. Transfer of assets, liabilities, and surplus from permanent park fund to the permanent parks and recreation fund.

(Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)
(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 166. Repeal of inconsistent charter provisions.

(Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)
(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 167. Severability.

(Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)
(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 168. Conflicting charter provisions declared inapplicable.

(Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)
(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

Sec. 169. Article self-executing.

(Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)
(Repealed by Ord. No. 5575 (1993), § 1, adopted by electorate on November 2, 1993.)

ARTICLE XII. OPEN SPACE

Sec. 170. Creation of a department of open space.

There shall be a department of open space, which shall be responsible for all open space land and other property associated therewith.

As used in this charter, "open space land" shall mean any interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on November 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for open space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the open space department, unless disposed of as expressly provided in section 177 below. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 171. Functions of the department.

Under the direction, supervision, and control of the city manager, there shall be a director of the department of open space, who may also serve as the city's director of real estate. Subject to the limitations set forth in section 175 below, the department of open space:

(a) Shall acquire, supervise, administer, preserve, and maintain all open space land and other property associated therewith and may grant nonexclusive licenses and permits and agricultural leases for crop or grazing purposes for a term of five years or less;

(b) Shall supervise, administer, and execute all open space programs, plans, functions, and activities of the city;

(c) Shall prepare and submit to the open space board of trustees written recommendations on those matters on which this article requires a recommendation from said board prior to council or department action;

(d) May, at the request of the open space board of trustees, prepare and submit to the board information and recommendations on such open space matters as are not provided for by (c) above; and

(e) May request advice on any open space matter from the open space board of trustees. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986. Amended by Ord. No. 7155 (2001), § 1, adopted by electorate on November 6, 2001.)

Sec. 172. Creation of the open space board of trustees.

There shall be an open space board of trustees consisting of five members appointed by the city council. The members of the board shall be residents of the city, shall not hold any other office in the city, and shall serve without pay. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 173. Term of office of board members–removal–vacancies.

The term of each member shall be five years; provided, however, that in appointing the original members of the board, the city council shall continue the terms of the current members and shall stagger the initial terms so that one board member's term expires in each year.

Five members of the council may remove any board member for cause.

The council shall fill all vacancies. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 174. Organization and procedure of the board.

The board shall choose a chair and a secretary. The director of the department of open space may be designated as secretary by the board.

The board shall have regular meetings once a month. Special meetings may be called at any time by three members of the board upon the giving of at least 24 hours' notice of said special meeting to the board members.

Three members of the board shall constitute a quorum. An affirmative vote of a majority of the members present shall be necessary to authorize any action by the board, except as otherwise expressly provided herein.

The board shall keep minutes and records of its meetings and transactions.

Except as otherwise expressly provided herein, the board shall have power to make rules for the conduct of its business. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 175. Functions of the board.

The open space board shall not perform any administrative functions unless expressly provided in this charter. The board:

(a) Shall make recommendations to the council concerning any proposed disposal of open space lands pursuant to section 177 below;

(b) Shall make recommendations to the council concerning any expenditure or appropriation from the open space fund pledged pursuant to the vote of the electorate on November 7, 1967, or proceeds of property acquired with the assets of the fund;

(c) Shall make recommendations to the council concerning any land that is to be placed under the direction, supervision, or control of the department of open space, including, without limitation, recommendations concerning use policies on, planned uses of, and restrictions on uses of, open space land;

(d) Shall make recommendations to the council concerning the open space program;

(e) Shall review the open space elements of the Boulder Valley Comprehensive Plan and make recommendations concerning any open space-related changes to the plan;

(f) Shall pursue vigorously the implementation of the open space elements of the Boulder Valley Comprehensive Plan and the acquisition of additional property required to fulfill the goals of the open space program;

(g) Shall review the city manager's proposed budget as it relates to open space matters and submit its recommendations concerning said budget to the council;

(h) Shall make recommendations concerning the grant or denial of any nonexclusive license or permit in or on open space land;

(i) Shall make recommendations concerning the incurring of any indebtedness payable from the open space fund, pursuant to section 97 above; and

(j) May prepare and submit to the council, the city manager, or the open space department recommendations on any other matter relating to the open space program, and may request and obtain from the open space department and the city manager information relating thereto.

The city council, the city manager, and the open space department shall not act on any of the matters set forth in paragraphs (a) through (i) above without securing a recommendation from the board as above provided; however, the council, the manager, and the department may act on the matters set forth in paragraphs (b) through (i) above without a board recommendation if the board fails to submit its recommendation within thirty days after request therefor is made by the council.

The board's recommendation shall not be binding upon the city council, except as expressly provided in section 177 below. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 176. Open space purposes–Open space land.

Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:

(a) Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;

(b) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;

(c) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;

(d) Preservation of agricultural uses and land suitable for agricultural production;

(e) Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth;

(f) Utilization of non-urban land for spatial definition of urban areas;

(g) Utilization of land to prevent encroachment on floodplains; and

(h) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 177. Disposal of open space land.

No open space land owned by the city may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the city council. Such approval may be given only after approval of such disposal by the affirmative vote of at least three members of the open space board of trustees after a public hearing held with notice published at least ten days in advance in a newspaper of general circulation in the city, giving the location of the land in question and the intended disposal thereof. No open space land owned by the city shall be disposed of until sixty days following the date of city council approval of such disposal. If, within such sixty-day period, a petition meeting the requirements of Section 45 above and signed by registered electors of the city to the number of at least five percent of the registered electors of the city as of the day the petition is filed with the city clerk, requesting that such disposal be submitted to a vote of the electors, such disposal

shall not become effective until the steps indicated in Sections 46 and 47 above have been followed.

This section shall not apply to agricultural leases for crop or grazing purposes for a term of five years or less.

This section is to be construed liberally in favor of providing opportunities for the citizens of the city to refer measures proposing the disposal of any open space land. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

CHANGES

Note: The charter as contained here sets forth the provisions and sections thereof in full force and effect as of November 8, 1983. To determine what provisions or sections of the charter were either amended, added or repealed since the adoption of the original charter on October 30, 1917, the following table should be consulted:

(see following page for table)

Section	Date	Change	Ordinance
4	October 2, 1956	(amended)	1978
4	September 11, 1973	(amended)	3925
4	November 3, 1998	(amended)	6006
5	October 2, 1956	(amended)	1978
5	November 3, 1981	(amended)	4597
5	November 2, 1993	(amended)	5575
7	November 7, 1989	(amended)	5221
8	November 5, 1996	(amended)	5813
9	November 3, 1981	(amended)	4597
9	November 2, 1993	(amended)	5575
9	November 4, 2003	(amended)	7296
13	November 3, 1998	(amended)	6006
13	November 3, 1998	(amended)	6008
18a	November 6, 1951	(added)	1632
18a	November 8, 1983	(amended)	4773
20	November 8, 1983	(amended)	4773
22	January 4, 2005	(amended)	7412
26	September 11, 1973	(amended)	3925
26	November 2, 1993	(amended)	5576
27	September 11, 1973	(amended)	3925
27	November 3, 1998	(amended)	6006
28	September 11, 1973	(amended)	3925
28	November 2, 1993	(amended)	5576
29	September 11, 1973	(amended)	3925
29	November 2, 1993	(amended)	5576
31	September 11, 1973	(amended)	3925
31	November 8, 1983	(amended)	4773
31	November 2, 1993	(amended)	5576
33	November 4, 1947	(repealed)	1474
33	October 26, 1954	(re-enacted)	1826
34	November 4, 1947	(repealed and re-enacted)	1474
35	November 4, 1947	(repealed and re-enacted)	1474
36	November 3, 1959	(amended)	2263
36	November 7, 1989	(repealed)	5219
38	November 3, 1981	(amended)	4598
39	November 3, 1981	(amended)	4598
39	November 3, 1981	(amended)	4599
41	November 3, 1981	(amended)	4598
41	November 2, 1993	(amended)	5577
41	November 4, 1997	(amended)	5907
44	November 3, 1981	(amended)	4598
44	November 3, 1981	(amended)	4599
46	November 3, 1981	(amended)	4598
46	November 3, 1981	(amended)	4599
51	November 6, 1951	(amended)	1632
65	November 6, 1951	(amended)	1632
65	November 2, 1993	(amended)	5575

Section	Date	Change	Ordinance
66	November 2, 1993	(amended)	5575
67	November 5, 1963	(amended)	2729
69	November 2, 1993	(repealed)	5575
69A	November 5, 1929	(added)	1219
69A	November 2, 1993	(repealed)	5575
70	November 3, 1953	(amended)	1753
70	January 31, 1961	(repealed)	2392
70a	November 3, 1953	(added)	1753
70a	January 31, 1961	(repealed)	2392
70b	November 3, 1953	(added)	1753
70b	January 31, 1961	(repealed)	2392
71	January 31, 1961	(repealed)	2392
74	November 6, 1951	(amended)	1632
74	November 5, 1963	(amended)	2728
75	November 6, 1951	(amended)	1632
75	November 5, 1963	(amended)	2728
75	November 2, 1993	(amended)	5575
76	November 6, 1951	(amended)	1632
77	November 6, 1951	(amended)	1632
78	November 6, 1951	(amended)	1632
79	November 6, 1951	(amended)	1632
80	November 6, 1951	(amended)	1632
81	November 6, 1951	(amended)	1632
82	November 6, 1951	(amended)	1632
83	November 6, 1951	(amended)	1632
84	November 5, 1929	(amended)	1219
84	November 6, 1951	(amended)	1632
84	January 31, 1961	(repealed)	2392
84	November 2, 1971	(added)	Res. No. 24a
84	November 7, 1989	(amended)	5220
84	November 3, 1998	(amended)	6013
84a	November 6, 1951	(added)	1632
84a	November 4, 1969	(amended)	3513
84b	November 6, 1951	(added)	1632
84b	January 31, 1961	(repealed)	2392
85	November 8, 1955	(amended)	1907
86	November 2, 1993	(amended)	5575
86	November 4, 2003	(amended)	7295
87	November 2, 1993	(amended)	5575
94	November 2, 1943	(amended)	1403
96	November 2, 1993	(repealed)	5575
96	November 5, 1996	(added)	5818
97	November 4, 1919	(amended)	821
97	November 4, 1969	(amended)	3513
97	November 2, 1971	(amended)	3743
97	November 5, 1996	(amended)	5820
97a	June 12, 1979	(added)	4420

Section	Date	Change	Ordinance
100	November 8, 1955	(amended)	1907
106	December 2, 1958	(amended)	2171
106a	November 3, 1953	(added)	1753
106b	November 3, 1953	(added)	1753
106c	November 3, 1953	(added)	1753
117	November 2, 1993	(repealed)	5575
126	November 8, 1983	(amended)	4773
128a	July 21, 1959	(added)	2244
128a	January 31, 1961	(amended)	2391
128a	November 6, 1979	(amended)	4452
128a	November 3, 1981	(amended)	4606
128a	November 5, 1991	(amended)	5402
128a	November 7, 2000	(amended)	7076
129	January 31, 1961	(repealed)	2392
130	November 3, 1998	(amended)	6007
131	November 2, 1993	(repealed)	5575
139	November 2, 1993	(repealed)	5575
141	November 7, 1967	(repealed)	3287
147	November 2, 1993	(repealed)	5575
148	November 2, 1993	(repealed)	5575
149	November 2, 1993	(repealed)	5575
150	November 2, 1993	(amended)	5575
152	November 3, 1981	(amended)	4602
154	November 2, 1993	(amended)	5574
155	January 31, 1961	(added)	2392
156	January 31, 1961	(added)	2392
157	January 31, 1961	(added)	2392
158	January 31, 1961	(added)	2392
159	January 31, 1961	(added)	2392
160	January 31, 1961	(added)	2392
161	January 31, 1961	(added)	2392
162	November 2, 1993	(amended)	5574
163	January 31, 1961	(added)	2392
164	November 2, 1993	(amended)	5574
165	November 2, 1993	(repealed)	5575
166	November 2, 1993	(repealed)	5575
167	November 2, 1993	(repealed)	5575
168	November 2, 1993	(repealed)	5575
169	November 2, 1993	(repealed)	5575
170	August 19, 1986	(added)	4996
171	August 19, 1986	(added)	4996
171	November 6, 2001	(amended)	7155
172–177 (inclusive)	August 19, 1986	(added)	4996

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GENERAL ADMINISTRATION

TITLE 1 GENERAL ADMINISTRATION

Chapter 1 Construction And Interpretation[1]

Section:

1-1-1 Legislative Intent.

The purpose of this chapter is to provide general rules for the interpretation of this code and other ordinances of the city.

1-1-2 How Code Designated And Cited.

The ordinances embraced in this and the following chapters and sections constitute and are designated the "Boulder Revised Code 1981," which may be referred to as B.R.C. 1981.

1-1-3 Catchlines Of Sections.

The city council intends that the catchlines of the several sections of this code printed in boldface type be mere catchwords to indicate the contents of the section and not titles or parts of such sections, nor, unless expressly so provided, are amendments or reenactments of any catchlines intended to be titles or parts of such sections.

1-1-4 Severability Of Parts Of Code.

The city council intends that the sections, paragraphs, sentences, clauses, and phrases of this code be severable. If any phrase, clause, sentence, paragraph, or section of this code is declared

[1]Adopted by Ordinance No. 4705. Derived from Ordinance No. 3838, 1925 Code.

unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity does not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this code, unless it appears to the court that the valid provisions of the section or ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the council would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. If provision of an exception invalidates a prohibition, but the prohibition without the exception would be valid, then it is council's intent in such cases that the exception be severed and the prohibition upheld.

Ordinance No. 5186 (1989).

1-1-5 **Liberal Construction.**

The city council intends that all general provisions, terms, phrases, and expressions contained in this code be liberally construed in order that the council's true intent and meaning may be fully implemented.

1-1-6 **Common And Technical Usage.**

The city council intends that words and phrases be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, are intended to be construed accordingly.

1-1-7 **Singular And Plural.**

Unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.

1-1-8 **Tense.**

Unless the context clearly indicates otherwise, words in the present tense include the future tense.

1-1-9 **Gender.**

Whenever this code or any ordinance of the city refers to the feminine or masculine gender, it is deemed to refer to both genders.

1-1-10 **Computation Of Time.**

(a) In computing a period of days, the first day is excluded and the last day is included.

(b) Except as otherwise expressly provided by this code or any ordinance of the city or applicable state statute, if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

1-1-11 Joint Authority.

A grant of authority to three or more persons as a public body confers the authority upon a majority of the number of members fixed by the code.

1-1-12 Conflict In The Expression Of Numbers.

If there is a conflict between figures and words in expressing a number, the words govern.

1-1-13 Standard Time, Daylight Saving Time.

United States Mountain Time, as defined by state law[1], applies to all ordinances, rules, and regulations relating to the time of performance of any act by any officer or department of this city, relating to the time in which any rights accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the city.

1-1-14 Intention In Enacting Ordinances.

In enacting an ordinance the city council intends:

(a) To comply with the city charter and the constitutions of the State of Colorado and the United States;

(b) That the entire ordinance be effective;

(c) A just and reasonable result;

(d) A result that may be feasibly executed; and

(e) That the public interest be favored over any private interest.

1-1-15 Ambiguous Ordinances, Aids In Construction.

If an ordinance is ambiguous, a court in determining the intent of the city council may consider, among other matters:

(a) The legislative declaration or purpose[2];

(b) The object sought to be obtained;

(c) The administrative construction of the ordinance;

(d) The legislative history, if any;

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[1]2-4-109, C.R.S.

[2]2-4-203, C.R.S. See, Martin v. King, 417 F. 2d 458 (10th Cir. 1969): Larsen v. City of Colorado Springs, 142 F. Supp. 871 (D. Colo. 1956).

(e) The circumstances under which the ordinance was enacted;

(f) The common law or former code provisions, including ordinances upon the same or similar subjects; and

(g) The consequences of a particular construction.

1-1-16 Special Or Local Provision Prevails Over General.

If a general provision conflicts with a special or local provision, the city council intends that it be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

1-1-17 Irreconcilable Ordinances.

If the city council enacts an ordinance that is irreconcilable with another provision of this code, the ordinance whose effective date is latest prevails.

1-1-18 Continuation Of Prior Law.

(a) An ordinance is presumed to be prospective in its operation.

(b) The provisions appearing in this and the following chapters, so far as they are the same as or substantially similar to the provisions of "The Revised Code Of The City Of Boulder, Colorado 1965," as amended, which they replace, are deemed to be continuations thereof and not new enactments.

(c) An ordinance that is reenacted, revised, or amended is intended to be a continuation of the prior law and not a new enactment to the extent that its terms are the same as the prior ordinance.

1-1-19 Reference To Ordinances.

A reference to any ordinance or title, chapter, section, or any part thereof of this code applies to all reenactments or revisions thereof or amendments thereto.

1-1-20 Accumulation Of Remedies.

The remedies provided for in any section of this code are cumulative. Unless otherwise expressly provided by this code or any ordinance of the city, no action taken by the city constitutes an election by the city to pursue any remedy to the exclusion of any other remedy provided by this code or other ordinance of the city.

1-1-21 Meaning Of "May," "Shall," And Present Tense.

When used in this code or any ordinance of the city, the use of the "present tense" and the word "shall" mandate or prohibit an action, and the word "may" confers authority or privilege to act.

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1-1-22 **Rounding Rule.**

(a) Unless otherwise specifically provided, if it is necessary under this code or any ordinance of the city to determine which whole number a computed fractional number represents, it shall be presumed to represent the lower.

(b) This section does not apply to title 10, "Structures," B.R.C. 1981, nor to any codes adopted by reference therein.

Ordinance No. 4927 (1985).

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TITLE 1 GENERAL ADMINISTRATION

Chapter 2 Definitions[1]

Section:

1-2-1 Definitions.

(a) The definitions in this chapter apply throughout this code unless a term is defined differently in a specific title, chapter, or section.

(b) The following words used in this code and other ordinances of the city have the following meanings unless the context clearly indicates otherwise:

"Abandoned motor vehicle" means any motor vehicle that is left in one location on public property or on private property without the consent of the owner thereof for a continuous period of more than seventy-two hours.

"Accessory" means subordinate or incidental to, and on the same lot or on a contiguous lot in the same ownership, as the building or use being identified or advertised.

"Affirmative defense" means a defense in which the defendant, to raise the issue, presents some credible evidence on that issue, unless the city's evidence raises the issue involving the alleged defense. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the violation.

"Age" means age between forty and sixty-five years.

"Agency" means the city council and any officer, employee, department, division, or other agency of the City of Boulder, including boards and commissions, but excludes the municipal court.

"Alley" means a street or way within a block set apart for public use, vehicular travel, and local convenience to provide access to the rear or side of the abutting lots or buildings.

"Ambulatory vendor" means any person who engages in the business of selling balloons, flowers, or shoeshines while moving about the downtown Boulder mall or a portrait artist with a minimum amount of artist's equipment.

"Antique vehicle" means a vehicle registered with and licensed by the Colorado State Division of Motor Vehicles of the Department of Revenue or the department of motor vehicles of any other state as an antique vehicle.

"Appear on behalf of" means to act as a witness, advocate, or expert or otherwise to support the position of another person.

"Architectural projection" means any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, including, without limitation, a roof overhang, mansard, unenclosed exterior balcony, marquee, canopy, awning, pilaster, and fascia, but not including a sign.

[1]Adopted by Ordinance No. 4777. Derived from Ordinance Nos. 3838, 4491.

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"Authorized emergency vehicle" means every vehicle equipped with audible or visual signals meeting the requirements of section 42-4-212, C.R.S., as amended, and operated by a city police officer, city firefighter, or any peace officer, and every other vehicle defined as an authorized emergency vehicle by state law.

"Authorized service vehicle" means such highway or traffic maintenance vehicles as are publicly owned and operated on a highway by or for a governmental agency, the function of which requires the use of service vehicle warning lights as prescribed by state law, and such other vehicles having a public service function, including, without limitation, public utility vehicles and tow trucks, as determined by the state department of highways under section 42-4-212.5(5) C.R.S., as amended. Some vehicles may be designated as both an authorized emergency vehicle and an authorized service vehicle.

"Automotive vehicle" means any vehicle, including every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway or any device used or designed for aviation or for flight in the air and upon which a specific ownership tax is imposed by the State of Colorado, including, without limitation, all motor vehicles, trailers, semi-trailers, and aircraft, but excluding devices moved by human power or used exclusively upon stationary rails or tracks.

"Awning" means an architectural projection roofed with flexible material, including, without limitation, fabric, supported entirely from an exterior wall of a building, and that may be retracted, folded, or collapsed against the face of the supporting building.

"Awning sign" means a sign depicted or placed upon, attached to, constructed in, or supported by a marquee, canopy, or awning.

"Ballot proposition" means any amendment to the city charter, initiative, referendum, or recall, for which petitions have been properly certified by the city clerk for submission to the city council or any ordinance or issue put to a vote of only the electors of the City of Boulder. Such term does not include any ballot issue placed on the ballot by the United States, the State of Colorado, or any political or other subdivision thereof except the city.

"Basement" means that portion of a dwelling between floor and ceiling that is located partly below and partly above grade and has less than half its clear floor-to-ceiling height below the average grade of the adjoining ground abutting the exterior walls of the dwelling unit.

"Bathroom" means a room containing a toilet that may also contain a lavatory, shower, or bathtub.

"Bicycle" means a vehicle propelled solely by human power through a chain, belt, or gears and that has at least one wheel more than fourteen inches in diameter.

"Bike path" or "bicycle path" means a separate path that has been designated for use by bicycles by traffic control device or other sign and that is separated from the roadway for other vehicular traffic by open space or a barrier.

"Blue Line" means the line above which the City of Boulder shall not supply water for domestic, commercial, or industrial uses, as described in section 128A of the charter of the City of Boulder, except as specifically stated therein.

"Brush" means woody shrubs not part of a planned and maintained landscape of either a highly structured manicured type or a natural appearance.

"Building" means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

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"Building extension" means any structure that is an extension of an existing building front or basement adjacent to the mall and that encroaches upon the mall.

"Building ornament" means any awning, sign, planter box, or other ornament on a building adjacent to the mall that encroaches upon the air space above the mall.

"Business" means all activities in which a person engages or in which such person causes another to be engaged with the object of gain, benefit, or advantage, whether direct or indirect.

"Camper" means a unit containing cooking or sleeping facilities that is designed to be loaded onto or affixed to the bed or chassis of a truck to provide temporary living quarters for recreational camping or travel use.

"Candidate" means any person for whom a petition as a choice for an elective office of the city has been completed, certified, and filed in the office of the city clerk, pursuant to charter section 26, including a candidate to fill a possible vacancy at a recall election, unless such person withdraws as a choice for that elective office. The term also means those persons elected to, re-elected to, or appointed to elective offices in the city.

"Canopy" means a roofed architectural projection which is supported by an exterior wall of a building and by additional supports, including, without limitation, columns, upright poles, or braces extended from the ground.

"Cellar" means that portion of a dwelling that is located partly or wholly below grade and has half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground abutting the exterior walls of the dwelling unit.

"Central Area General Improvement District" or "CAGID" means the City of Boulder Central Area General Improvement District established by Ordinance 3644 (1970), as subsequently amended[1].

"Charitable organization" means any entity organized and operated in the city exclusively for religious or charitable purposes, no part of whose net earnings inures to the benefit of any private shareholder or individual, no substantial part of whose activities is carrying on propaganda or otherwise attempting to influence legislation, and that does not participate in or intervene in any political campaign on behalf of any candidate for public office or publish or distribute any statements on such candidate's behalf.

"Charter" means the charter of the City of Boulder, Colorado, as amended.

"City" means the City of Boulder, Colorado.

"City clerk" or "city treasurer" means the director of finance and record, ex-officio city clerk and city treasurer.

"City council" means the city council of the City of Boulder, Colorado.

"City manager" means the city manager of the City of Boulder, Colorado or the manager's authorized representative.

"City Of Boulder Design And Construction Standards" means the design and construction standards adopted by Ordinance 5986 (1998), amended by Ordinance 7088 (2000), and including any subsequent amendments to those standards adopted by ordinance.

[1]Ordinance Nos. 3920, 4060, 4103, 4152, 4218, 4349, 5054, and CAGID Resolutions 37 and 45.

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"Cleanable" means having a smooth, hard surface that is free from unsealed breaks and impervious to the amount of water that would be used in cleaning.

"Code enforcement officer" means any city employee or person employed under independent contract by the city who is appointed by the city manager to enforce the laws of the city. "Code enforcement officer" also means an authorized volunteer appointed by the city manager to enforce the laws concerning parking of vehicles in spaces reserved for the handicapped by issuing parking tickets.

"Condominium" means real property having more than one dwelling unit and the ownership of which consists of separate, divided fee simple estates in individual air space units, together with an undivided fee simple interest in the common elements appurtenant to such units.

"Condominium conversion" means the transfer of ownership of less than the total number of dwelling units in a multiple dwelling unit structure, where the ownership interests created by the transfer of ownership are in a number of dwelling units that is less than the total number of units in the structure in which the seller had an interest prior to the sale or, with respect to a mobile home park, the transfer of ownership of the mobile home park property so that it is jointly and severally owned by the owners of the mobile homes upon such property.

"Condominium unit" means a form of property ownership of airspace, as defined in section 38-33-103, C.R.S.

"Construction project" means the erection, installation, alteration, repair, or remodeling of a building or structure upon real estate or any other activity for which a building permit is required under this code or an ordinance of the city.

"Developer" means any person who participates in any manner in the development of land.

"Development" means any plan to construct or place one or more dwelling units on a particular parcel of land within the city.

"Driver" means every person who drives or is in actual physical control of the steering, accelerating, or braking controls of a vehicle or the rider of an animal. No person shall be deemed not to be the driver or to drive because a vehicle is out of control except immediately following a collision not proximately caused by a traffic violation of such driver. A person dismounted from a bicycle, moped, or motorcycle and pushing it on foot is a pedestrian, not a driver.

"Dwelling" means any building, structure, or other housing accommodation that is wholly or partly used or intended to be used for living or sleeping by human occupants, but excludes temporary housing.

"Dwelling unit" means one room or rooms connected together for residential occupancy and including bathroom and kitchen facilities. If there is more than one meter for any utility, address to the property, or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units; or if there is a lockable, physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, multiple dwelling units are presumed to exist; but this presumption may be rebutted by evidence that the residents of the dwelling share utilities and keys to all entrances to the property and that they: 1) share a single common bathroom as the primary bathroom, or 2) share a single common kitchen as the primary kitchen.

"Extermination" means control and elimination of insects, rodents, vermin, or other pests by eliminating their harborage and materials that may serve as their food or by taking

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recognized, legal methods of eliminating pests, including, without limitation, poisoning, spraying, fumigating, or trapping.

"Family" means the heads of household plus the following persons who are related to the heads of the household: parents and children, grandparents and grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, first cousins, the children of first cousins, great grandchildren, great grandparents, great great grandchildren, great great grandparents, grandnieces, grandnephews, great aunts, and great uncles. These relationships may be of the whole or half blood, by adoption, guardianship, including foster children, or through a marriage or a domestic partnership meeting the requirements of chapter 12-4, "Domestic Partners," B.R.C. 1981, to a person with such a relationship with the heads of household.

"Final construction acceptance" means the city's acceptance of public improvements and appurtenances thereto constructed or installed by the developer or subdivider at the end of the prescribed warranty period on such improvements and after correction of any deficiencies discovered in the final inspection of such improvements.

"Firearm" means any handgun, automatic revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

"Firefighter" means any person commissioned as such under the provisions of section 2-5-4, "Identification Card For Firefighters," B.R.C. 1981, and any member of another fire department who is acting under the direction of the City of Boulder Fire Department and is identifiable as a firefighter.

"Food" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Frontage, building" means the horizontal, linear dimension of that side of a building that abuts a street, a parking area, a mall, or other circulation area open to the general public and that has either the primary window display of the enterprise or the primary public entrance to the building; in industrial districts, the building side with the primary entrance open to employees is the building frontage; where more than one use occupies a building, each such use having a primary window display or a primary public entrance for its exclusive use is considered to have its own building frontage, which is the front width of the portion of the building frontage occupied by that use.

"Frontage, street" means the linear frontage of a lot or parcel abutting a private or public street that provides principal access to or visibility of the premises.

"Garbage" means putrescible animal or vegetable waste resulting from the preparation, cooking, and serving of food or the storage or sale of produce.

"Garbage container" means a metal or other non-absorbent container equipped with a tightly fitting metal or non-absorbent lid or sealed plastic garbage bags, but does not include incinerators or ash pits.

"General circulation" means delivered to a substantial number of residences in the city and also otherwise made available for purchase or distribution.

"Grade" means the average of the finished ground level at the center of all walls of a building. When walls are parallel to and within five feet of a sidewalk, "grade" means the sidewalk level.

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"Habitable room" means a room or enclosed floor space used, intended to be used, or designed to be used for living, sleeping, eating, or cooking and excludes bathrooms, toilet compartments, closets, halls, and storage places.

"Heads of the household" means one person or up to two persons who are married or are domestic partners meeting the requirements of chapter 12-4, "Domestic Partners," B.R.C. 1981.

"Height of a sign," "high," or "in height" mean the vertical distance measured from the elevation of the nearest sidewalk, or, if there is no sidewalk within twenty-five feet, from the lowest point of the finished grade on the lot upon which the sign is located and within twenty-five feet of the sign, to the uppermost point on the sign or the sign structure, whichever is higher.

"Hereafter" means any time after the effective date of this code.

"Heretofore" means any time previous to the effective date of this code.

"Holiday" means New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Colorado Day, Thanksgiving Day, Christmas Day, and such additional entire days declared as holidays by city ordinance.

"Hotel" means an establishment that offers temporary lodging, for less than one month, in rooms and that may provide meals, entertainment, and various personal services for the public but excludes a "bed and breakfast" as defined in section 9-16-1, "General Definitions," B.R.C. 1981.

"Hotel room," "motel room," or "other accommodation" means any room or other accommodation in any hotel, apartment-hotel, motel, guest house, trailer court, or any such similar place to any person who for a consideration uses, possesses, or has the right to use or possess such room or other accommodation for a total continuous duration of less than one month.

"Housing" means any building, structure, vacant land, or part thereof during the period it is advertised, listed, or offered for sale, lease, rent, or transfer of ownership, except that transfer does not include transfer of property by will or gift.

"Incarcerate" means the restraint of a person authorized by chapter 2-6, "Courts And Confinements," B.R.C. 1981, in lieu of immediate release on summons and complaint, and "for custodial arrest" includes transportation to a detention facility, booking, and lodging in a detention facility. The term also means lodging in a detention facility under a sentence imposed by the municipal court.

"Income" means the gross amount of money received during the year by an individual or family.

"Infestation" means the presence of insects, rodents, vermin, or other pests of a kind or in a quantity that endanger health within or around a dwelling.

"Inoperable motor vehicle" means any motor vehicle that does not have a current license plate and a validation sticker lawfully affixed thereto or that is apparently inoperable due to being wrecked, dismantled, or partially dismantled, or having essential parts missing.

"Intentionally" or "with intent" means that one's conscious objective is to cause the specific result proscribed by the provision of this code or the ordinance defining the violation. All violations defined in this code in which the mental culpability requirement is expressed as

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"intentionally" or "with intent" are specific intent offenses. It is immaterial to the issue of specific intent whether or not the result actually occurred.

"Interested person" means any person described as "interested" by city charter, ordinance, or code or state or federal constitution or law, any person having a legally protected interest under city charter, ordinance, or code or state or federal constitution or law that is subject to potential injury in fact due to proposed final agency action, or any person having a right of appeal therefrom by virtue of a specific provision of city charter, ordinance, or code or state or federal constitution or law. "Interested person" may include a city agency.

"Intersection" means the area embraced within the prolongation or connection of the lateral curblines of two streets that join one another at, or approximately at, right angles or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict, whether or not one such street crosses the other, but the term does not include the junction of any alley with a street. If a street includes two roadways thirty feet or more apart, every crossing of each roadway of such divided street by an intersecting street is a separate intersection. If such intersecting street also includes two roadways thirty feet or more apart, every crossing of such streets is a separate intersection. The farthest applicable points shall be used when measuring.

"Judge" means any judge of the municipal court.

"Keeper" means a person who has custodial or supervisory authority or control over an animal.

"Kiosk" means a freestanding structure located within a pedestrian circulation area used for posting of notices or advertisement of goods.

"Kitchen" means any part of a room or dwelling unit that can be used for the preparation of food that includes one or more of the following: a refrigerator, cooking device, food storage cabinet, kitchen sink, or dishwasher.

"Knowingly" or "willfully" means, with respect to conduct or to a circumstance described by a section of this code or an ordinance defining a violation, that a person is aware that such person's conduct is of that nature or that the circumstance exists. With respect to a result, this means that a person is aware that such person's conduct is practically certain to cause the result. All violations defined in this code in which the mental culpability requirement is expressed as "knowingly" or "willfully" are general intent offenses.

"Law" means any regulation, ordinance, provision of this code, or charter provision of the city; any rule, statute, or constitutional provision of the state which is binding on a home rule city; or any regulation, statute, or constitutional provision of the United States which is binding on the state or its cities.

"Lot" means a portion or parcel of land, including a portion of a platted subdivision, occupied or intended to be occupied by a building or use and its accessories, together with the yards required under the provisions of the zoning chapter of this code, which is an integral unit of land held under unified ownership in fee or co-tenancy or under legal control tantamount to such ownership.

"Mall" means the Boulder downtown pedestrian mall established by Ordinance No. 4022 (2-18-1975)[1].

"May" means is authorized to.

[1]Ordinance 4022 generally describes the mall as Pearl Street from the east curb line of 11th Street to the west curb line of 15th Street, less the area between the curb lines of Broadway, 13th, and 14th Streets.

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"Mobile home" means a transportable, single-family dwelling unit, suitable for year-round occupancy that contains the same water supply, waste disposal, and electrical conveniences as immobile housing, but that has no foundation other than wheels or removable jacks for conveyance on highways, and that may be transported to a site as one or more modules, but the term does not include "travel trailers," "campers," "camper buses," "motor homes," or modular homes designed to be placed on a foundation.

"Mobile home park" means any lot or tract of land designed, used, or intended to provide a location or accommodation for one or more mobile homes and upon which any mobile home or homes are parked or located, whether or not the lot or tract or any part thereof is held or operated for profit, but the term excludes automobile or mobile home sales lots on which mobile homes are parked only for inspection and sale.

"Mobile home space" means a plot of ground within a mobile home park designed for the accommodation of one mobile home and its accessory structures.

"Month" means a calendar month.

"Motel" means a hotel that is arranged in such a manner that individual guest rooms are directly accessible from an automobile parking area.

"Motor home" means a motor vehicle containing cooking or sleeping facilities and designed as temporary living quarters for recreational camping or travel use and includes, without limitation, vehicles designated as "camper buses" and those that may have been originally designed for use as vans or buses but that have been converted to use as living quarters.

"Motor vehicle" means any self-propelled vehicle other than a moped.

"Multi-unit dwelling" means a building used by two or more of the following groups of persons living independently of each other in separate dwelling units but not including motels, hotels, and resorts:

(1) The members of a family plus one or two roomers. The quarters the roomers use shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate dwelling unit;

(2) Up to three individuals in RR-1, RR-2, RE, and RL zones;

(3) Up to eight persons sixty years of age or older in RR-1, RR-2, RE, and RL zones;

(4) Up to four individuals in RM, RMX, MU-1, MU-2, MU-3, RH-1, RH-2, RH-3, RH-4, RH-5, BT, BC, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IG, IM, IMS, BMS, and BR zones; or

(5) Two individuals and any of their children by blood, marriage, guardianship, including foster children, or adoption.

"Municipal court" means the police magistrate's court or police court prescribed by charter sections 86 and 87 and described in Colorado Constitution Article XX, sections 6(b) and (c).

"Negligently" means to act with negligence with respect to a result or to a circumstance described by a section of this code by failing to exercise the degree of care that would be exercised by the ordinarily reasonable and prudent inhabitant of the city under the same or similar circumstances.

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"Newspaper" means a publication, having been in existence for at least six months, regularly printed and distributed no less than once a week, that contains news, opinions, advertisements, and other items of general interest.

"Notice or legal notice" means any requirement for informing a person or persons, a segment of the public, or the public generally. A notice required to be published may be published in any newspaper of general circulation unless otherwise required by the charter, this code, or an ordinance of the city.

"Oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" are equivalent to the words "affirm" and "affirmed."

"Occupant" means any person living in, sleeping, possessing, or otherwise using any land, building, or part thereof.

"Open space land" means any interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on November 7, 1967, November 7, 1989, and November 4, 1997, or proceeds thereof, any interest in real property dedicated to the city for open space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the department of open space and mountain parks, unless disposed of as expressly provided in charter section 177 and subsection 2-3-9(e), B.R.C. 1981.

"Owner" means a person as defined by this code, who, alone, jointly or severally with others, or in a representative capacity (including, without limitation, an authorized agent, executor, or trustee) has legal or equitable title to any property in question.

"Pay station" has the meaning given in section 7-1-1, "Definitions," B.R.C. 1981.

"Peace officer" means any police officer or city code enforcement officer.

"Person" means a natural person, corporation, firm, partnership, association, organization, and any other group acting as a unit as well as individuals. It also includes an executor, administrator, trustee, receiver, or other representative appointed according to law. Whenever the word "person" is used in any provision of this code prescribing a penalty or fine as to partnership or associations, the word includes the partners or members thereof, and as to corporations, includes the officers, agents, or members thereof who are responsible for any violation of such section. "Person" includes the plural as well as the singular.

"Place of accommodation" means any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges, or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind.

"Place or event open to the public" means any place or event, the admission or access to which is open to members of the public upon payment of a charge or fee. This term includes, without limitation, the following places and events when a charge or fee for admission to such places and events is imposed upon members of the public:

(1) Any performance of a motion picture, stage show, play, concert, or other manifestation of the performing arts;

(2) Any sporting or athletic contest, exhibition, or event whether amateur or professional;

(3) Any lecture, rally, speech, or dissertation;

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(4) Any showing, display, or exhibition of any type, such as an art exhibition; and

(5) Any restaurant, tavern, lounge, bar, or club, whether the admission is called a "cover charge," "door charge," or any other such term.

"Police officer" means:

(1) Any city police officer commissioned by the city manager;

(2) Any person appointed by the city manager pursuant to charter section 72;

(3) Any peace officer of another jurisdiction who is also commissioned by the city manager to enforce the laws of the city;

(4) Any city park patrol officer commissioned by the city manager;

(5) Any city fire chief or fire marshal or firefighter commissioned by the city manager; and

(6) Any other city employee designated by the city manager to exercise police powers including the power of arrest and commissioned by the city manager.

"Possessor" of real property means a person not the owner of the property who is in control of the property and is responsible as lessee, caretaker, or otherwise for its care and upkeep.

"Preceding" and "following" mean next before and next after, respectively.

"Preliminary construction acceptance" means the city's acceptance of the developer's or subdivider's construction, installation, and testing of public improvements and appurtenances thereto as conforming with city standards and defines the date on which the warranty period on such improvements commences.

"Premises" of the owner or keeper of an animal means only that property over which the owner or keeper has full possession and control. The unenclosed property of a condominium or townhouse or the common passageway, parking facility, or unenclosed common yard of an apartment building or shopping center are not premises of an owner or keeper.

"Primary," "Primarily," "Principal," or "Principally" means more than half, if used in a quantifiable context, and first in rank, importance, or value, if used in a context where ranking is possible but quantification is not.

"Property" means real, tangible, and intangible personal property.

"Proximate cause" means that which, in natural and continuous sequence, unbroken by an efficient, intervening cause, produced the result complained of and without which the result would not have occurred.

"Public authority" means the City of Boulder, State of Colorado, or the United States, any of their agencies or instrumentalities, and any body or official thereof possessing power or authority delegated by the public authority.

"Public right-of-way" means the entire area between property boundaries which is: owned by a government, dedicated to public use, or impressed with an easement for public use; primarily used for pedestrian or vehicular travel; and publicly maintained, in whole or in part, for such use. "Right-of-way" includes, without limitation, the public street, shoulder, gutter, curb, sidewalk, sidewalk area, parking or parking strip, and any other public way.

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"Public way" means any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.

"Quorum" means a majority of the number of members of a public body fixed by the charter, this code, another ordinance of the city, or a statute.

"Rat harborage" means any plant growth, object, or structure that provides rats with shelter from the weather, protection from predators, or sites for nest building and rearing of young.

"Real property," "premises," "real estate" or "lands" means lands, tenements, and hereditaments.

"Rental property" means all dwellings, dwelling units, and rooming units located within the city and rented or leased for any valuable consideration, but the term excludes dwellings owned by the federal government or the State of Colorado or any of their agencies or political subdivisions and facilities licensed by the State of Colorado as health care facilities.

"Roadway" means that portion of a street from curb to curb improved, designed, or ordinarily used for vehicular travel. If a street includes two or more separate roadways, "roadway" refers to any such roadway separately, but not to all such roadways collectively.

"Rodent" means members of the order Rodentia, including, without limitation, rats and mice in the family Muridae, any other introduced rodents, and various native species such as field mice, voles, wood rats, ground and tree squirrels, chipmunks, and prairie dogs.

"Roof" means the cover of any building, including the eaves and similar projections.

"Roof line" means the highest point on any building where an exterior wall encloses usable floor space (including roof areas for housing mechanical equipment) and the highest point on any parapet wall if the parapet wall extends around the entire perimeter of the building.

"Rooming house" means an establishment where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is offered for one month or more for three or more roomers not related to the family of the heads of the household.

"Rooming unit" means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and study, and that may include a private bath but does not include a sink or any cooking device.

"Rubble" means large brush wood, large cardboard boxes or parts thereof, large or heavy yard trimmings, discarded fence posts, crates, vehicle tires, junked motor vehicle bodies or parts thereof, scrap metal, bed springs, water heaters, discarded furniture, and all other household goods or items, demolition materials, used lumber and other discarded or stored objects three feet or more in length, width, or breadth.

"Runoff coefficient" means the percentage of runoff from the parcel produced by a five-year storm according to the City of Boulder *Design And Construction Standards*.

"Safe," "safely," and "in safety" mean:

(1) Without hazard to person or property;

(2) Without in any way interfering with, impeding, hindering, obstructing, or taking the right-of-way from any other vehicle or pedestrian;

(3) In an attentive, careful, and prudent manner; and

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(4) At a speed such that recovery from errors in judgment is possible.

"Shall" means is required to.

"Sidewalk" means that portion of the sidewalk area paved or otherwise improved, designed, or ordinarily used for pedestrians and every such walk parallel and adjacent to a roadway.

"Sidewalk area" means the area between the curb of a street and the adjacent property lines.

"Sign" means any writing, pictorial representation, illustration, decoration (including any material used to differentiate sign copy from its background), landscaping, form, emblem, symbol, trademark, banner, flag, pennant, captive balloon, streamer, spinner, ribbon, sculpture, statue, or any other figure of similar character that:

(1) Is a structure or any part thereof (including the roof or wall of a building); or

(2) Is written, printed, projected, painted, constructed, or otherwise placed or displayed upon or designed into landscaping or a structure or a board, plate, canopy, awning, marquee, or vehicle, or upon any material object or device whatsoever; and

(3) By reason of its form, color, wording, symbol, design, illumination, or motion, attracts or is designed to attract attention to the subject thereof or is used as a means of identification, advertisement, or announcement or political or artistic expression or decoration; but

(4) Landscaping constitutes a sign only to the extent that it is planted, trimmed, graded, arranged, or installed in such a manner as to convey an explicit commercial message.

"Signature" means the name written in proper handwriting of such person or his or her mark.

"Single-unit dwelling" means a detached principal building other than a mobile home, designed for or used as a dwelling exclusively by one group of the following persons as an independent living unit:

(1) The members of a family plus one or two roomers. The quarters the roomers use shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate dwelling unit;

(2) Up to three individuals in RR-1, RR-2, RE, and RL zones;

(3) Up to eight persons sixty years of age or older in RR-1, RR-2, MU-2, RE, and RL zones;

(4) Up to four individuals in RM, RMX, MU-1, MU-2, MU-3, RH-1, RH-2, RH-3, RH-4, RH-5, BT, BC, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IG, IM, IMS, BMS, and BR zones; or

(5) Two individuals and any of their children by blood, marriage, guardianship, including foster children, or adoption.

"Sound condition" and "good repair" mean freedom from defects that would endanger the health, safety, and welfare of the occupants of the structure.

"Specific defense" means a defense in which the defendant, to raise the issue, presents some credible evidence on that issue, unless the city's evidence raises the issue involving the defense. If the issue involved in the specific defense is raised, it may be submitted to the trier of fact along with other issues, but the defendant bears the burden of proving the issue

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by a preponderance of the evidence, although the city must prove all other issues by proof beyond a reasonable doubt in any criminal action.

"Stairway" means all stairwells and includes stair stringers, risers, treads, handrails, banisters, and vertical and horizontal supports.

"State," "the state," or "this state" means the State of Colorado.

"Storm water" means any flow occurring during or following any form of normal precipitation and resulting therefrom.

"Street" means the entire width between the property boundary line of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and includes, without limitation, alleys, or the entire width of every way declared to be a public highway by any law.

"Structure" means any thing constructed or erected with a fixed location on the ground above grade, but the term does not include poles, lines, cables, or other transmission or distribution facilities of public utilities.

"State highway" means a street designated as part of the state highway system under the provisions of section 43-2-134, C.R.S., as amended. Designation of the street as a state highway on any map published by the state or the city or marked as such by signs is prima facie evidence of such designation.

"Subdivider" means any person who participates in any manner in the dividing of land for the purpose, immediate or future, of sale or building development.

"Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development for residential, industrial, commercial, or other use, but the term excludes any transaction that is exempt from subdivision regulation under chapter 9-12, "Subdivision," B.R.C. 1981.

"Temporary housing" means any mobile home, camper, or other structure used for human shelter that is designed to be transportable and is not attached to the ground, to another structure, or to any utilities system.

"Tenant" - see definition of "occupant."

"Time" means, whenever certain hours are named in this code or on any traffic control sign or parking meter, Mountain Standard Time or mountain daylight time, depending on the date, as prescribed by state law. Mountain Standard Time is Coordinated Universal Time minus seven hours. Mountain daylight time is Coordinated Universal Time minus six hours.

"Townhouse" means a multi-unit dwelling in which the ownership of each dwelling unit consists of a separate fee simple estate on an individually platted lot, together with an undivided fee simple interest in the common elements, if any.

"Townhouse unit" means that part of a townhouse constituting a single dwelling unit.

"Traffic" means pedestrians, ridden or herded animals, and vehicles, either singly or together, while using any street for purposes of travel.

"Traffic control sign" means a sign on, above, or adjacent to a street placed by a public authority to regulate, warn, or guide traffic.

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"Traffic control signal" means a device on, above, or adjacent to a street placed by a public authority by which traffic is alternately directed to proceed and stop by means of the display of colored lights or symbols.

"Traffic engineer" means the city manager, any city employee designated by the manager to act as traffic engineer or assistant traffic engineer, and the supervisors of any person so designated.

"Travel trailer" means a portable structure, mounted on wheels and designed to be towed by a motor vehicle, which contains cooking or sleeping facilities to provide temporary living quarters for recreational camping or travel.

"Vehicle" means any device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks, but the term excludes devices used exclusively upon stationary rails or tracks.

"Week" means any seven consecutive days.

"Willingly" - see definition of "knowingly."

"Writing" and "written" means printing, handwriting, lithography or any other physical mode of representing words and letters.

"Year" means a calendar year, unless otherwise expressed, and the word "year" shall be equivalent to the words "year of our Lord."

Ordinance Nos. 4803 (1984); 4879 (1985); 4969 (1986); 5039 (1987); 5085 (1987); 5106 (1988); 5182 (1989); 5186 (1989); 5187 (1989); 5190 (1989); 5270 (1990); 5681 (1994); 5805 (1996); 5930 (1997); 5986 (1998); 7182 (2002); 7291 (2003); 7294 (2003); 7304 (2003); 7416 (2005); 7522 (2007).

TITLE 1 GENERAL ADMINISTRATION

Chapter 3 Quasi-Judicial Hearings[1]

Section:

1-3-1 Legislative Intent And Application Of Chapter.

The following rules of procedure are intended to provide a uniform, consistent, and expeditious method for conducting quasi-judicial hearings held by city officers, employees, departments, divisions, boards, commissions, and the city council and to afford persons due process of law. An agency may supplement the provisions of this chapter by adopting further rules of procedure not inconsistent herewith. An agency may grant the opportunity for public testimony and shall permit public testimony whenever required by city charter, ordinance, or code or state or federal constitution or law. This chapter applies whenever a quasi-judicial hearing is required by any provision of city charter, ordinance, or code or state or federal constitution or law, unless another procedure is provided by city charter, ordinance, code, or contract or state or federal constitution or law. Nothing in this chapter shall be interpreted to grant any person the right to appeal to any agency or to have a hearing before it unless a specific provision of city charter, ordinance, or code or state or federal constitution or law grants such a right. This chapter does not apply to any pre-disciplinary procedures involving any employee of the city.

Ordinance Nos. 4879 (1985); 5202 (1989).

1-3-2 Definitions.

As used in this chapter:

"Agency" means the city council and any officer, employee, department, division, or other agency of the City of Boulder, including boards and commissions but excluding the municipal court.

"Interested person" means any person described as "interested" by city charter, ordinance, or code or state or federal constitution or law, or any person having a legally protected interest under city charter, ordinance, or code or state or federal constitution or law that is subject to potential injury in fact due to proposed final agency action, or any person having a right of appeal from proposed final agency action by virtue of a specific provision of city charter, ordinance, or code or state or federal constitution or law[2]. "Interested person" may include a city agency.

"Party" to a hearing means any interested person who requests a hearing, appears at a hearing, or submits a written entry of appearance at or before a hearing.

"Pre-disciplinary procedures" means any and all activities conducted by supervisory personnel of the city prior to imposition of disciplinary action.

[1]Adopted by Ordinance No. 4615. See 24-4-105, C.R.S.
[2]Wimberly v. Ettenberg, 194 Colo. 163, 570 P.2d 535 (1977).

"Proponent of an order" means the party requesting proposed final agency action.

Ordinance Nos. 4879 (1985); 5202 (1989).

1-3-3 **Notice Of Agency Action.**

(a) Except as provided by section 1-3-4, "Exception For Emergencies," B.R.C. 1981, no agency may take final agency action subject to this chapter unless, before taking such proposed action, the agency has given all known interested persons notice by hand delivery, posting on the property subject to agency action, or regular mail, or publication once in a newspaper of general circulation in the city of:

(1) The proposed agency action;

(2) The legal authority under which it is proposed to be taken;

(3) The opportunity for any interested person to submit written data, views, and arguments with respect to such proposed action; and

(4) Either:

(A) The date of a hearing if city charter, ordinance, or code or state or federal constitution or law requires a hearing without a request therefor before proposed agency action; or

(B) The opportunity for any interested person to request a hearing on such proposed agency action by filing a written request therefor that is received by the agency no more than ten days after the date the notice is deposited in the mail, hand delivered, posted, or published.

Notice shall be given at least ten days before the date of the hearing. If the notice is mailed, it is given when mailed to the address shown on the license, permit, or application in question or in the records of the county clerk or tax assessor or any other official custodian of public records of property ownership for any specific property in question. For purposes of this subsection, public records means those records defined in 24-72-202(6), C.R.S.

(b) If an interested person requests a hearing as prescribed by subparagraph (a)(4)(B) of this section, the agency shall give notice at least ten days before the hearing of the date, time, place, and nature of the hearing to all known interested persons. Unless otherwise provided by city charter, ordinance, or code or state or federal constitution or law, such notice shall be given to the person first requesting the hearing upon depositing the notice in the mail or hand delivering the notice at least ten days before the date of the hearing to the last address furnished to the agency by the person requesting the hearing. The agency shall notify all other known interested persons by the means specified in subsection (a) of this section of the date, time, place, and nature of the hearing; that they may participate in the hearing; and that failure to appear at the hearing waives any hearing right.

1-3-4 **Exception For Emergencies.**

(a) The requirements of prior notice and hearing in section 1-3-3, "Notice Of Agency Action," B.R.C. 1981, do not apply when the agency determines that the public health, safety, or welfare requires emergency agency action pending a hearing. If the agency takes emergency action, it shall provide timely notice of the action and shall thereafter provide the notices required by section 1-3-3, "Notice Of Agency Action," B.R.C. 1981, and an opportunity for a

post-emergency action hearing to interested persons by the means prescribed by section 1-3-3, "Notice Of Agency Action," B.R.C. 1981.

(b) Nothing in this chapter shall be deemed to prohibit an agency from ordering interim relief to preserve the status quo pending a hearing.

Ordinance No. 5099 (1988).

1-3-5 **Hearings And Determinations.**

(a) The agency may charge a fee for a hearing, if so authorized by city code or ordinance. The hearing officer or agency may waive or refund the fee upon a showing of undue hardship.

(b) Any interested person shall be admitted as a party to the hearing upon filing a written entry of appearance before the hearing, setting forth a brief and plain statement of the facts that entitle such person to be admitted and the matters that the person claims should be decided.

(c) The hearing shall be conducted by the agency; by an employee, agent, or subcommittee of the agency; or by one or more hearing officers who have not personally determined the factual issues in controversy at the hearing and have no personal financial interest in the outcome of the hearing. In its discretion the agency may, but need not, appoint an employee of the city or other person possessing qualifications acceptable to the agency as a hearing officer to hear and receive evidence and render a decision on the law and the facts. The hearing officer has all the authority possessed by the agency to render decisions. While presiding at a hearing, the agency or hearing officer shall determine whether the proposed agency action comports with the requirements and standards in the applicable provisions of city charter, ordinance, or code or state or federal constitution or law.

(d) The agency or hearing officer has authority to administer oaths and affirmations; sign and issue subpoenas; waive or refund hearing fees; rule upon offers of proof; compel testimony; receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing of briefs and other documents; direct the parties to appear and confer to consider simplification of issues, admissions of facts or documents to avoid unnecessary proof, and limitation of the number of witnesses; issue appropriate orders that control the subsequent course of the proceeding; dispose of motions; and control the decorum and conduct of the proceeding.

(e) All testimony shall be taken under oath or by affirmation.

(f) No person shall fail to comply with the orders of the agency or hearing officer at the hearing. Violation of this requirement may be prosecuted in municipal court in the same manner that other municipal offenses are prosecuted.

(g) The proceedings of the hearing shall be recorded through tape recording, stenographic, or other verbatim reproduction, and copies of transcriptions of the proceedings shall be available, upon payment of the reasonable costs thereof, to the parties to the hearing.

(h) Unless otherwise provided by city charter, ordinance, or code or by state or federal constitution or law, the proponent of an order has the burden of proof, and every party to the proceeding has the right to present such party's case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.

The agency or hearing officer may receive all or part of the evidence in written form if the interests of the parties will not be prejudiced substantially and if the hearing will be expedited thereby. The rules of evidence and requirements of proof and procedure shall conform to the extent practicable to those in civil nonjury cases, but when necessary to ascertain facts affecting the substantial rights of the parties to the proceeding, the agency or hearing officer may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The person conducting the hearing shall give effect to the rules of privilege required by law, may exclude incompetent and unduly repetitious evidence, and may receive documentary evidence in the form of a copy or excerpt if the copy is authenticated. The agency or hearing officer shall use its experience, technical competence, and specialized knowledge in evaluating the evidence presented to it. Parties to the hearing may make objections to evidentiary offers, which shall then be noted in the record. In the absence of objection, the hearing may be conducted informally, and failure to request any procedure shall constitute a waiver thereof.

(i) The agency or hearing officer may issue a decision at the hearing and shall issue a written decision with findings of fact and conclusions of law, setting forth the grounds of the decision, based on the evidence presented at the hearing. The agency shall serve the decision on each party to the hearing by personal service or by mailing by regular mail to the last address furnished to the agency by the party. The decision shall be effective as to such party on the date mailed or on such other date as is stated in the decision.

(j) Unless otherwise provided by city charter, ordinance, or code or by state or federal constitution or law, the decision of the agency or hearing officer is final subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4). No defense or objection may be presented for judicial review unless it is first presented to the agency or hearing officer, prior to the decision thereof.

Ordinance No. 4879 (1985).

1-3-6 **Ex Parte Contacts.**

No ex parte material or representation of any kind or any other communication outside the hearing shall be considered by the agency or hearing officer conducting the hearing unless it is fully disclosed on the hearing record and an opportunity is given for comment thereon at the hearing.

TITLE 1 GENERAL ADMINISTRATION

Chapter 4 Rulemaking[1]

Section:

1-4-1 Definitions.

The following words and phrases, wherever used in this chapter, have the following meanings unless the context clearly indicates otherwise:

"Adopting authority" means the city manager or any board or commission authorized by charter, this code, or another ordinance of the city to make rules.

"Rule" means the whole or any part of any statement of general applicability and future effect implementing the legislative intent of the charter, this code, or another ordinance of the City, but does not include: a) a general statement of policy which is not binding on the public, b) a statement of agency organization, conduct required of city employees, or regulation of internal management and procedures, which is not binding on the public, or c) a rule concerning the use of city property which does not form a basis for a prosecution in municipal court[2]. "Regulation" is a synonym for "rule."

1-4-2 Submission To City Manager And City Attorney.

Before a proposed rule is published as provided in this chapter, and before a proposed rule as changed after public comment becomes effective, the city manager, board, or commission, as applicable, shall approve it as to substance and the city attorney shall approve it as to form and legality.

1-4-3 Publication Of Proposed Rules.

Before a proposed rule becomes effective, the adopting authority shall file three copies of the proposed rule with the city clerk, and publish in a newspaper of general circulation in the city a notice stating that the filing with the city clerk has been made, the date of the filing, the general subject matter of the proposed rule, the right of the public to submit written comments on the proposed rule, and the time during which such comments may be filed.

[1]Adopted by Ordinance No. 5053.

[2]See, Davis, Administrative Law Treatise, §§5.03-5.04; Seaboard World Airlines, Inc. v. Gronouski, 230 F.Supp. 44 (D.D.C. 1964); Batterton v. Marshall, 648 F.2d 694 (D.C. Cir. 1980).

1-4-4 **Public Comment.**

Members of the public may file written comments with the adopting authority during a period of fifteen days following the date of publication of the notice required in section 1-4-3, "Publication Of Proposed Rules," B.R.C. 1981. The adopting authority shall consider such comments and may, in its discretion, incorporate a response to such comment and such other changes as it may determine to be appropriate in the proposed rules. The adopting authority shall submit any rule that it has changed for approval of the city attorney, after which approval the rule shall be effective. If, however, the proposed changes are substantial, the adopting authority may, in its discretion, provide by published notice an additional period for accepting public comments on the proposed changed rule before it becomes effective. If the adopting authority further changes the proposed rule, it shall submit the proposed rule for approval of the city attorney, after which approval the rule shall become effective.

1-4-5 **Effective Date.**

Unless a later date is stated therein, rules are effective when, after the time for comment has passed, a copy signed by the adopting authority and the city attorney is filed with the city clerk.

1-4-6 **Emergency Rules Excepted.**

A rule may become effective immediately if the adopting authority finds that the public health, safety, or welfare requires immediate effectiveness of the rule and states the reasons for such finding. If it adopts an emergency rule, the adopting authority shall so state in its published notice and shall also state that it will accept written public comment for a period of thirty days subsequent to the date of the publication of the notice. After considering public comment and after receiving approval from the city attorney, the adopting authority shall issue a final rule.

1-4-7 **Copies Of Rules.**

The adopting authority and the city clerk shall provide a copy of a proposed rule without charge to any interested person who requests it. The city clerk is authorized to sell copies of adopted rules to the public, and to set a reasonable price therefor.

1-4-8 **Numbering.**

The city clerk shall assign an identifying number to each adopted rule.

1-4-9 **Repeal.**

Rules may be amended, repealed and readopted, or repealed by following the provisions set forth in this chapter. Rules also may be repealed by publishing notice thereof once in a newspaper of general circulation in the city.

1-4-10 **Existing Rules.**

Nothing in this chapter shall be interpreted to nullify or limit the effectiveness of any rule adopted on or before December 1, 1987. All such rules shall remain effective, but three copies thereof shall be filed in the office of the city clerk before January 1, 1988.

TITLE 2

GOVERNMENT ORGANIZATION

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 1 City Council[1]

Section:

2-1-1 Legislative Intent.

The purpose of this chapter is to prescribe the procedures and duties of the city council of the City of Boulder, Colorado.

2-1-2 Council Meetings.

The city council shall hold two regular meetings in each calendar month of each year on the first and third Tuesdays of each month commencing at 6:00 p.m. in the city council chambers of the Municipal Building, 1777 Broadway, Boulder, Colorado. The council may by motion prescribe a different date, time, or place for such regular meetings in any month, but no such motion affects the time, date, or place for regularly scheduled meetings of the council in any other month.

Ordinance No. 4816 (1984).

Appendix Council Procedure

(see following page for appendix)

[1]Adopted by Ordinance No. 4662. Derived from Ordinance No. 3345.

APPENDIX

COUNCIL PROCEDURE

Adopted: February 21, 1984
(by Council motion only)
Amended: September 1984
Amended: March 1988
Amended: May 1990
Amended: May 1992
Amended: February 1994
Amended: February 1996
Amended: March 1999
Amended: May 2003
Amended: July 2003
Amended: April 2004

COUNCIL PROCEDURE

This procedure is intended to govern the actions of the city council in the general conduct of its business and to serve as a reference in settling parliamentary disputes. In handling routine business, the council may by general consent use a more informal procedure than that set forth in this procedure.

This procedure may be suspended at any time by vote of five council members or of two-thirds of the council members present, whichever is the greater.

CONDUCT OF COUNCIL MEETINGS

I. Presiding Officer: Mayor

The mayor, as chair of the council, is responsible for conducting its meetings in an orderly and democratic manner and assuring that minority opinion may be expressed and that the majority is allowed to rule. At the same time, the mayor retains all of the prerogatives of a duly elected council member: The mayor may make and second motions and take part in discussions and must vote on all matters not involving the mayor's personal financial interest or the mayor's official conduct.

II. Agenda

A. **Notice.** The printed agenda is generally distributed to council members no later than the Thursday preceding the council meetings, whether regular, special, or continued meetings. Items will generally not be added, but may be added or deleted with the consent of the mayor. Whenever practicable, notice shall be given of all agenda items by publication of the title or a general description thereof in the *Boulder Daily Camera* on the weekend preceding the council meeting. However, failure to give such notice shall not invalidate any action taken by the council, and such provision shall not apply at all to items adopted by emergency.

B. **Council Agenda Committee (CAC).** Items are placed on the agenda by the staff, with the approval of the members of an agenda committee in attendance at a meeting called by the mayor to review the agenda, which normally takes place in the manager's office on Monday afternoons. In addition to the mayor and the deputy mayor, the council designates a third council member for six to seven weeks at a time (depending on the council meeting cycle) to serve on the agenda committee. A sign-up list is circulated to council members, from alternating ends of the council table each time it is circulated, until all time blocks are filled for that time period. Replacements are solicited from all remaining council members whenever an agenda committee member cannot attend a meeting. If more council members wish to attend than there are vacancies, the mayor makes the appointment. Meetings of the agenda committee are open to the public and the press/media, but are not advertised. No more than four council members may attend an agenda committee meeting at any time. "Drop-ins" should notify the mayor in advance whenever possible. Presence of staff members at agenda committee meetings is subject to the discretion of the city manager.

C. **Quarterly Agenda Review.** At least once a quarter, the agenda committee holds an agenda review to review the successes and the difficulties of the council in dealing with agenda items during the preceding calendar quarter and to schedule agenda items for the next calendar quarter, when such items are known in advance. The agenda committee reports on its agenda review to the council as a whole.

D. **CAC Mission.** Representing the views of the entire city council, the agenda committee: 1) sets the agenda for council meetings and study sessions; 2) comments on written agenda materials to assure that all reasonable questions anticipated from the public and any member of the council are answered; 3) acts as a sounding board for staff; 4) informs the city council and

staff of emerging issues; 5) requests that staff supply information to the council concerning emerging issues; and 6) discusses correspondence, faxes, and e-mail to the mayor and the city council and responses to Public Participation. The agenda committee assigns the responsibility for drafting and signing such responses. Responses are placed in a binder in the council office, so that council members can be assured that the public's concerns have been addressed. But individual council members may respond as well, at their discretion. 7) The agenda committee determines when boards and commissions should be requested to address the council concerning their deliberations, and when matters should be referred back to a board or commission before council action is scheduled. Generally, it is expected that boards and commissions with an adopted mission statement that includes a certain area of concern will be asked to advise council about any agenda item dealing with that area of concern. 8) The agenda committee also establishes check points for council input on important staff projects. 9) Agenda committee minutes are made available to the council on the morning following the day of the agenda committee meeting whenever possible, by e-mail, fax, or delivery, as requested by each council member. Recommendations and information are segregated in the minutes. The approved draft agenda is attached.

E. **CAC Ground Rules.**

1. **No Decisions.** The agenda committee should not make a "decision" on anything except for specific decisions relating to the council agenda and assignment of correspondence for a response.

2. **No References.** Agenda committee members should avoid reference to the meeting in debate, as by statements such as: "This was discussed in the agenda committee meeting," or "We dealt with that question in the agenda committee meeting." Above all, there should be no reference to any "decision" having been made by the agenda committee.

3. **CAC Communications With Council.** If, as a result of an agenda committee meeting, the committee determines that it is necessary to contact the remaining council members to convey information or to obtain advice about proposed staff action, staff should contact each available council member. Council members, including agenda committee members, generally should not be involved in such communications. But this does not restrict any council member from contacting other council members and conveying any information or requesting any advice or action. Agenda committee and other council members may use a telephone (or e-mail or fax) tree to communicate with other council members about any matter, but such process should not substitute for staff action as set forth above, and is subject to the "open meeting" requirements of state law (§ 24-6-402(2)(d)(III), C.R.S.), concerning the use of e-mail, which requires use of the hotline for any communication involving more than two council members.

4. **CAC To Focus On Council Concerns Rather Than Personal Point Of View.** It is not appropriate for agenda committee members to use the agenda committee meeting to advance their own political agendas or points of view. This is conceded to be difficult to avoid, especially when three council members are discussing an upcoming decision, but it is essential.

5. **CAC Not To Indicate Council Support.** Prior to approval by the council, the agenda committee and staff are prohibited from indicating any city commitment to city sponsorship or support of an event or to city support for a development proposal.

6. **Questions To CAC.** Council members are urged to send questions, comments and suggestions to the staff or to members of the agenda committee prior to its meeting. The agenda committee will endeavor to discuss all such questions, comments and suggestions at its meeting.

7. **Postponement Of Issues.** It is acceptable for members of the city council to ask for postponement of issues to accommodate a brief absence, when the rescheduling will not inconvenience other council members and the individual council member has a significant interest in the particular issue being decided. However, no council member has a right to require such a change,

and the decision of the CAC is generally treated as final, although the council is, as always, the final decision maker.

8. **No Rule Of Three.** Meetings of the CAC shall not be used to indicate a "rule of three" for information/research requests. See section VIII, Research And Study Sessions, subsection A, Information/Research Requests/Rule Of Three.

F. **Consent Items, Urgent Items, Time Budget, And Order Of Agenda.** The CAC designates potential consent items, so that they can be dealt with in a summary fashion. Although consent items are separately listed on the agenda, the mayor asks for any objection from the city council, and, hearing none, requests a motion to approve the consent agenda. The CAC also designates urgent items, for which delay is not possible or inadvisable, so that the council can deal with such items prior to adjournment. The CAC sets the order of the agenda, which shall be generally as follows:

1. **Call To Order And Roll Call.** Meetings are generally called to order at 6:00 p.m. sharp.

2. **Public Participation.** (Three-minute limit per person, on a first-come, first-served basis). Public Participation is a time set aside for the public to address the council concerning city business not otherwise on the agenda for public hearing. The council's goal is to begin Public Participation at 6:00 p.m. and end at 6:45 p.m. or after fifteen persons have testified, whichever is longer. Public Participation lasts forty-five minutes or such lesser time as is required to accommodate all persons signing up to speak, provided that the mayor shall have the discretion to extend Public Participation beyond forty-five minutes if so desired to accommodate persons who have signed up to speak regarding an ordinance scheduled for first reading. When Public Participation is closed prior to all persons signed up having an opportunity to speak, such persons are accommodated, if possible, after the last public hearing item on the agenda or given priority at the next Public Participation period, usually two weeks later. The council reviews Public Participation and assures that an appropriate response is given if the council feels that a response is required, usually immediately following the Public Participation period. Staff and council responses are discouraged at the meeting, except for referral to the staff for further analyses and reports and ultimate council decisions on a future agenda.

3. **Consent Agenda.** Including generally, but not strictly limited to:

a. **Minutes.** Minutes of previous meetings are approved as made available beforehand, and as corrected by the city clerk, in response to council suggestions, in the discretion of the clerk. This procedure should not be used to alter remarks to express a more considered point of view. Such remarks should be made under item 8, Matters From Mayor And Members Of Council. A motion to approve the minutes is deemed to include such corrections, as well as any corrections made at the meeting.

b. **First Readings.** Although generally calendared as part of the consent agenda, the city manager may request that a particular first reading be scheduled early on the agenda when staff/council interaction on the item is important on first reading. See section V, Procedure In Handling Ordinances, Resolutions And Important Motions, subsection C, First Reading.

4. **Call-Up Check-In.** Call-ups (typically appeals to Council) are considered during item 8, Matters From Mayor And Members Of The Council. During call-up check-in, council members are provided an opportunity, and are generally expected, to announce that they have questions or concerns with respect to a potential call-up. This advance warning, while not binding on any council member, would generally indicate those potential call-ups for which staff or interested parties should be present. Notwithstanding the failure of any council member to indicate questions or concerns, Council may still consider any potential call-up should a council member change their views during the meeting.

5. **Public Hearings.** Expected substantial public comment items are generally placed first on the agenda, in the order of public interest in the item, as anticipated by the Council Agenda Committee, but critical short items may be placed first when deemed appropriate by the agenda committee. Items from the city manager, city attorney, or mayor and members of council which are of substantial public interest are placed in this section of the agenda, in the order of public interest.

6. **Matters From The City Manager.** No final decision may be made under this item, or item 7, Matters From The City Attorney, or 8, Matters From Mayor And Members Of Council, until after an opportunity for public comment, as provided in item 9, Public Comment; proposed decisions are announced by the mayor prior to item 9, Public Comment, to allow for public testimony, council questions, staff response, council motion, consideration and debate, and an informed final decision.

7. **Matters From The City Attorney.**

8. **Matters From Mayor And Members Of Council.** At this point, any council member may place before the council matters which are not included in the formal agenda. This item is generally limited to responses to Public Participation, appointments to boards and commissions, sharing of information, and requests for advice concerning matters pending before other bodies, consideration of call-ups, requests for staff work and requests for scheduling future agenda items. Matters requiring a formal council vote, such as motions to sponsor an event or to allocate funds, are normally placed on the agenda through the regular agenda review process, rather than dealt with under this item.

9. **Public Comment.** Prior to council decisions on motions, an opportunity shall be given for public comment on such motions. The rules are the same as for Public Participation, but with a fifteen-minute total limit. This time may be extended at the mayor's discretion.

10. **Decisions On Motions.** Final decisions on items discussed under items 6, Matters From The City Manager, 7, Matters From The City Attorney, and 8, Matters From Mayor And Members Of Council.

11. **Discussion Items.** Discussion items are generally scheduled for study sessions rather than council meetings.

12. **Adjournment.** The council's goal is that all meetings be adjourned by 10:30 p.m. An agenda check will be conducted at or about 10:00 p.m., and no later than at the end of the first item finished after 10:00 p.m. Generally, absent a deadline which the council cannot affect, no new substantial item will be addressed after 10:30 p.m. No new item shall be introduced after 10:30 p.m. unless a majority of the council members in attendance at that time agree. All council meetings shall be adjourned at or before 11:00 p.m. Items not completed prior to adjournment will generally be taken up at a special meeting at 6:00 p.m. on the following Tuesday evening.

III. Rules Of Speaking

A. **Mayor Directs Meeting.** To obtain the floor, a council member or staff member addresses the mayor.

B. **Assignment Of Floor.** To assign the floor, the mayor recognizes by calling out the person's name. Only one person may have the floor at a time. A person shall not speak while another has the floor. The mayor generally next recognizes the person who first asks for the floor after it has been relinquished. The mayor may, in his or her sole discretion, temporarily suspend the Rules of Speaking in order to permit a direct colloquy between council members with respect to an issue or motion properly before the Council.

C. **Three-Minute Rule.** During Public Participation or public hearings, members of the public are recognized by the mayor. No person shall make a presentation (not including council questions) longer than three minutes, unless given permission by the mayor before beginning to speak. The mayor may limit speakers to less than three minutes when deemed advisable by the CAC and notice of the shorter time limit is generally provided by publication or otherwise in advance of the meeting.

D. **Pooling Of Time.** Speakers will not generally be permitted to "pool" their time. Permission may be granted if the mayor determines that substantial time can be saved thereby and issues better addressed in order to facilitate public participation and council decision making. Speakers desiring to "pool" their time will not be granted the full pooled total, but a proportion determined by the mayor, in light of the complexity of the issues to be addressed and the projected time saved from the pooling. Normally, pooled time will not be granted unless at least three persons request it, all of whom otherwise would have testified. All persons wishing to pool their time must be present at the meeting in order for the mayor to recognize pooled time. Five minutes is the standard for pooled time, and no pooled time presentation will be permitted to exceed ten minutes total.

E. **Proponents.** Proponents of an agenda item, especially in a quasi-judicial proceeding, may request additional time, as reasonably required to present their case. In response, the mayor may designate a longer time period for proponents, generally not to exceed fifteen minutes and to occur immediately upon the opening of the public hearing, in order to give the public an opportunity to respond. Additional support for proponents' positions should come from individual witnesses.

F. **No Personal Attacks.** All council members, staff members, and members of the public are requested to direct their remarks to the council action that they are requesting. Speakers engaging in personal attacks may be interrupted by the mayor.

G. **Outline Of Decisions.** The staff and the mayor should attempt to focus discussion of agenda items in accordance with the materials, which should contain a proposed outline of decisions.

H. **Minimize Debates Prior To Public Hearings.** Council members should minimize debate prior to public hearings and use the period prior to public hearings to ask questions for clarification rather than to lecture, give speeches, score debating points or ask rhetorical questions. The mayor may intervene to avoid extended debate prior to public hearings.

I. **Minimize Debates After Decisions.** Council members minimize debate after decisions and move on to the next item.

J. **Motions To Table.** Tabling motions are generally discussed before they are made, in order to allow for a reasonable amount of council discussion prior to making a non-debatable motion.

K. **Early Warning Process.** Council members should give early warning to the mayor and the city manager whenever substantial opposition is anticipated to an agenda item, so that an appropriate staff and council response can be prepared.

L. **Rotation Of Questions.** Questions are rotated so that, to the extent practicable, different council members are given the lead on each agenda item and questions are grouped by subject matter whenever it is practicable to do so.

M. **Mayor May Intervene.** The mayor may intervene in council debate in order to solicit a motion after five to ten minutes of debate, seek to wrap-up discussion when debate seems to be proceeding longer than warranted, determine whether council wishes to postpone council action

when more information or staff work appears warranted to facilitate a council decision, and ask council to group follow-up questions by topic.

N. **No Surprises.** Council members will make every effort not to surprise each other by bringing up something new at a meeting, and rather will give notice of their intention to do so as soon as practical before the meeting.

IV. Procedure In Handling Motions

A. **Making A Motion.** A council member, after obtaining the floor, makes a motion. (If long or involved, it should be in writing.) The council member may state reasons briefly before making the motion; but may argue the motion only after it has been seconded; and having spoken once may not speak again until everyone who wishes to be heard has had the opportunity to speak, except to answer questions asked by other council members. Having made a motion, a council member may neither speak against it nor vote against it.

B. **Seconding A Motion.** Another council member seconds the motion. All motions require a second, to indicate that more than one member is interested in discussing the question. The seconder does not, however, have to favor the motion in order to second it, and may both speak and vote against it. If there is no second, the mayor shall not recognize the motion.

C. **Stating The Motion.** The mayor states the motion and asks for discussion.

D. **Debate.** General debate and discussion follow, if desired. Council members, the city manager, the city attorney, or the city clerk, when wishing to speak, follow the rules of speaking outlined above. The speaker's position on the motion should be stated directly: "I favor this motion because...," "I am opposed to this because...," etc. Remarks should be addressed to the mayor.

E. **Question.** The mayor restates the motion and puts the question. Negative as well as affirmative votes are taken.

1. If the mayor is in doubt of the result of a voice vote, the mayor may call for raising of hands or a roll call vote.

2. If any council member is in doubt of the result of a voice vote, the council member may obtain a vote by raising of hands or by roll call by calling for it (without need to be recognized by the mayor).

3. In case of a tie vote, the motion is lost.

F. **Result.** The mayor announces the result. The motion is not completed until the result is announced.

V. Procedure In Handling Ordinances, Resolutions And Important Motions

A. **Two Readings.** All ordinances require at least two readings, since the city charter requires ten days' advance publication in final form. The agenda committee may require similar publication of complex or important motions and resolutions, in order to assure informed public participation.

B. **Notice.** All documents delivered to council members' residences prior to any meeting shall be deemed to have been received and read, unless a council member indicates to the contrary during consideration of the matter. In the event that a council member has not received and read the document in question, the mayor shall determine an appropriate course of action, which may consist of an explanation of the substance of the document by a person familiar with

its contents, or a recess. Abstentions are not permitted by the city charter under these circumstances.

C. **First Reading.** On first reading, the clerk reads the title or the general description of the item set forth on the agenda, and the council has an opportunity to ask questions of the staff. Whenever practicable, council members ask first reading questions in writing or by e-mail to "hotline" in advance of the meeting. Noon on the day following the meeting is the cutoff time. Any remaining questions are asked at the meeting. Complex questions are subject to the "rule of five" for information and research requests set forth in section VIII, Research And Study Sessions, subsection A, Information/Research Requests/Rule Of Three. The mayor then requests an appropriate motion. However phrased, an affirmative motion is construed as one to order the item published. Unless otherwise stated in the motion, all publication shall be by title only. The mayor then states the question, followed by proposal of amendments, if any, restates the question if necessary, and puts the question to a vote. After the conclusion of the vote, the mayor declares the item to have been ordered published or to have been rejected for publication. Publication does not constitute substantive approval of an item.

D. **Second Reading.** On second reading, the clerk reads the title or the general description of the item set forth on the agenda, followed by the staff presentation, and then the council has an opportunity to ask questions of the staff. Thereafter, the mayor opens a public hearing and supervises the public hearing. If any council member wishes, questions may be asked of persons testifying. Council may consider a response to public testimony at the meeting, and the agenda committee may consider a response the following week, but the normal response is in the council members' actions on the agenda. The mayor then requests an appropriate motion. The motion should be one to adopt the ordinance, and, however phrased, an affirmative motion shall be so construed. Unless otherwise stated in the motion, all publication shall be by title only. The mayor then states the question, followed by discussion by the council, the city manager and the city attorney and dialogue with staff in response to questions raised by the council, followed by debate, proposal of amendments, if any, and consideration thereof in the form of motions. After debate, the mayor restates the question and requests that the clerk conduct a roll call vote. After the conclusion of the roll call vote, the mayor declares the ordinance adopted or defeated.

E. **Resolutions.** Resolutions are handled in the same manner as the second reading of an ordinance, except that the vote need not be by roll call.

F. **Emergencies.** Ordinances may be passed by emergency on first or second reading, upon appropriate findings of urgency and need. In the event of passage by emergency on first reading, the first reading is handled in the same manner as the second reading of an ordinance, and the second reading is omitted.

G. **Amendments.** Non-emergency ordinances which are amended in substance rather than in form on second reading are republished in the same form originally published (either in full or by title only), as amended, and voted on again at a third reading, without further staff presentation or public hearing. The council retains the discretion to set a public hearing on third reading by majority vote. The same procedure applies to later substantive amendments as well.

VI. Voting

Voting ultimately decides all questions. The council may use any one of the following ways of voting:

A. **Voice Vote.** All in favor say "aye," and all opposed say "no." The mayor rules on whether the "ayes" or the "nos" predominate, and the question is so decided.

B. **Raising Of Hands.** All in favor raise their hands, and then all opposed raise their hands. The mayor decides which side predominates and notes dissents for the record.

C. **Roll Call.** The clerk calls the roll of the council members, and each member present votes "aye" or "no" as each name is called. The roll is called in alphabetical order, with the following special provision: On the first roll call vote the clerk shall begin with the first name on the list; on the second vote, the clerk shall begin with the second and end with the first; and so on, continuing thus to rotate the order. This rotation shall continue from meeting to meeting.

VII. Nominations And Elections

A. **Nominations.** Nominations for mayor and acting mayor (generally referred to as deputy mayor) are made orally. No second is required, but the consent of the nominee should have been obtained in advance. Any person so nominated may at this time withdraw his or her name from nomination. Silence by the nominee shall be interpreted as acceptance of candidacy.

B. **Order Of Vote.** A motion then is made and seconded to close the nominations and acted on as any motion. The voting is accomplished by raising of hands unless there is only one nomination and a unanimous vote for the candidate. The names shall be called in alphabetical order or reverse alphabetical order depending upon a flip of a coin by the clerk, who shall thereafter alternate the order for all further election ballots during the same meeting.

C. **Ballots.** If it is the desire of the council to use paper ballots rather than a voice vote, such a procedure is proper. However, since there is no provision for a secret vote, each ballot must be signed by the council member casting the vote.

D. **Elimination Process.** If any of the candidates nominated receives five votes on the first ballot, such person is declared elected. If none of the candidates receives five votes on the first ballot, the candidate (plus ties) receiving the lowest number of votes is dropped as a candidate unless this elimination would leave one candidate or less for the office. If this elimination would leave one candidate or less for the office, another vote is taken, and once again the candidate (plus ties) receiving the lowest number of votes is dropped as a candidate unless this elimination would leave one candidate or less for the office. In the event that one candidate or less is left for the office after the second vote, a flip of a coin shall be used in order to eliminate all but two candidates for the office.

E. **Impasse Process.** In the event that neither of the two final candidates receives five votes on the first ballot on which there are only two candidates, another vote shall be taken. If no candidate receives five votes on the second such ballot, the candidate who receives the votes of a majority of the council members present shall be declared elected. If no candidate receives such a majority vote, the meeting shall be adjourned for a period not to exceed twenty-four hours, and new nominations and new ballots shall be taken. If no candidate receives five votes on the first ballot at the adjourned meeting on which there are only two candidates, another vote shall be taken. If no candidate receives five votes on the second such ballot, the candidate who receives the votes of a majority of the council members present shall be declared elected. If no candidate receives a majority vote on the second such ballot at the adjourned meeting, a flip of a coin shall be used to determine which of the two final candidates shall be declared elected as mayor or deputy mayor.

F. **Boards And Commissions.** Elections to fill positions on boards or commissions shall be conducted in the same manner. However, a majority of the council members present rather than a majority of the full council is sufficient to decide an election of this nature. Each board or commission vacancy shall be voted on separately.

G. **Advertising Of Vacancies After Partial Terms.** Prior to advertising board and commission vacancies, when a person has already served on the board or commission and is seeking reappointment, council should make the decision of whether or not to advertise that particular vacancy.

VIII. Research And Study Sessions

A. **Information/Research Requests/Rule Of Three.** Requests for information should be directed to "hotline," or, if a public request is not appropriate, directly to the city manager or the city attorney. Requests for a briefing should be directed to the city manager or the city attorney. A single council member may require the city manager or the city attorney to provide available information at any time or to answer any question concerning an agenda item. The concurrence of three council members is required to assign a matter for research by staff. For staff to spend more time than the city manager or the city attorney considers reasonable in light of other staff time commitments, the concurrence of five council members is required. In such case, the manager or attorney shall report the results of the preliminary research and an estimate of the time required to complete the task as the manager or attorney proposes. In any case, a vote shall be taken at a council meeting, but work may proceed in an emergency pending such vote. The council shall be informed of any such emergency work.

B. **Budget Rule.** A matter shall be placed before the council for decision during the deliberation of the budget by a vote equal to or greater than the number of council members remaining at the meeting after deduction of the majority thereof.

C. **Study Sessions.** Materials for study sessions generally will be made available to the council and the public at least ten days before the date of the study session. Notice will be given as for other council meetings. Written comments received by staff prior to noon on the Thursday preceding study sessions will be forwarded to all council members that evening. Testimony of persons other than staff or consultants or subject-matter experts designated by the city manager is not permitted at study sessions unless a majority of the council members present votes to suspend this rule. The council will give direction to staff at study sessions for the presentation of action items at future regular council meetings. Summaries of study sessions are placed on the council agenda for approval, including the direction given, any remaining issues, and any staff reaction or proposed work plan in response to the study session.

IX. Procedure In Handling Major Capital Improvement Projects

Major capital improvement projects shall be handled, to the extent practicable, in accordance with the Planning and Project Approval Process dated July 2003. Failure to follow any aspect of such processes shall not be grounds for any challenge to any city project. Prior to a development review decision by the planning board or approval of the Community and Environmental Assessment Process by an advisory board, the council may determine by motion to review the project prior to the decision on the concept review or Community and Environmental Assessment Process. If so, the manager will schedule a public hearing and consideration of a motion directing staff concerning: 1) the goals and objectives of the program which will be served by the project and 2) the conceptual design of the project. For those projects requiring development review, the council will deal only indirectly with the factors which may ultimately be entailed in a development review application under chapter 9-4, "Land Development Review," B.R.C. 1981, in recognition that it may later be called upon to adjudicate such questions on a call-up of a planning board decision.

X. Council Calendar

The council office maintains and sends at least weekly to council members a calendar of hearings set by city staff and boards and commissions and events at which the mayor or any council member will have a ceremonial or a substantive role. Any council member may attend such hearings and events, but council members may not testify at a board or commission hearing and may be dis-invited from ceremonial events by the host. Council members are responsible for notifying the council office of hearings and events for which they are the liaison to the council.

XI. Council Liaisons

The council may appoint liaisons from among its members to serve on ad hoc and ongoing intergovernmental committees, such as the Colorado Municipal League Policy Committee, the Denver Regional Council of Governments, the Regional Air Quality Consortium, the CU/City Steering Committee, or the Boulder County Consortium of Cities. Council liaisons may be appointed for staff activities on an ad hoc basis. No more than two liaisons are appointed for any activity, and such appointments occur at council meetings, after notice to the council that the appointment will be considered as part of the agenda of the meeting. The mayor appoints one of the members to the Housing Authority and one to the Urban Renewal Authority, in conformity with state law, but council is notified at a council meeting of each such appointment, and the Urban Renewal Authority appointment is subject to Council ratification. The council appoints one of its members to the Bureau of Conference Services and Cultural Affairs, to the Boulder County Resource Conservation Advisory Board, and to the board of directors of the Boulder Art Center. Council liaisons are expected to inform the council of their liaison activities and to request advice on important policy issues.

XII. Parliamentary Procedure

Except as otherwise provided herein or as advised by the city attorney, all matters of procedure are governed by *Robert's Rules Of Order Newly Revised* (2000).

XIII. Declarations, Proclamations, And Resolutions

A. **Mayor To Screen.** All matters proposed for council or mayoral action which commemorate a period of time or commend the actions of a person or a group or endorse a position or an idea not directly related to the affairs of the city shall be screened by the mayor.

B. **Mayoral Declarations.** If a group with substantial local support requests such action, and the mayor determines that there is no substantial political issue concerning such action, the mayor may issue a declaration for the action. Such declaration shall be forwarded to a binder kept for such purpose in the city council office but shall not be placed on the agenda unless the council determines at a meeting by majority vote of the council members present to call up the matter, in which case the action shall be revoked upon the passage of the call-up motion, pending further action by the council at its next regular meeting.

C. **Council Proclamations And Resolutions.** In extraordinary circumstances, if the group supporting the action determines that it wishes council action rather than a mayoral declaration, and the action otherwise meets the criteria set forth above, the mayor may, if the mayor considers such action appropriate in light of the importance of the action and the additional business on the council agenda, place a proclamation or a resolution on the agenda for council action.

D. **Resolutions.** Resolutions are appropriate for legislative concerns, including, without limitation, conveyances of positions or ideas to other legislative and administrative bodies. But all legislative actions must be by ordinance.

E. **Political Questions.** In the event that a substantial political issue is determined to be presented by a proposed declaration or proclamation, the mayor shall not act or place the matter on the agenda, but instead will inform the group supporting the action that the matter will be placed on the agenda only if a majority of the council members present at a meeting of the council so directs. The burden shall be on such group to present the issue to the council. The mayor may request council advice at any time concerning proposed mayoral or council action.

F. **Foreign Policy And National Policy Questions.** Council shall not act on a foreign policy or national policy issue on which no prior official city policy has been established by the

council or the people, unless sufficient time and resources can be allocated to assure a full presentation of the issue.

G. **Fund-Raising.** Publicity for fund-raising efforts and community events will be deemed inappropriate for council action, although major efforts and events may be commemorated if the majority of the council members present at a meeting of the council so directs.

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 2 General Administration[1]

Section:

2-2-1 Legislative Intent.

The purpose of this chapter is to prescribe general requirements for the administration of the city government. The city council intends that the city manager may have appropriate discretion in determining the structure of the city government, consistent with the requirements of the charter.

2-2-2 Duties Of City Manager.

(a) Whenever the term "city manager" is used in this code or any ordinance of the city, it means the manager or the manager's authorized representative.

(b) The city manager shall cause the ordinances of the city to be published as required by law, superintend their printing, and examine the proof sheets and compare them with the original rolls.

(c) The city manager shall receive and file all papers to be filed among the city records.

(d) The city manager shall keep a correct and detailed account of all bonds issued and promissory notes given by the city, specifying under what order or ordinance they were issued or given, when they were issued or given, the outstanding principal amount, to whom they were issued or given, for what purpose they were issued or given, when they are payable, where they are paid, and the amount and percentage of interest paid upon such bonds and promissory notes.

[1]Adopted by Ordinance No. 4662. Amended by Ordinance No. 4704. Derived from Ordinance Nos. 2104, 2395, 2764, 2926, 3805, 3949, 4645, 1925 Code, 1955 Code.

(e) The city manager shall make out and deliver to each person elected or appointed to any office in the city a certificate of such election or appointment.

(f) The city manager shall furnish to the city attorney any record or documents in the manager's office that the attorney may request to be used in any court and take receipts therefor. The manager shall also furnish any necessary, duly certified transcripts of the city.

(g) The city manager shall keep an account with each fund to which appropriations are made by the city council in such manner as to show at all times the state of each fund. The manager shall debit each fund with the amount of each appropriation as well as all money from time to time received from payments, transfers, or otherwise, and shall credit each fund with all warrants drawn on it for its use.

(h) The city manager shall collect all monies due to the city.

(i) The city manager may exempt management staff positions that report directly to the city manager or directly to the city council from participation in the Public Employees' Retirement Association[1]. The manager shall require each person employed in a staff position which has been designated as exempt who desires to withdraw from the Public Employees' Retirement Association to execute a trust agreement with a retirement trust approved by city council contemporaneously with such employee's withdrawal from the Public Employees' Retirement Association.

Ordinance No. 4888 (1985).

2-2-3 **Government Organization.**

(a) The city government consists of the following departments with the following duties, in addition to any other duties delegated thereto by the city manager:

(1) A department of finance and record, responsible to maintain the accounts of the city, collect revenues, make disbursements, maintain city records, make purchases for the city, and keep minutes of all council proceedings;

(2) A department of community planning and development, responsible to prepare and recommend to the city council a plan for land development of the city, implement the plan through review and approval of land development in the city, and coordinate with other governmental agencies on land development and planning matters[2];

(3) A department of public works and utilities, responsible to construct, maintain, and manage all public rights-of-way and city utilities, administer building codes, and supervise traffic engineering;

(4) A department of parks and recreation, responsible to supervise and maintain city park properties and recreational facilities, programs, and functions[3];

(5) A department of housing and human services, responsible to research and evaluate social problems and conditions in the community, develop and implement programs to respond to such social problems and conditions, and coordinate city, state, federal and private agency efforts to improve such social conditions and solve such problems[4];

[1]Section 24-54-110, C.R.S.
[2]See section 2-3-11, "Planning Board," B.R.C. 1981.
[3]See section 2-3-10, "Parks And Recreation Advisory Board," B.R.C. 1981.
[4]See section 2-3-6, "Human Relations Commission," B.R.C. 1981.

(6) A department of open space and mountain parks, responsible to purchase, manage and maintain city real estate and open space and mountain parks[1];

(7) A police department, responsible to provide for the public safety and enforce the laws of the city[2];

(8) A fire department, responsible for providing fire protection, fire inspection and investigation, and emergency medical service for the city and establishing fire prevention and natural disaster preparedness programs[3]; and

(9) A department of the library, responsible to supervise the city library and any branches thereof[4].

(b) The city manager may create additional divisions and offices as the manager deems advisable.

Ordinance Nos. 5099 (1988); 7097 (2000).

2-2-4 Selection Of City Depository.

(a) As often as necessary, the city manager shall select one or more banks or banking institutions as a depository for city funds.

(b) The city manager shall determine that each bank or institution selected under subsection (a) of this section is and continues to be an eligible public depository and has and maintains collateral for public funds as required by state law[5].

Ordinance Nos. 5099 (1988); 5531 (1992).

2-2-5 Officers To Deliver Books And Papers To Successors.

No officer or employee of the city shall, upon leaving office, fail to deliver to the person's successor all books, papers, furniture, and other things pertaining to the office.

2-2-6 City Seal.

(a) The common seal of the city shall be of a circular shape in the center of which is a representation of the Boulder mountain backdrop engraved thereon and with the words "City of Boulder, Colorado" surrounding the image, and around the margin of such seal engraved upon the face thereof in Roman capitals.

(b) The city manager is the official custodian of the city seal.

(c) The city manager shall affix the city seal, or stamp a rubber stamp producing a facsimile thereof, upon all transcripts, orders or certificates that it may be necessary or proper to authenticate under the provision of a state statute or city ordinance. The manager shall also affix or stamp the seal to every contract or other instrument requiring the seal of the city under any state law or city ordinance.

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[1]See section 2-3-9, "Open Space Board Of Trustees," B.R.C. 1981.
[2]See chapter 2-4, "Police Administration," B.R.C. 1981.
[3]See chapter 2-5, "Fire Department," B.R.C. 1981.
[4]See section 2-3-8, "Library Commission," B.R.C. 1981.
[5]11-10.5-101 et seq., and 11-47-101 et seq., C.R.S.

2-2-7 City Auditor.

(a) Pursuant to sections 12 and 105 of the charter, at the first regular meeting in August 1982 and every year thereafter, or more often if necessary, the city council shall, by resolution, appoint an auditor, who is a certified public accountant licensed to practice in the State of Colorado and is well informed regarding governmental accounting and auditing.

(b) The auditor appointed under this section shall sign an affidavit that the auditor has no substantial personal interest in the financial affairs of the city or any of its officers or employees.

(c) Immediately following December 31 of each year, and at such other times as required by provisions of the charter or by the city council, the auditor shall make a thorough and complete examination and audit of all the financial accounts of all employees, officers, departments, boards, and commissions of the city. The auditor shall make complete reports in writing covering such examination and audit as soon as reasonably possible, but in any event no later than six months following the close of the immediately preceding fiscal year. The auditor shall furnish copies of such report to the city council, the city manager, and the city attorney.

(d) The auditor shall make such recommendations as deemed advisable as to the manner of the system of accounting with the city and shall report any irregularity, error, or oversight in the keeping of the accounts or compliance with ordinance or charter provisions.

2-2-8 Conveyance Of City Real Property Interests[1].

(a) The city manager may convey, grant, or lease any interest in any city real property for a term of three years or more only if the manager first obtains city council approval in the form of a motion, after which the manager may sign the deed or other instrument making the conveyance, grant, or lease.

(b) Any deed or other instrument executed by the city manager, acknowledged by the director of finance and record, and purporting to have been made under the terms of this section is prima facie evidence of compliance with all of the requirements of this section.

Ordinance Nos. 4839 (1984); 5919 (1997); 7291 (2003).

2-2-9 Returned Check Charge[2].

The city manager shall assess a $25.00 penalty against any person who issues a check returned for insufficient funds or lack of an account to the city in payment of taxes, licenses, or any other fees collectable by the city. The manager shall assess the penalty prescribed by this section in addition to any other penalties or interest prescribed by any provision of this code or an ordinance of the city. For purposes of this section, the term "insufficient funds" means not having a sufficient balance in account with a bank or other drawee for the payment of a check when the check is presented by the city for payment within thirty days after its issue. The manager may waive the penalty upon a finding of good cause.

Ordinance Nos. 4946 (1985); 5012 (1986); 5940 (1997).

[1]For vacation of city rights-of-way, see chapter 8-6, "Public Right-Of-Way And Easement Encroachments, Revocable Permits, Leases, And Vacations," B.R.C. 1981, and 43-2-301 et seq., C.R.S.
[2]24-35-114 and 39-10-116, C.R.S.

2-2-10 Delinquent Fees And Set-Offs Of Refunds Due.

(a) In addition to taking any other collection remedies, whenever payment is required to be made to the city under this code, the charter, or any ordinance or resolution of the city, for the performance of any function, provision of any service, or granting of any entitlement and such payment is delinquent for a period of thirty days or more, the city manager shall furnish no further services, other than services for which no specific fee is charged, to any person who owes such payment to the city, until such delinquent payment is made.

(b) The city manager may set off against any refunds due from the city to any person any amounts due to the city from such person.

(c) Before terminating any future service or setting off any past due amounts against refundable amounts, the manager shall afford to the person against whom such action is proposed to be taken an opportunity for a hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, to contest the amounts due to the city.

2-2-11 Traffic Engineering.

(a) The city manager is appointed as traffic engineer for the city to perform the responsibilities provided in this section and other applicable ordinances of the city. It is the general duty of the traffic engineer to plan the installation, timing, and maintenance of traffic control devices; to plan and direct the operation and parking of traffic on the streets of the city; to conduct investigations of traffic conditions; to represent the city in dealing with officials of other governments on traffic and street improvements; to make agreements dividing responsibility for maintenance of streets and traffic control devices over which authority is exercised jointly with other governments; and to take such steps as are reasonably necessary and proper to carry out these plans subject to the availability of funds.

(b) In addition to other duties prescribed by this code or other ordinances of the city, the city manager may, without limitation:

(1) Plan for and regulate the movement of traffic on the streets of the city including parking areas;

(2) Investigate traffic conditions, conduct safety studies, and study police and citizen accident reports;

(3) Determine when and where to install traffic control devices, including, without limitation, traffic signals, signs, and markings;

(4) Determine the timing of traffic control signals;

(5) Determine where certain types of traffic on certain streets or lanes of roadways should be restricted or prohibited;

(6) Establish speed limits;

(7) Determine where angle parking should be established;

(8) Determine where loading zones should be established;

(9) Determine when stopping or parking should be prohibited or limited to certain times or certain classes of vehicles;

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(10) Determine the need for and location of tow-away zones;

(11) Determine where parking on streets or city parking lots should be metered and the amount to be charged;

(12) Establish safety zones of such kind and character and at such places where the manager finds that there is particular danger to pedestrians and whose existence is reasonably likely to reduce that danger;

(13) Close streets during civil emergencies and construction projects;

(14) Establish barricaded play streets if the manager finds that the public safety and convenience would be served thereby;

(15) Close streets or portions of streets temporarily for no more than eight hours for community or neighborhood events, if the manager finds that the public safety and convenience would not be thereby adversely affected and subject to such conditions as the manager deems reasonable to protect public health, safety, and welfare; and

(16) Approve use of all or a portion of streets for bicycle or pedestrian racing events, and temporarily close for no more than twelve hours all or a portion of such areas as reasonably necessary for the safety of racers, spectators, and those who would otherwise use the facility, if the manager also determines that:

(A) The event will not unreasonably interfere with other traffic or with access to affected properties;

(B) If required by the manager, the organizers have secured the approval of the persons in possession of affected properties;

(C) Approval of the Colorado Department of Highways has been secured by the race organizers if any portion of the event is on a state highway;

(D) The organizers have agreed to pay the reasonable costs, as determined by the manager, of the extra expenses, including, without limitation, salaries and overtime of city employees, reasonably occasioned by city participation in preparation, monitoring, directing traffic, securing areas, and returning the areas to their normal use, and have paid such amounts in advance or have secured such payment obligation by a method acceptable to the manager;

(E) The race organizers have presented a practical and detailed plan of the event which, if followed, will promote reasonable safety and minimize traffic disruption; and

(F) The organizers have demonstrated an ability to comply with the plan.

(c) The city manager may erect, install, and maintain such traffic control devices as are reasonably necessary to effectuate the manager's determinations and to cover emergencies, tests, experiments, and other special circumstances.

(d) In exercising the discretion delegated by this section, the city manager shall consider the following factors that apply under the circumstances:

(1) The standards of the traffic engineering profession and of the state and federal governments;

(2) Public safety;

(3) The most efficient use of the streets and city parking areas; and

(4) The costs involved.

(e) The city manager shall make and maintain records of the location, installation, functioning, and maintenance of all traffic control devices. The manager shall maintain a record of all approvals made by the Colorado Highway Department of traffic control devices on state highways.

(f) The city manager is authorized to produce or acquire and sell to the public handicapped parking permits which will serve in lieu of depositing money or tokens in parking meters, or purchasing time in a parking space in a pay station, on city streets and city parking lots by vehicles eligible to park in spaces designated for parking by the handicapped. If the Central Area General Improvement District or the University Hill General Improvement District determines to extend use of these permits to meters or pay stations on lots owned or leased by the district, or to attended parking on such lots, the general manager of the district shall enter into a written agreement with the city manager specifying how to divide the permit revenues equitably between the general fund and the district in proportion to the division which would occur were no permits sold. If the manager determines to institute such a program, the manager shall, by regulation, specify the form of the permit, the method of its use and display, the method of application and purchase, the cost of the permit, and any restrictions on its use.

(g) (1) The city manager is authorized to specify the circumstances under which authorized emergency vehicles of the city police and city fire departments, of the Boulder County Sheriff's Department, the University of Colorado Police Department, and the Colorado State Patrol, may park in metered parking spaces or spaces regulated by pay stations on city streets, alleys, or parking lots for investigative and administrative purposes not rising to the level of an emergency governed by the parking exemption of section 7-2-12, "Exemptions For Authorized Emergency Vehicles," B.R.C. 1981, without paying the fees specified and in excess of the time limit. With respect to city vehicles covered by this policy, the manager shall estimate the annual parking revenue loss occasioned thereby, and cause such an amount to be transferred from the amount appropriated for each such department into the parking meter revenue account.

(2) The city manager is authorized to issue meter parking permits to public utility companies for display on marked service vehicles of such utility companies in lieu of depositing money in meters or pay stations on city streets, alleys, or parking lots in return for prepayment of the parking meter revenue loss occasioned thereby, as estimated by the manager. Such permits may only be displayed when the service vehicle is parked in a metered space or space regulated by a pay station in response to a bona fide utility service necessity.

Ordinance Nos. 5233 (1989); 5241 (1989); 5920 (1997); 7294 (2003).

2-2-12 City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection[1].

(a) If any property owner fails or refuses to pay when due any tax, charge or assessment imposed by this code or any ordinance of the city, the city manager may, in addition to taking other collection remedies, certify due and unpaid tax, charge, and assessment, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected.

[1]31-20-105, 106, C.R.S.

(b) Before certifying taxes, charges, and assessments to the county for collection as prescribed by subsection (a) of this section, the city manager shall provide to the property owner an opportunity for a hearing to contest the authority of the city to incur the tax, charge, or assessment or the amount thereof. The manager shall conduct such hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall mail the notice to the property owner by first class mail addressed to the last known owner of property on the records of the Boulder County Assessor. If the manager's decision after a hearing affirms the imposition of charges, the decision shall include notice that the charges are due and payable within ten days of the date of the decision and that, if not paid when due, they will be certified to the Boulder County Treasurer for collection, along with ten percent of the charges for the cost of the county collection.

(c) Whenever the city manager certifies any tax, charge, or assessment to the Boulder County Treasurer for collection, the manager shall record notice of such certification to the Boulder County Clerk and Recorder.

2-2-13 **Open Space Program.**

(a) Pursuant to a vote of the electorate on November 7, 1967[1], November 4, 1986, November 7, 1989[1], November 4, 1997[1], and November 6, 2001, the city has established an Open Space Program whose objective is to preserve and protect the quality of the natural environment of the city. Land or interests in land acquired with open space funds may not be developed for intensive recreational uses or improved by planting or structures unless such improvements are necessary to protect and maintain open space land.

(b) There shall be a department of open space and mountain parks, which shall be responsible for all open space land and other property associated therewith.

(c) Under the direction, supervision, and control of the city manager, there shall be a director of the department of open space and mountain parks, who may also serve as the city's director of real estate. Subject to the limitations set forth in subsection 2-3-9(e), B.R.C. 1981, the department of open space and mountain parks:

(1) Shall acquire, supervise, administer, preserve, and maintain all open space land and other property associated therewith and may grant non-exclusive licenses and permits and agricultural leases for crop or grazing purposes for a term of five years or less;

(2) Shall supervise, administer, and execute all open space programs, plans, functions, and activities of the city;

(3) Shall prepare and submit to the open space board of trustees written recommendations on those matters on which this code requires a recommendation from said board prior to council or department action;

(4) May, at the request of the open space board of trustees, prepare and submit to the board information and recommendations on such open space matters as are not provided for by paragraph (c)(3) of this section; and

(5) May request advice on any open space matter from the open space board of trustees.

(d) The city manager shall employ various methods to preserve open space land, including, without limitation:

(1) Purchase of the fee interest in land;

[1]For provisions earmarking sales and use tax revenues for open space, see section 3-2-39, "Earmarked Revenues," B.R.C. 1981.

(2) Easements and development rights to retain land in an open, natural condition;

(3) Scenic easements and trail easements;

(4) Notes and deeds of trust;

(5) Options to preserve the city's opportunities to acquire land in the future at current prices; and

(6) Leases, lease-purchases, and lease-back arrangements whereby land purchased by the city can be used for agricultural purposes consistent with the objectives of the program.

(e) The city manager shall attempt to obtain funds from other government agencies and private institutions and shall communicate with interested government agencies, such as Boulder County, on the program's progress in order that such agencies may develop long-range planning and land use policies consistent with the city's open space program.

Ordinance No. 7291 (2003).

2-2-14 Initiation And Settlement Of Claims And Suits.

(a) The city attorney is authorized to initiate and pursue, defend and settle civil actions and administrative proceedings as provided in this section. In all other cases, approval by the city council is required.

(b) Upon the request of the city council or city manager, or upon his or her own initiative with the consent of the city council or city manager, the city attorney shall initiate and pursue, or intervene in, a judicial or administrative civil action to recover losses and/or pursue legal remedies to address:

(1) Damage to city property;

(2) Breach of any contract;

(3) Abatement of any nuisance, except that when more specific authority is granted to the city attorney by other provisions of this code, that authority shall prevail;

(4) The need to enjoin any act or omission which affects a policy, financial, property, personnel or administrative interest of the city which has been previously recognized by the city council;

(5) The need to declare the rights of the city when necessary or desirable to carry out or clarify a policy, financial, property, personnel, or administrative interest of the city which has been previously recognized by the city council.

(c) The city attorney may independently initiate or intervene in judicial or administrative civil actions upon his or her initiative for any lawful purpose when, in the opinion of the city attorney, there are exigent circumstances that warrant proceeding immediately without city council or city manager approval. As soon after initiating such an action as possible, the city attorney shall seek the authorization of the city council or city manager as otherwise provided in this section.

(d) In any lawsuit or administrative proceeding in which the city is a defendant or party, the city attorney is authorized to defend and represent the city's interests, and to file such

counterclaims, crossclaims, or claims against third parties as, in the opinion of the city attorney, are necessary to protect the city's interests.

(e) To the extent that appropriated funds are available for the purpose, the city attorney, with the city manager's approval, is authorized to settle any claim against the city or suit in which the city is a party defendant if no more than $10,000.00 is paid by the city for settlement of the claim or suit, whether denominated as attorneys' fees, damages, or otherwise. In all other cases, approval by the city council is required. No other city official is authorized to settle any claim for damage, injury, or otherwise, nor expend any funds to address or resolve potential liability against the city or an official or employee of the city.

(f) In any lawsuit in which the city is a party, the city attorney may consider the city manager or the manager's delegate to be the client for the purposes of satisfying the attorney's ethical obligations to keep the client fully informed, to obtain the client's consent concerning settlement other than for settlement covered in subsection (e) or (h) of this section, and for discussing alternative dispute resolution and other matters arising during the lawsuit. Notwithstanding this authorization, the city attorney shall keep the council informed of litigation matters to the greatest extent possible. The city attorney shall report at least annually to the city council on the status of all litigation involving the city.

(g) Nothing in this section shall be construed to limit the city attorney's authority and duty to initiate criminal actions or other actions authorized by ordinance or state law.

(h) To the extent that appropriated funds, insurance, or both are available for the purpose, the city manager and the city attorney are authorized to settle any claim against the city by a city employee arising under the Workers' Compensation Act of Colorado.

Ordinance Nos. 4936 (1985); 5716 (1995); 7433 (2005).

2-2-15 **Neighborhood Permit Parking Zones.**

(a) Restricting parking on streets in certain areas zoned for residential uses primarily to persons residing within such areas will reduce hazardous traffic conditions, promote traffic safety, and preserve the safety of children and other pedestrians in those areas; protect those areas from polluted air, excessive noise, trash, and refuse; protect residents of those areas from unreasonable burdens in gaining access to their residences; preserve the character of those areas as residential; promote efficiency in the maintenance of those streets in a clean and safe condition; preserve the value of the property in those areas; and protect the peace, good order, comfort, convenience, and welfare of the inhabitants of the city. The city council also finds that, in some cases, residential streets serve an important parking function for nonresidents in the public and commercial life of the city. Some accommodation for parking by others may be appropriate in these cases.

(b) Upon receipt of a request by twenty-five adult residents of a neighborhood proposing a neighborhood permit parking zone, the city manager will conduct studies to determine if a neighborhood permit parking permit zone should be established in that neighborhood, and what its boundaries should be. The manager may, if the manager concludes it is in the public interest to do so, initiate this process without any request. The manager may consider, without limitation, the extent to which parking spaces are occupied during working or other hours, the extent to which parked vehicles are registered to persons not apparently residing within the neighborhood, the impact that businesses and facilities located within or without the neighborhood have upon neighborhood parking within the neighborhood, such other factors as the manager deems relevant to determine whether parking by nonresidents of the neighborhood substantially impacts the ability of residents of the proposed parking permit zone to park their vehicles on the streets of the proposed zone with reasonable convenience,

and the extent to which a neighborhood permit parking zone would significantly reduce this impact. The manager shall also determine the need for reasonable public access to parking in the area, and the manner and extent that it should be provided, along with the hours and days on which parking restrictions should apply. No such parking restrictions shall apply on Sundays or holidays.

(c) If the manager determines that establishing a neighborhood permit parking zone is in the public interest, or that altering a residential parking zone in existence on January 1, 1997, or created thereafter, is in the public interest, the manager shall prepare a proposal for the zone, specifying the boundaries, the hours and days on which parking restrictions will apply, and the provisions, if any, for nonresident permit parking. The manager may hold such public meetings as deemed advisable to assist the manager in formulating such proposal. The manager shall present this proposal for the zone to the Transportation Advisory Board. The board, after including in its normal public notice these features of the manager's plan, shall hold a public hearing on the manager's proposal, and shall recommend to the manager that the zone be established, that it be established with certain modifications which are within the manager's authority under this code and any adopted regulations, or that it not be established. The manager shall, within thirty days of the board's recommendation, provide the city council with the manager's proposal to the board, the board's recommendation and related comments, the manager's final plan, and the reason for any difference between the recommendation and the final plan. If the city council does not call up the manager's final plan within thirty days, the manager may establish the zone. If the city council calls up the manager's final plan, it shall hold a public hearing on the plan and, by motion, direct the manager not to establish the zone, or to establish the zone with any modifications which are within the manager's authority, or to establish the zone in accordance with the manager's final plan. The manager shall establish the zone approved by regulation, but if the zone is established after a city council call-up, the manager shall not call for public comment in the notice of proposed regulation.

(d) Upon establishment of a zone, the manager shall, subject to the availability of funds appropriated for the purpose, install the necessary traffic control devices within the zone and issue neighborhood parking zone permits pursuant to chapter 4-23, "Neighborhood Parking Zone Permits," B.R.C. 1981.

(e) The manager may by regulation prescribe additional standards, not inconsistent with those set out in this section, which must be met before the manager designates a neighborhood permit parking zone, or adds or deletes territory from an established zone. The manager may issue regulations governing the issuance and use of neighborhood parking permits not inconsistent with chapter 4-23, "Neighborhood Parking Zone Permits," B.R.C. 1981.

(f) The city manager shall monitor the program on a regular basis and annually provide the city council with a report on the neighborhood permit parking program generally, including its relationship to parking supply and demand in adjacent areas of the city and the status of zone block faces under subsection 4-23-2(j), B.R.C. 1981. The details of the monitoring effort shall be contained in administrative regulations promulgated by the city manager pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981.

Ordinance Nos. 4966 (1986); 5869 (1997).

2-2-16 Manager's Authority To Set Fees And Prices.

(a) The manager may by regulation prescribe the fees to be charged for photocopying or other duplication or for printouts of public records as defined by state law[1]. Such fees shall not exceed $1.25 per page unless actual costs exceed that amount.

(b) The manager may by regulation prescribe the fees to be charged for the search, retrieval, and copying of criminal justice records as defined by state law[2]. Such fees shall not exceed actual costs.

(c) The manager may dispose of any property, other than real property, of the city which the manager deems to be surplus to the city's needs in such manner and under such circumstances and for such price as the manager determines to be in the public interest.

(d) Whenever the manager determines that there are services which the city is capable of performing for members of the public upon specific request by individuals, which are not required to be provided by law, and for which a specific fee has not been set by this code, the manager may perform such services by contract, for a price which the manager determines to be in the public interest. If the manager determines that such services are of a recurring nature, the manager may, by regulation, set a schedule of fees for the performance of such services.

Ordinance No. 5017 (1986).

2-2-17 Unclaimed Intangible Property In Possession Of City.

(a) All unclaimed "intangible property," as that term is defined in section 38-13-102, C.R.S., of another person which is held by the city and which remains unclaimed by the owner for more than six months after it became due and owing to that person shall be deemed abandoned and shall escheat to the city as if it were a gift to the city. After such intangible property has become subject to escheat the city manager shall take reasonable steps under the circumstances to notify the owner of the intangible property that it is unclaimed and subject to escheat. Such notice shall give the owner sixty days to reclaim the intangible property by written application to the manager at an address specified in the notice, shall describe the intangible property, give its amount or estimated value, and the circumstances by which the intangible property came to be held by the city. Notice shall be sufficient, without limitation, if it is sent by regular or certified mail to the last address of the owner known to the city. If no address is known by the city or the mailed notice is returned as undeliverable, the manager shall publish notice once in a newspaper of general circulation in the city and post notice on the city's world wide web site during the sixty-day period in which the owner is allowed to apply for the property.

(b) For unclaimed gift certificates issued by the city, the abandonment period shall be five years instead of one.

(c) This section does not apply to any intangible personal property which any other provision of this code declares to be forfeit to the city.

(d) This section does not apply to any intangible personal property for which any other provision of this code provides a method of disposition.

[1]24-72-201 et seq., C.R.S.
[2]24-72-301 et seq., C.R.S.

(e) Nothing in this section is intended to affect the obligations under state law of private parties as holders of unclaimed intangible property.

Ordinance Nos. 5472 (1992); 7162 (2001).

2-2-18 **Property Inventories.**

The city manager shall establish a capitalization threshold annually and conduct annual inventories of the real and personal property belonging to the city having an original cost in excess of the established threshold, any provision of the laws of this state to the contrary notwithstanding.

Ordinance Nos. 5102 (1988); 5530 (1992); 5765 (1995).

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 3 Boards And Commissions[1]

Section:

2-3-1 General Provisions.

(a) The city council:

(1) At a regular meeting before April shall appoint members to city boards and commissions, who are city electors representing both sexes;

(2) May remove any member by majority vote for conflict of interest violation[2], any other violation of applicable law, regulation, or policy, non-attendance to duty, failure to attend three consecutive regularly scheduled meetings without a leave of absence approved by a majority of the board or commission, or any other cause; and

(3) Shall fill any vacancy for the remainder of its term.

(b) Each city board or commission shall:

(1) Hold regular monthly meetings;

(2) Keep minutes of its meetings and records of its transactions, which are publicly available;

(3) Appoint a chair, vice-chair, and secretary (who may be a city employee);

(4) Conduct its meetings under *Robert's Rules Of Order*, Newly Revised (1981), unless the board or commission adopts other rules of meeting procedure;

[1]Adopted by Ordinance Nos. 4629, 4651. Amended by Ordinance No. 4722. Derived from Ordinance Nos. 2548, 3280, 3521, 3712, 3750, 3814, 3940, 3950, 3967, 4000, 4168, 4169, 4170, 4171, 4276, 4437, 4504.
[2]For prohibited conflicts of interest, see chapter 2-7, "Code Of Conduct," B.R.C. 1981.

2-3-1

(5) Hold all meetings open to the public, after full and timely notice of date, time, place, and subject matter of the meeting, and provide an opportunity for public comment at the meeting; and

(6) Unless otherwise provided by law, conduct all quasi-judicial hearings under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(c) Unless otherwise provided by law, three members of each board constitute a quorum, and each board or commission shall act only on an affirmative vote of at least three members.

(d) Unless otherwise provided by law, each city board or commission is authorized to:

(1) Hold special meetings at any time upon the call of a quorum and after at least twenty-four hours' notice to members and as much public notice as is practicable under the circumstances;

(2) Administer oaths;

(3) Adopt rules interpreting its legislative duties under this code and establishing procedures in aid of its functions; and

(4) Issue subpoenas to require the presence of persons and the production of writings, papers, books, documents, records, or tangible things necessary to its proceedings.

(A) The secretary of the board or commission shall issue subpoenas upon written request therefor.

(B) Subpoenas shall be served in accordance with the provisions of Colorado Rules of Civil Procedure 45(c), except that no witness fees or mileage shall be paid.

(C) No person shall fail to obey a subpoena issued by the board or commission.

(e) Except as otherwise provided by law, all members of city boards and commissions shall serve without pay, shall serve until their successors take office, and shall not hold any other office in the city, but the secretary of any board or commission may be a city employee.

(f) If a member of a city board or commission is present at a meeting and refuses to vote, the member's vote shall be recorded in the affirmative. No member is excused from voting except on approving minutes of a meeting that the member did not attend or on a matter creating a conflict of interest under chapter 2-7, "Code Of Conduct," B.R.C. 1981, or on consideration of such member's conduct in the business of the board or commission.

(g) If a city board or commission listed in this chapter, or the city council, the Boulder Municipal Property Authority, or an advisory body to a general improvement district, gives posted notice of a public meeting other than a notice required to be posted on affected property, in addition to any other place where such notice is posted, the notice shall be posted on the bulletin board in the first floor lobby of the municipal building located on the southwest corner of Broadway and Canyon. It shall not be necessary for any of these bodies to designate this place for posting annually. Except in cases of emergency meetings, such notice, if posted, shall be posted at least twenty-four hours in advance of the meeting. Notice posted pursuant to this subsection shall be full and timely notice, but no meeting shall be deemed not to have been preceded by full and timely notice merely because notice was not posted as allowed in this subsection so long as full and timely notice was given by some other means.

Ordinance Nos. 5621 (1994); 7202 (2002).

2-3-2 **Arts Commission.**

(a) The City of Boulder Arts Commission consists of five members appointed by the city council for five-year staggered terms, all of whom are city electors.

(b) The commission's functions include, without limitation:

(1) To promote and encourage the development and public awareness of and interest in the fine and performing arts in the city;

(2) To advise the city council in connection with all matters relating to the artistic and cultural development of the city;

(3) To perform such other functions associated with the arts as the council may from time to time direct;

(4) To make recommendations to the council with respect to annual budget appropriations for the arts;

(5) To assist in the preparation of applications for grants or other sources of funding for arts programs for the city;

(6) To administer the city arts grant program and other city arts programs pursuant to any authority provided therefor by ordinance of the council; and

(7) To advise and consult with local arts groups as requested by such groups or by the council.

(c) The commission is not authorized to issue subpoenas.

Ordinance No. 5541 (1993).

2-3-3 **Beverage Licensing Authority.**

(a) The City of Boulder Beverage Licensing Authority consists of five members serving five year staggered terms, all of whom are city electors. The council shall appoint members at a regular meeting in March of every year. The council shall adjust terms as needed to stagger the terms. Vacancies shall be filled for the remainder of the term.

(b) The city manager shall serve as secretary to the authority. The secretary may be known as the licensing clerk, and shall serve as the authority's agent for all functions.

(c) The authority's functions are:

(1) To grant or refuse applications for licenses to sell malt, vinous, or spirituous liquor and fermented malt beverages;

(2) To conduct investigations;

(3) To suspend or revoke such licenses for cause;

(4) To perform all other acts or duties required to carry out the purposes of the state and city liquor and fermented malt beverage licensing laws; and

(5) To perform all other responsibilities that the council may delegate to it.

(d) The city manager shall issue all licenses granted by the authority upon receipt of the license fees prescribed by sections 4-20-2, "Alcohol And Fermented Malt Beverage License And Application Fees," and 4-20-12, "Local Improvement District Fees," B.R.C. 1981.

(e) Sections 1-3-3, "Notice Of Agency Action," 1-3-4, "Exception For Emergencies," and subsections 1-3-5(a) and (c), B.R.C. 1981, do not apply to hearings conducted by the authority.

(f) The city council shall establish and adopt by resolution rules of procedure for the authority.

(g) The authority may adopt supplemental rules of procedure provided that the authority's supplemental rules shall not be in conflict with those adopted by the city council.

Ordinance Nos. 5347 (1990); 5440 (1992); 7457 (2006).

2-3-4 **Board Of Building Appeals.**

(a) The City of Boulder Board of Building Appeals consists of the five members of the Board of Zoning Adjustment, who shall sit as the Board of Building Appeals.

(b) The chief city building official and the city fire chief shall be advisory members of the board without vote. The city manager shall be secretary of the board.

(c) In addition to any other duties the council may prescribe, the responsibility of the board is to hear appeals by any person as provided in section 9-9-21, "Signs," chapters 10-2, "Housing Code," 10-5, "Building Code," 10-6, "Electrical Code," 10-7, "Energy Conservation And Insulation Code," 10-8, "Fire Prevention Code," 10-9, "Mechanical Code," 10-10, "Plumbing Code," and 10-12, "Mobile Homes," B.R.C. 1981.

Ordinance Nos. 5382 (1991); 7109 (2001).

2-3-5 **Downtown Management Commission.**

(a) The City of Boulder Downtown Management Commission consists of five members appointed by the city council for five year terms. The commissioners who are first appointed shall be designated to serve for staggered terms, so that the term of one commissioner expires each year. A member must wait one year after terminating service to be eligible for reappointment, except for the commissioners first appointed and members reappointed after a partial term of one year or less. Three members shall be owners of taxable real or personal property located in the area contained in the Central Area General Improvement District or representatives of owners of such property. Two members shall be citizens of the city at large.

(b) The secretary of the commission may be a member of the commission or may be a city staff member. Three members of the commission constitute a quorum. An affirmative vote of at least three members is necessary to authorize any action of the commission.

(c) Annually, the commission shall select a chair and a vice-chair from among its members. The commission may appoint such subcommittees and task forces as it deems appropriate. The commission shall consult regularly with the city manager in all matters relating to employees performing services for the commission. The manager shall be the appointing authority and shall determine the qualifications, duties, performance evaluation, and compensation of all employees performing services for the commission, after receiving the advice of the commission. The manager shall appoint an executive director of the commission to coordinate its functions. The commission shall utilize the services of the city attorney for

such legal services as it may require, subject to the provisions of charter section 85, "City attorney," concerning appointment of special counsel by the city council.

(d) The functions of the commission are to:

(1) Exercise, subject to call up by the city council acting as the Board of Directors of the Central Area General Improvement District as provided in subsection (e) of this section, and subject to the limitations of subsection (f) of this section, the following powers of said Board of Directors in furthering the purposes specified in Ordinance No. 3644 (1970), as amended, to provide parking and related improvements for CAGID:

(A) Acquisition, construction, installation, maintenance, operation, improvement, and repair of the improvements of CAGID and of all property, rights, and interests incidental or appurtenant thereto;

(B) Management, control, and supervision of all of the business affairs of CAGID and the installation, construction, operation, replacement, maintenance, repair, and improvement of the property and improvements of CAGID;

(C) Determination, imposition, redetermination, and revision of a schedule of user charges for the use of the parking facilities provided or furnished by CAGID, as well as the determination of reasonable penalties, interest, collection costs, and other charges for delinquencies in payment of such charges, following the procedures of subsections 8-4-15(c), (e), and (f), B.R.C. 1981, in so doing, but nothing in this section shall authorize the commission to set the times or rates for on-street metered parking, or the fines or penalties for parking infractions specified in chapter 7-6, "Parking Infractions," B.R.C. 1981;

(D) Hearing appeals pursuant to subsection 8-4-16(b), B.R.C. 1981;

(E) Acceptance of responsibility to maintain and repair public property located in but not owned by CAGID that is beneficial to the purposes of CAGID;

(F) Contracting with the city to administer CAGID's program and operations;

(G) Copyrighting designs used for or by CAGID;

(H) Leasing district parking facilities, including, without limitation, retail space, but no such lease shall be valid if tax free bonds of CAGID for the construction or acquisition of the facility are still outstanding and such lease would imperil tax free status;

(2) Perform the duties of an advisory committee to the city council acting as the CAGID Board of Directors as specified in subsection 8-4-10(c), B.R.C. 1981;

(3) Exercise all powers given it by chapter 4-11, "Mall Permits And Leases," B.R.C. 1981;

(4) Function as an advisory body to the city council in the consideration or implementation of any downtown development authority or urban renewal authority having jurisdiction over any part of the Central Area General Improvement District.

(5) In addition, the commission shall be permitted, to the extent budgeted, to expend funds appropriated to the commission for maintenance of data concerning and for promotion of events in CAGID. This power shall include, without limitation, coordination of efforts of merchants and property owners and promotion of common plans of action and facilitation of transportation, parking, urban design, communications, and quality of life improvements in CAGID. However, the commission shall not engage in any anticompetitive practice or discourage any person from locating any legal business in any particular place.

(e) Upon taking action, the commission shall forward a copy of its action to the city council, including the nature of the action and the reasons for taking it and any conditions that the commission has imposed. Such action shall take effect as provided by the commission. At the next council meeting held at least five days after delivery of the action to all council members, the council may call up the action for de novo review, consideration, or hearing, which constitutes a revocation of the action. At the review, consideration, or hearing held on the action, which shall be at the next meeting of the council unless the council by motion determines otherwise, the council shall make a final decision concerning what action shall be taken.

(f) The commission shall recommend to the city manager and the city council, and the council shall approve, a line item budget. Subject to city purchasing procedures, the commission may authorize expenditures within such line items, including, without limitation, contracts for services. The commission may not make any budgetary appropriation or encumbrance and shall not incur any debt or purchase or initiate construction of any parking, and all such matters are left in the full discretion of the city council. In the event that the commission desires at any time to cease utilizing the services of the city for any purposes for which it has contracted for such services, it will present such issue to the city council for final determination.

(g) The commission is authorized to issue subpoenas only in quasi-judicial proceedings.

Ordinance Nos. 4806 (1984); 5085 (1987); 5453 (1992).

2-3-6 **Human Relations Commission.**

(a) The City of Boulder Human Relations Commission consists of five members appointed by the city council for five year terms, or as long a lesser term as possible in staggering the terms, and includes as much as practicable members reflecting the various social, economic, ethnic, racial, and religious segments of the city.

(b) Repealed.

(c) The functions of the commission are to foster mutual respect and understanding and to create an atmosphere conducive to the promotion of amicable relations among all members of the city's community, to serve as a vehicle through which citizens can convey their suggestions on city policies with respect to social problems, to be sensitive to the social needs of citizens, and to advise and assist the city government in relating human and social services to the needs of the city residents. In addition to other tasks that the city council may assign to it, the commission shall:

(1) Study, prepare, and recommend to the council a plan of long and short range priorities and specific legislation or programs to alleviate problems of human relations including programs administered by the city to promote better human relations;

(2) Upon request of the council or the city manager or upon its own initiative, advise the council or manager on the social and human relations impact of proposals to be acted upon by the council or upon areas to which the council's attention should be directed;

(3) Develop and conduct programs and activities, alone or in cooperation with government agencies or community groups, designed to increase good will among citizens of the city, eliminate discrimination, and open new opportunities for all citizens in all phases of community life;

(4) Hold hearings and issue orders as provided in chapter 12-1, "Prohibition Of Discrimination In Housing, Employment, And Public Accommodations," B.R.C. 1981;

(5) Advise, coordinate, and consult with the city manager on programs and activities concerning the city's department of housing and human services and the human rights ordinance, chapter 12-1, "Prohibition Of Discrimination In Housing, Employment, And Public Accommodations," B.R.C. 1981, and complement and assist those programs and activities;

(6) Conduct public hearings and inquire into incidents of division and conflict on issues of human relations and attempt to correct them by issuing public reports and recommending to appropriate agencies, public and private, implementation of actions necessary or helpful to eliminate such division and conflict; and

(7) Consider, investigate, study, and make recommendations regarding any contemplated or proposed action by any federal, state, or municipal government, or any agency or instrumentality thereof, that may have an effect on human relations in the community.

Ordinance Nos. 4879 (1985); 4805 (1984); 5099 (1988).

2-3-7 **Landmarks Board.**

(a) The City of Boulder landmarks board consists of five members appointed by the city council for five-year terms, two of whom are architectural or urban planning professionals and three of whom may be chosen without limitation. The planning board shall appoint one of its members to attend the landmarks board meeting without a vote and advise the landmarks board.

(b) The board's responsibilities are:

(1) To initiate designations of landmarks and historic districts;

(2) To hold public hearings on proposed designation of landmarks and historic districts and approve, modify, or disapprove such proposals;

(3) To hold public hearings on applications for landmark alteration certificates and approve, modify, or disapprove the applications; and

(4) To approve structures of historical, architectural, or aesthetic merit and to encourage the protection, enhancement, perpetuation, and use of any such structures.

(c) The board is not authorized to issue subpoenas.

(d) The mayor, with the consent of the city council, may appoint former board members as alternates to hear matters under chapter 9-11, "Historic Preservation," B.R.C. 1981, when the mayor finds that there is a conflict of interest under chapter 2-7, "Code Of Conduct," B.R.C. 1981. An alternate board member may be appointed pursuant to the following standards and procedures:

(1) The board member with the conflict of interest shall inform the board at a meeting prior to the meeting when the item where such conflict exists is to be considered;

(2) If the board finds it necessary to appoint an alternate board member as set forth above, the board shall request that the mayor appoint an alternate member from among the former members of the board; and

(3) The alternate board members shall only be authorized to act upon the matters that have been requested by the full board.

Ordinance Nos. 5712 (1995); 7522 (2007).

2-3-8 **Library Commission.**

(a) The library commission of the City of Boulder consists of five members appointed by the city council for five year terms.

(b) The functions of the commission are under the direction of the city manager to control the operations of the public library, leases of grounds or buildings for library purposes, administration of books and other resources entrusted to the library, and management and custody of real and personal property acquired by loan, purchase, lease, gift, devise, or bequest for the library.

(c) The commission is authorized to:

(1) Make and enforce all rules and regulations for the administration, government, and protection of the library and all real and personal property belonging thereto or loaned or leased thereto;

(2) Administer any trust created for the library;

(3) Define powers and prescribe duties of all officers and employees of the library;

(4) Borrow, lease, purchase, and accept books, journals, publications, supplies, and equipment for the library;

(5) Order payment from library funds for any liability or authorized expenditure of the library;

(6) Establish library branches and reading rooms meeting the needs of the city; and

(7) Make annual reports to the city council, including a statement of the number of books and periodicals on hand, the number of visitors, and such other information as the city manager may request.

(d) The commission is not authorized to issue subpoenas.

2-3-9 **Open Space Board Of Trustees.**

(a) Creation Of The Open Space Board Of Trustees: There shall be an open space board of trustees consisting of five members appointed by the city council for five-year terms. The members of the board shall be residents of the city, shall not hold any other office in the city, and shall serve without pay.

(b) Functions Of The Board: The open space board shall not perform any administrative function unless expressly provided in this code. The board:

(1) Shall make recommendations to the city council concerning any proposed disposal of open space lands pursuant to subsection (e) of this section;

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(2) Shall make recommendations to the city council concerning any expenditure or appropriation from the open space fund pledged pursuant to the vote of the electorate on November 7, 1967, November 7, 1989, and November 4, 1997, or proceeds of property acquired with the assets of the fund;

(3) Shall make recommendations to the city council concerning any land that is to be placed under the direction, supervision, or control of the department of open space and mountain parks, including, without limitation, recommendations concerning use policies on, planned uses of, and restrictions on uses of, open space land;

(4) Shall make recommendations to the city council concerning the open space program;

(5) Shall review the open space elements of the Boulder Valley Comprehensive Plan and make recommendations concerning any open space related changes to the plan;

(6) Shall pursue vigorously the implementation of the open space elements of the Boulder Valley Comprehensive Plan and the acquisition of additional property required to fulfill the goals of the open space program;

(7) Shall review the city manager's proposed budget as it relates to open space matters and submit its recommendations concerning said budget to the city council;

(8) Shall make recommendations concerning the grant or denial of any nonexclusive license or permit in or on open space land;

(9) Shall make recommendations concerning the incurring of any indebtedness payable from the open space fund, pursuant to charter section 97; and

(10) May prepare and submit to the city council, the city manager, or the open space and mountain parks department recommendations on any other matter relating to the open space program, and may request and obtain from the open space and mountain parks department and the city manager information relating thereto.

(c) Board Recommendations: The city council, the city manager, and the open space and mountain parks department shall not act on any of the matters set forth in paragraphs (b)(1) through (b)(9) of this section without securing a recommendation from the board as above provided; however, the council, the manager, and the department may act on the matters set forth in paragraphs (b)(2) through (b)(9) of this section without a board recommendation if the board fails to submit its recommendation within thirty days after request therefor is made by the council.

(d) Open Space Purposes - Open Space Land: Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:

(1) Preservation or restoration of natural areas characterized by or including terrain, geologic formation, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;

(2) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;

(3) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;

(4) Preservation of agricultural uses and land suitable for agricultural production;

(5) Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth;

(6) Utilization of non-urban land for spatial definition of urban areas;

(7) Utilization of land to prevent encroachment on floodplains; and

(8) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land.

(e) Disposal Of Open Space Land:

(1) No open space land owned by the city may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the city council. Such approval may be given only after approval of such disposal by the affirmative vote of at least three members of the open space board of trustees after a public hearing held with notice published at least ten days in advance in a newspaper of general circulation in the city, giving the location of the land in question and the intended disposal thereof. No open space land owned by the city shall be disposed of until sixty days following the date of city council approval of such disposal. If, within such sixty-day period, a petition meeting the requirements of charter section 45 and signed by registered electors of the city to the number of at least five percent of the registered electors of the city as of the day the petition is filed with the city clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until the steps indicated in charter sections 46 and 47 have been followed.

(2) This section shall not apply to agricultural leases for crop or grazing purposes for a term of five years or less.

(3) This section is to be construed liberally in favor of providing opportunities for the citizens of the city to refer measures proposing the disposal of any open space land.

(4) In making recommendations to the city council regarding acquisition or disposition of open space land, the board shall consider the purposes set forth in subsection (d) of this section and the following:

(A) The land use goals of the city;

(B) The quality of life of the residents of the city;

(C) Land as a finite resource with limited carrying capacity; and

(D) The potential cost to the city of the land after its acquisition or disposition.

Ordinance No. 7291 (2003).

2-3-10 **Parks And Recreation Advisory Board.**

(a) The City of Boulder Parks and Recreation Advisory Board consists of seven members, appointed by the city council for five year terms.

(b) The city manager shall serve as secretary to the board.

(c) Four members of the board constitute a quorum. The board may only act on an affirmative vote of at least a majority of all members present at a meeting. Three members of the board may call a special meeting.

(d) The board's functions are:

(1) To approve or disapprove proposals concerning the disposal of park lands and forward such recommendations to the city council;

(2) To approve or disapprove expenditures or appropriations from the permanent park and recreation fund and forward such recommendations to the city council;

(3) To make recommendations to the council concerning the grant or denial of any license or permit in or on park lands;

(4) To make recommendations to the council concerning protection and maintenance of park lands;

(5) To review the city manager's proposed annual budget relating to parks and recreation matters and submit its recommendations concerning that budget to the council;

(6) At the request of the council, the city manager, or the department of parks and recreation, to prepare and submit to the council, manager, or department, recommendations on any additional park and recreation matters; and

(7) To request information and recommendations from the department of parks and recreation pursuant to the provisions of charter section 155.

(e) The board is not authorized to issue subpoenas.

Ordinance No. 5039 (1987).

2-3-11 **Planning Board.**

(a) The City of Boulder Planning Board consists of seven members appointed by the city council for five year terms.

(b) The secretary of the board may be a member of the board or may be the city manager.

(c) Four members of the board constitute a quorum. An affirmative vote of at least four members is necessary to authorize any action of the board.

(d) The chair and at least two members may call special meetings.

(e) The board's functions are those established in the charter, this code, and other ordinances of the city, including, without limitation:

(1) To review and approve or disapprove changes to the Boulder Valley Comprehensive Plan;

(2) To review and recommend to the city council regarding proposed historic districts as prescribed by section 9-11-5, "Landmarks Board Designation Public Hearing," B.R.C. 1981;

(3) To review and recommend to the city council regarding the city's capital improvements plan; and

(4) To perform all the functions prescribed by title 9, "Land Use Code," B.R.C. 1981.

Ordinance No. 4803 (1984).

2-3-12 **Board Of Zoning Adjustment And Building Appeals.**

(a) The City of Boulder Board of Zoning Adjustment and Building Appeals consists of five members appointed by the city council for five year terms.

(b) The board's functions are to:

(1) Review and decide at the request of any interested person, any question of interpretation by the city manager of section 9-6-1, "Schedule Of Permitted Land Uses," or 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981;

(2) Hear and decide to grant or deny applications for variances from the setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, and the size and parking setback requirements for accessory dwelling units of subparagraph 9-6-3(a)(2)(B), B.R.C. 1981;

(3) Hear and decide referrals from the planning department or appeals from applicants or interested parties regarding changes or expansion in nonconforming buildings or lots, as provided in section 9-2-14, "Site Review," B.R.C. 1981;

(4) Hear and decide applications for exceptions under the solar access ordinance, section 9-9-17, "Solar Access," B.R.C. 1981;

(5) Hear and decide appeals of orders from the city manager under the sign code, section 9-9-21, "Signs," B.R.C. 1981;

(6) Sit as the Board of Building Appeals pursuant to section 2-3-4, "Board Of Building Appeals," B.R.C. 1981; and

(7) Hear and decide such other matters as the city council may by ordinance provide.

Ordinance Nos. 4803 (1984); 5034 (1987); 7109 (2001).

2-3-13 **Firefighters' Pension Fund Board Of Trustees.**

(a) The City of Boulder Firefighters' Pension Fund Board of Trustees consists of the mayor, the director of finance and record, an appointee by the city council for a three-year term, and three members of the fire department hired before April 8, 1978, elected for a term of three years by the members of the fire department hired before April 8, 1978. The board shall elect from its members a president and a secretary.

(b) The board's functions are:

(1) To supervise the city's and firefighters' contributions to the fund and the investment of all monies in the fund;

(2) To hear and decide all applications for relief or pensions from the fund.

(c) The decision of the board on such contributions and applications for relief or pensions is final and conclusive, unless the board grants a rehearing in a particular case.

(d) The board need not hold monthly meetings.

(e) Four members of the board constitute a quorum, and the board shall only act on an affirmative vote of at least four members.

(f) The director of finance and record is ex officio treasurer of the board.

(g) The board shall make all necessary rules and regulations for managing and discharging its duties and for its own government and procedure and for the preservation and protection of the fund.

(h) A record of all matters coming properly before the board shall be kept and preserved.

Ordinance No. 4995 (1986).

2-3-14 **Transportation Advisory Board.**

(a) The City of Boulder Transportation Advisory Board consists of five members appointed by the city council for five year terms.

(b) The responsibilities of the board are:

(1) To advise the city manager, the planning board, and the city council concerning any transportation matter, except as set forth in subsection (c) of this section.

(2) To review all city transportation environmental assessments and capital improvements.

(3) To review, monitor, and propose changes to the Transportation Master Plan for the Boulder Valley, including, without limitation, policies for automobiles, pedestrians, bicycles, transit, parking, and greenways.

(4) To work with individual citizens, neighborhood groups, and transportation staff to develop and recommend criteria by which to guide neighborhood traffic mitigation projects.

(5) To advise the city council and the planning board concerning alternative transportation programs and to track the modal shift goal of the transportation master plan.

(6) To review and provide recommendations to the city manager concerning policy issues on operating programs, including, without limitation, traffic engineering, parking, and alternative transportation.

(c) The board shall not involve itself in any review under the land use regulation, title 9, "Land Use Code," B.R.C. 1981, unless its opinion is requested by the city council.

(d) Prior to making any recommendation, the board shall hold a public hearing.

(e) The board is not authorized to issue subpoenas.

Ordinance Nos. 5216 (1989); 5506 (1992).

2-3-15 **Water Resources Advisory Board.**

(a) The City of Boulder Water Resources Advisory Board consists of five members appointed by the city council for five-year terms.

(b) The responsibilities of the board are to advise the city manager, the planning board, and the city council concerning the following water resources matters managed by the utilities division:

(1) To review all environmental assessments and capital improvements conducted or proposed by the utilities division.

(2) To review, monitor, and propose changes to the city's raw water, treated water, wastewater and flood control master plans.

(3) To review and provide recommendations to the city manager concerning policy issues on operating programs, including, without limitation, water conservation, water treatment plant residuals, wastewater treatment plant biosolids disposal, and water quality.

(c) The board shall not involve itself in any review under the land use regulation, title 9, "Land Use Code," B.R.C. 1981, unless its opinion is requested by the city council.

(d) Prior to making any recommendation, the board shall hold a public hearing.

(e) The board is not authorized to issue subpoenas.

Ordinance Nos. 5516 (1992); 5789 (1996).

2-3-16 **Environmental Advisory Board.**

(a) The City of Boulder Environmental Advisory Board consists of five members appointed by the city council for five year terms.

(b) The responsibilities of the board are:

(1) To advise the city council and the city manager concerning waste management and recycling, energy efficiency, environmental risks, and pollution control, except as already assigned to other boards and commissions.

(2) To advise the city council concerning an appropriate advocacy role for the city in state, regional and federal environmental matters.

(3) To advise the affected board and the city council concerning the effects on the environment of any proposed city master plan or revision.

(c) The board shall not become involved in an environmental issue not specified by subsection (b) of this section except as authorized by the city council.

(d) The board shall not involve itself in any review under the land use regulations, title 9, "Land Use Code," B.R.C. 1981, unless its opinion is requested by the city council.

(e) The board shall not become involved in city environmental assessments unless requested to do so by the city council.

(f) Prior to making any recommendation, the board shall hold a public hearing.

(g) The board is not authorized to issue subpoenas.

Ordinance No. 5505 (1992).

2-3-17 City Of Boulder Public Access And Educational Channel Advisory Commission.

Repealed.

Ordinance Nos. 5705 (1995); 5859 (1997).

2-3-18 Downtown Design Advisory Board.

(a) The City of Boulder downtown design advisory board consists of five members appointed by the city council for five year terms, at least two of whom are design professionals and three of whom may be chosen without limitation. The purpose of the board is to encourage thoughtful, well-designed development projects that are sensitive to the character of the downtown.

(b) The board's functions are to:

(1) Review projects for compliance with the Downtown Urban Design Plan (1986), adopted by Ordinance No. 5013, and provide comments to persons responsible for designing and developing downtown projects having a valuation of $10,000.00 or more involving the construction of a new building or exterior work on an existing building;

(2) Review projects for compliance with the Downtown Urban Design Plan (1986) and provide comments to persons responsible for designing, developing, and approving downtown projects that require a discretionary development review, pursuant to chapter 9-2, "Review Processes," B.R.C. 1981; and

(3) Advise and make recommendations for approval or disapproval of amendments to the Downtown Urban Design Plan (1986) to the planning board, the city manager, and the city council.

(c) The board shall use the guidelines set forth in the Downtown Urban Design Plan (1986) to review projects in those areas described on the "Downtown Area Map" as the historic commercial area, the non-historic downtown area, and the interface area.

(d) Projects that require a review by the landmarks board are exempt from a review by the downtown design advisory board.

(e) The board shall not involve itself in any review under title 8, "Parks, Open Space, Streets, And Public Ways," 9, "Land Use Code," or 10, "Structures," B.R.C. 1981, unless its opinion is requested by the planning board or city council.

(f) Prior to making any recommendation, the board shall hold a public hearing.

(g) The board is not authorized to issue subpoenas.

Ordinance No. 5963 (1998).

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2-3-19 **Resident Commissioner For The Housing Authority.**

Pursuant to section 29-4-205, C.R.S., the city council is permitted to provide for the appointment of commissioners of the Housing Authority of the City of Boulder, also known as Boulder Housing Partners. One of such commissioners is required by federal regulation[1] to represent the residents of Housing Authority facilities, and it is preferable that the Resident Commissioner be elected by the residents of Housing Authority facilities. Accordingly, the city council hereby designates the President of the Resident Representative Council of the Housing Authority, certified from time to time by the Board of Commissioners of the Housing Authority, as the Resident Representative Commissioner member of the Board of Commissioners. The city council further determines that Resident Commissioner should serve for whatever term such person serves as President of the Resident Representative Council, notwithstanding the five year staggered terms served by other Housing Authority Commissioners. The city council hereby limits the participation of the Resident Commissioner in matters before the Board of Commissioners to public housing and section 8[2] matters, not involving the management of the housing development in which such person resides. The President of the Resident Representative Council may designate any officer of the council to act as an alternate Resident Commissioner when the President is unable to attend Housing Authority meetings.

Ordinance No. 7218 (2002).

[1]24 C.F.R. § 964.430.
[2]42 U.S.C.S. § 13619.

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 4 Police Administration[1]

Section:

2-4-1 Legislative Intent.

The purpose of this chapter is to define the duties and powers of the chief of police and city police officers and to provide a procedure for disposing of lost, abandoned, or recovered stolen property.

2-4-2 Commissioning Of Police Officers.

The city manager shall issue a commission card to each city police officer before the officer commences official duties, which identifies the holder as a currently employed city police officer.

2-4-3 General Duties Of Police Officers.

(a) City police officers shall perform under the direction of the city manager and chief of police. Police officers shall possess all powers conveyed to peace officers under state statutes and to police or peace officers under municipal ordinances.

(b) Police officers shall investigate, make arrests, issue summonses, sign complaints, and assist in prosecutions for violations of state or federal statutes and municipal ordinances. Police officers shall suppress all riots and breaches of the peace and apprehend persons fleeing from justice[2].

2-4-4 Duties Of The Chief Of Police.

(a) Subject to the powers of the city manager pursuant to charter section 72, the chief of police shall have general charge and supervision of city police officers and be responsible for the administration of the city police department.

(b) The chief of police may establish rules and regulations, subject to the approval of the city manager, for the administration of the police department.

(c) The chief of police shall receive and retain on file all traffic accident reports made to the chief under state law or this code for use by the city manager or the Department of Motor Vehicles of the Colorado State Department of Revenue.

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[1]Adopted by Ordinance No. 4653. Amended by Ordinance No. 4704. Derived from Ordinance Nos. 1734, 2477, 4054, 4432.
[2]For the description of procedures to detain, charge, arrest, incarcerate, book, release, and use force, see sections 2-6-16 through 2-6-22, B.R.C. 1981.

2-4-5 Custody Of Lost, Abandoned, And Recovered Stolen Property.

(a) The chief of police has custody of all lost, abandoned, and recovered stolen personal property coming into the possession of the city. The chief shall keep a record of all property taken into custody, and shall, pending disposal of the property, cause the property to be stored on property owned or leased by the city or with a private person engaged in the business of storing personal property.

(b) If the finder of lost, abandoned, or stolen property is an officer or employee of the city and takes possession of such property, the city shall be deemed the finder and the property shall be placed in the custody of the chief of police.

(c) Whenever a private person brings property to any city employee that the person has found, the property shall be placed in the custody of the chief of police. Upon the finder's making a report concerning the location and circumstances of the finding, the manager shall issue a receipt for the property, which shall declare the finder's contingent right to reclaim the possession thereof.

(d) Upon coming into possession of personal property that has no known owner, the chief of police shall make reasonable efforts to ascertain the ownership of the property.

(e) If the chief of police ascertains the owner of lost, abandoned, or stolen personal property, except a motor vehicle, the chief shall give notice in writing to the owner that the property is in the possession of the police department, that it may now be reclaimed, and that it will be sold or otherwise disposed of by the city unless the owner reclaims the property in the manner prescribed by law within sixty days after the date the notice is deposited in the mail, postage prepaid, to the owner at the owner's last known address.

(f) If the owner of the lost, abandoned, or stolen property cannot be ascertained by the chief of police, the chief shall periodically, and not less than once each year, cause notice containing the following information to be published on three different days, with the last day of publication to be no less than ten days prior to the auction, in a newspaper of general circulation in the city:

(1) Locations, electronic or physical, where descriptions of the lost, abandoned, or stolen personal property then in the possession of the chief of police may be viewed; and

(2) A statement that the property will be disposed of by the city or its designee unless the owner thereof reclaims the property in the manner provided for by law within ten days after the last publication of the notice.

(g) The chief of police may immediately dispose of any property that reasonably appears to pose a sanitary or health hazard if stored, and shall keep a log describing all property disposed of for these reasons.

(h) This section applies only to tangible personal property. Lost and found currency turned in to the chief of police by city employees or private persons shall be deemed tangible personal property.

Ordinance Nos. 5472 (1992); 7464 (2006).

2-4-6 Disposition Of Property Other Than Motor Vehicles.

(a) If, at any time prior to the city's disposition of any found personal property, except a motor vehicle, in the manner provided by this section, a person claims to be the property owner, the

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chief of police shall return the property to such claimant if the claimant submits written evidence of ownership that is sufficient to satisfy the chief that the claim is rightful and if the claimant pays the city for all reasonable costs incurred by the city in obtaining possession of the property, storing the property, and publishing or mailing notice relating to the property.

(b) If an apparent owner has not made claim to the property by the expiration of the time period set forth in the mailed or published notice, the finder of record shall be notified by mail that the finder has ten days to claim the property. If within said ten-day period, the finder makes a demand for the property and tenders payment to the city for all reasonable costs incurred by the city in connection with the possession, and storage, and publication and mailing of notices regarding the property, the property shall be returned to the finder.

(c) If the found personal property remains unclaimed after the time following the notice as required by subsections 2-4-5(e) and (f), B.R.C. 1981, and after giving the finder notice and opportunity to reclaim the property under this section, the city manager shall cause the property to be disposed of by sale, unless, upon the recommendation of the manager, the city council, by ordinance, motion, or resolution, provides for a different manner of disposition.

(d) If property is to be disposed of by sale, the city manager shall:

(1) Cause a notice of such sale to be published on three different days in a newspaper of general circulation in the city setting forth the date, time, and place of the sale at least ten days after the last publication of notice of sale; locations, electronic or physical, at which descriptions of the property to be sold may be viewed; and a statement that the property will be sold at public auction to the highest bidder for cash;

(2) At the date and place designated for the sale of said lost, abandoned, or recovered stolen personal property described in the notice of sale, cause said property to be sold at public auction to the highest bidder for cash. No money or negotiable instruments shall be sold at such a sale; they shall become the property of the city if unclaimed by the owner thereof. If a bid is not made for an article of personal property offered at such sale, said article of personal property shall become the property of the city;

(3) Utilize on-line auction procedures as an alternative to traditional auction procedures if the manager determines that such action is consistent with the objectives of this section. In the event that on-line auction procedures are used, newspaper publication and on-line item description provisions of this section shall be utilized to provide notice of such on-line auctions in addition to, but not in lieu of, the notice procedures set forth in this section. In such instance, payment by credit card, debit card, or equivalent means will be permitted;

(4) Upon consummation of the sale of said lost, abandoned, or recovered stolen property, issue a receipt to the successful bidder that indicates the article of personal property sold and the amount paid therefor. Upon exhibiting said receipt to the chief of police, the purchaser shall be entitled to possession of the article so purchased; and

(5) Apply proceeds of the sale of said lost, abandoned, or recovered stolen property first to costs of storage, towing, publication, and other costs of the keeping and sale of said property, and place the balance of said proceeds in the general fund of the city.

(e) There is no right of redemption from a sale and conveyance of said lost, abandoned, or recovered stolen property.

Ordinance No. 7464 (2006).

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2-4-7 **Disposition Of Motor Vehicles.**

The city manager may dispose of impounded motor vehicles in any of the following ways:

(a) By following the procedures provided by state law[1] for disposal of abandoned vehicles; or

(b) If the manager determines that some other method of disposal is more efficient, the manager may adopt such a method. Such method shall provide:

(1) Reasonable notice to the owner and any lienholders of record by mail or publication at least thirty days before disposition of the vehicle. But if the vehicle has been appraised to determine its reasonable market value by the chief of police, by any employee of the police department designated by the chief, or by a licensed Colorado motor vehicle dealer as having a value of less than $200.00, then the vehicle may be disposed of no less than fifteen days after the date of the notice. Notice is deemed given on the date it is delivered, mailed, or published, whichever is earliest. The notice shall indicate whether the holding period is fifteen or thirty days. Before giving notice, the manager shall make inquiry through the licensing authority of the state of registration of the vehicle, if that can be ascertained from the license plate or vehicle identification number, if any, as to the name and mailing address of the owner and lienholders of record. Notice shall be delivered or sent by first class or certified mail to such persons. If the manager's inquiries produce no information, the manager shall publish the notice at least once in a newspaper of general circulation in the city. The notice shall state the grounds upon which impoundment was authorized, the location of the vehicle, and the person to whom the owner or lienholder may apply to reclaim the vehicle prior to its disposal. Notice given to the owner pursuant to subsection 7-7-2(b) or 7-7-3(d), B.R.C. 1981, satisfies the requirement of this section for notice to the owner.

(2) For disposition of the vehicle:

(A) If the vehicle has been appraised, and the towing and storage charges at the end of the applicable holding period exceed the appraised value, then the manager may sell the vehicle to the towing and impoundment lot operators, if such were involved, for the amount of the accrued charges;

(B) At a private sale; or

(C) At a public sale.

(3) For delivery of a bill of sale to the purchaser. The manager shall send a copy of such bill of sale, together with a written report of the sale, to the Colorado Department of Revenue. If the appraised value of the vehicle was less than $200.00, or if, in the case of a vehicle sold without appraisal, the sale was for less than $200.00, the bill of sale shall state that the vehicle is sold only for the purpose of junking or dismantling the vehicle, and that the purchaser acquires no right to a certificate of title for such vehicle. Such purchaser shall also be given a copy of the report which is sent to the Colorado Department of Revenue.

(4) For disposition of the proceeds from a sale pursuant to subparagraph (b)(2)(B) or (b)(2)(C) of this section in the following manner:

(A) The costs of towing and storage in an impound lot shall be paid to the towing and impound lot operators in accordance with the contract such operators may have with the city for such services. Such contract may provide, without limitation, that the towing and impound lot operator will receive only a percentage of the proceeds, but not to exceed such costs. If such services were not performed pursuant to a contract with the city, payment shall be calculated in the manner provided by state law.

[1] 42-4-1801 et seq., C.R.S.

(B) From the balance, if any, there shall be deposited into the general fund of the city reasonable expenses to the city on account of the abandonment of the vehicle, including, without limitation, the costs of the search for owners and lienholders, notice, appraisal, advertising, sale, and any other fees or penalties, including, without limitation, those on account of parking infractions pursuant to chapter 7-6, "Parking Infractions," B.R.C. 1981, due with respect to the vehicle.

(C) The remaining balance, if any, shall then be paid first to any lienholder of record and, second, to any owner of record as their interests may appear on such records, or to any person submitting proof of an enforceable interest in such vehicle as of the date of sale. If no such person is known to the manager, such balance shall be deposited into the general fund of the city.

(D) There is no right of redemption from any sale made pursuant to this section. After a vehicle has been sold pursuant to such terms, neither the city nor any officer, agent, or employee thereof is liable for any failure to deliver such vehicle to any person other than the purchaser at such sale.

Ordinance Nos. 4917 (1985); 5039 (1987); 5848 (1996); 7190 (2002).

2-4-8 **Holding Property As Evidence.**

In the event that the city attorney, district attorney, or other person charged with the duty of prosecuting violations of the city, state, or federal laws, requests that any of the lost, abandoned, or recovered stolen property be held by the chief of police because it is required in a criminal prosecution, the chief shall retain custody and shall not sell the same until written notice is received that the property is no longer needed for prosecution purposes.

2-4-9 **Police Lines.**

(a) If the city manager determines that a substantial danger to the preservation of public health or safety exists as a result of a parade or demonstration or counter-demonstration or planned or threatened parade or demonstration or counter-demonstration, the manager may set up a police line or lines for the purpose of effecting a clearing; to separate parade participants or demonstrators, counter-demonstrators, and passers-by; to allow for the movement of pedestrian and vehicular traffic; to exclude the public from the vicinity of a riot or disorderly gathering; or to protect persons and property. Such police line shall be set up in a manner which represents the least restrictive alternative reasonably necessary to cope with the danger posed, in the judgment of the manager, and by any means which the manager determines gives reasonable notice of the existence of the police line.

(b) Such lines shall at all times provide reasonable space for the parade, demonstration, or counter-demonstration. More restrictive lines intended to cope with a riot or disorderly gathering shall be set up only after the riot or disorderly gathering has begun, and shall not be set up based upon mere threat of such arising out of a parade or threatened parade or demonstration or counter-demonstration.

(c) In the case of a riot or disorderly gathering, any police officer of the rank of sergeant or higher may establish a police line at locations reasonably related to the termination of the unlawful behavior.

(d) When incidents occur involving fires, floods, accidents, wrecks, explosions, imminent collapse of buildings or other structures, movement of the earth, damage to public utilities, hazardous materials incidents, crimes in progress, crime scenes, barricaded persons with weapons or

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threatening use of weapons, or hostage situations, any peace officer or firefighter may establish police lines to afford a clearing for the operation of police, fire, and emergency medical personnel and their equipment, and of wreckers or other heavy equipment necessary to deal with the emergency, or to keep the public from the zone of danger. The location and duration of such lines shall be reasonably related to their purpose, and they shall be effectuated by a means which gives reasonable notice of their existence and location.

Ordinance Nos. 4980 (1986); 7129 (2001).

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 5 Fire Department[1]

Section:

2-5-1 Legislative Intent.

The purpose of this chapter is to define the duties and powers of the fire department and the fire chief and prescribe citizen responsibilities regarding fire abatement.

2-5-2 Authority Of Fire Department.

The responsibilities of the city fire department include without limitation: the suppression or extinguishment of fires, the provision of rescue and emergency medical services, the provision of fire inspection and fire prevention services, the management of hazardous substance incidents as defined by state law[2], and the planning or response to public disasters and emergencies, including, without limitation, windstorms and flooding.

Ordinance No. 4879 (1985).

2-5-3 Rules And Regulations.

The city manager may make such rules and regulations for the management of the fire department as the manager deems necessary.

2-5-4 Identification Card For Firefighters.

(a) The city manager shall issue an identification card to each city firefighter before the firefighter commences official duties, which identifies the holder as a currently employed city firefighter.

(b) No person shall act as a member of the fire department until such person has been appointed and qualified and unless such person carries a valid and effective identification card.

2-5-5 Powers And Duties Of Fire Chief.

(a) The city fire chief has the following powers:

(1) To demand reasonable assistance from any person present to suppress or extinguish fires;

[1]Adopted by Ordinance No. 4679. Derived from Ordinance Nos. 1734, 1932, 3882, 1925 Code.
[2]29-22-101 through 109, C.R.S.

to prescribe a system of confinement for persons sentenced upon conviction of violation of the charter, this code, or any other ordinance of the city.

2-6-2 Definitions And Interpretation.

(a) The following terms have the following meanings unless the context clearly indicates otherwise:

"Associate judge" means a judge who transacts the business of the court at such times and upon such causes as determined by the presiding judge, and who is employed under a calendar-year contract with renewal at the discretion of the city council upon recommendation of the presiding judge.

"Book" or "booking" means the administrative procedure of photographing a defendant and obtaining fingerprints following arrest.

"Cash bond" has the meaning given in paragraph 2-6-24(f)(2), B.R.C. 1981.

"Incarcerate" means the restraint of a person authorized by this chapter in lieu of immediate release on summons and complaint, and "for custodial arrest" includes transportation to a detention facility, booking, and lodging in a detention facility. The term also means lodging in a detention facility under a sentence imposed by the municipal court.

"Judge" means any judge of the municipal court.

"Municipal court" means the police magistrate's court or police court prescribed by charter sections 86 and 87 and the courts described by Colorado Constitution Article XX, sections 6(b) and (c).

"Peace officer" has the meaning prescribed by section 5-1-1, "Definitions," B.R.C. 1981.

"Police officer" has the meaning prescribed by section 5-1-1, "Definitions," B.R.C. 1981.

"Temporary judge" means a judge who serves temporarily when the presiding judge and the associate judges are unable to transact the business of the court due to illness, absence, disqualification, or other similar reason.

"Violation" has the meaning prescribed by section 5-2-5, "Violations," B.R.C. 1981, and includes civil infractions.

(b) Whenever the term "summons" is used in this chapter, unless the context clearly indicates otherwise, it includes a summons, a summons and complaint, and a penalty assessment.

(c) Whenever the term "plea of guilty" is used in this chapter it includes pleas of guilty, acknowledgments of guilt, and nolo contendere pleas.

Ordinance No. 7408 (2005).

2-6-3 Creation, Jurisdiction, And Powers Of Municipal Court.

(a) Pursuant to charter section 86 there exists a municipal court in and for the City of Boulder, Colorado.

(b) The municipal court has original jurisdiction of all criminal cases arising under the charter, this code, and other ordinances of the city, with power to punish violations thereof by imposing fines and penalties as authorized by this code or any ordinance.

(c) The municipal court has original jurisdiction of all civil cases arising under the charter, this code, and other ordinances of the city, with power to assess and collect civil penalties, order and enforce by contempt abatement of nuisances, and perform other responsibilities prescribed by the charter, this code, and other ordinances of the city.

(d) The municipal court has the jurisdiction and powers of an administrative hearing officer, where so provided by this code or other ordinance of the city.

(e) Each judge is authorized to issue search warrants for the inspection of premises or property by municipal or city-county officials or inspectors in accordance with the Colorado Municipal Court Rules. Each judge may also issue such inspection warrants for the inspection and examination of any structure or property if it satisfactorily appears that the applicant for the warrant is required to make the inspection by any provision of this code or other ordinance of the city or any regulation or routine policy of inspection and enforcement and that for the purpose of making a complete inspection the applicant is required to go upon privately owned premises or enter a privately owned structure. But nothing in this subsection shall be deemed to require the issuance of a warrant for emergency inspections or in any other case where warrants are not required by law[1].

(f) The municipal court is a qualified municipal court of record and shall comply with requirements of state law and regulations for courts of record[2]. The municipal court shall furnish the record to any party wishing to appeal from a judgment of the municipal court for transcription at such party's expense.

(g) In all cases where a judge acts as an administrative hearing officer under this code or other ordinance of the city, the judge shall conduct hearings under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(h) Except as otherwise provided in this code, the municipal court shall be conducted under the procedures prescribed by the Colorado Municipal Court Rules and title 13 of the Colorado Revised Statutes.

(i) Code and ordinance violations for which imprisonment is not a possible penalty and that are not criminal under counterpart state law are civil[3], but the judge shall follow the Colorado Municipal Court Rules in all such cases unless the rules are clearly inapplicable.

Ordinance Nos. 5198 (1989); 5617 (1994); 5661 (1995).

2-6-4 **Judges.**

(a) The city council shall appoint a judge to preside over the municipal court, who may appoint such other associate and temporary judges as needed to transact the business of the court, subject to the provisions of this chapter.

(b) The presiding judge shall:

(1) Supervise and direct the operation and schedule of sessions of the municipal court;

[1]See section 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," B.R.C. 1981, for distraint warrants.
[2]13-10-101 et seq., C.R.S.
[3]City of Greenwood Village v. Fleming, 643 P.2d 511 (1982).

(2) Adopt written rules for the conduct of the court in the manner prescribed by the Colorado Municipal Court Rules;

(3) Recruit, appoint, supervise, evaluate and remove temporary judges and law clerks for terms of up to one year as the presiding judge may deem to be needed to conduct the court's business, after notification to the city council of each such appointment, evaluation, and removal;

(4) Recruit, appoint, supervise and remove referees to conduct the court's business as provided by this code or other ordinance of the city, for terms of up to one year as the presiding judge may deem to be needed for such purpose;

(5) Recruit associate judges who serve for more than one year, who shall be recommended by the presiding judge to the city council for appointment pursuant to charter section 86;

(6) Supervise and evaluate associate judges who serve for more than one year, each of whom shall be employed under a calendar-year contract with renewal at the discretion of the city council, and transmit such evaluation, together with a recommendation concerning renewal of the contract and any adjustment in salary, to the city council in time for the council's annual budget process; and

(7) Assure "at will" status for all temporary and associate judges, but provide sufficient information to the city council so that it may consider any presiding judge recommendation for removal in a process to be set by the city council to review the facts of concern that prompt such action.

(c) After a preliminary meeting with the mayor or the mayor's designee (the "*Loudermill* meeting"), the mayor or designee may, in consultation with other council members, remove the presiding judge for "cause" pursuant to charter section 86. Thereafter, the presiding judge may, upon relinquishment of all contractual severance payment rights, demand a hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, before a hearing officer appointed by the city council, at which hearing the city shall have the burden of proof to show cause for removal pursuant to charter section 86.

(d) The presiding and associate judges shall be attorneys at law admitted to practice in the State of Colorado and shall be residents of Boulder County, but need not be residents of the city. The temporary judges shall be attorneys at law admitted to practice in the State of Colorado.

(e) Before assuming the office, each judge shall take and subscribe before a judge of the Twentieth Judicial District and file with the council an oath or affirmation to support the Constitution and laws of the United States and of the State of Colorado and the charter, this code, and other ordinances of the city and faithfully to perform the duties of the office.

(f) Each year the city council shall establish the salaries and bonuses payable to the presiding and associate municipal court judges. But the compensation of referees, temporary judges and law clerks serving for terms of up to one year shall be set by the presiding judge.

Ordinance Nos. 7193 (2002); 7408 (2005).

2-6-5 **Court Administration.**

(a) The court administrator shall be appointed by the city manager.

(b) The court administrator is ex officio court clerk, jury commissioner, and supervisor of the violations bureau. Assistants appointed as deputy court clerks have all the powers of the court clerk.

(c) The court administrator shall:

(1) Keep a register of the actions in the court, including all fees and money collected and disbursed;

(2) Promptly deliver to the city manager all money received as fees, fines, and penalties, which the manager shall deposit into the general fund of the city;

(3) Prepare and keep a docket for the court noting the judgments made;

(4) Prepare all writs and other papers pertaining to the business of the court; and

(5) Make and maintain all necessary court records.

(d) The court administrator may:

(1) Issue writs and notices, including, without limitation, subpoenas and summonses, in all cases coming before the municipal court; and

(2) Administer oaths and affirmations to persons appearing in any capacity in the municipal court.

(e) The court administrator is not required to post the bond required by section 13-10-109, C.R.S.

(f) The administrator is authorized to use any lawful method of collecting fines, fees, default judgments, personal recognizance bond forfeitures, and civil penalties due from any person assessed such sums by the municipal court, including reasonable costs of collection. The city shall be entitled to receive the reasonable costs of collection in addition to the amounts otherwise due, and interest at the statutory rate for unpaid civil judgments. Reasonable costs of collection shall include, without limitation, the fees and costs of the city attorney or of private counsel or a collection agency, but such fees and costs shall not exceed twenty-five percent of the amount collected.

Ordinance Nos. 7193 (2002); 7408 (2005).

2-6-6 **Violations Bureau.**

(a) The court administrator shall establish a violations bureau to assist with clerical work, to be operated during the hours that the court administrator determines.

(b) The presiding judge may designate the provisions of the charter, this code, or other ordinances of the city for violations of which payments of the fine and costs may be accepted by the violations bureau and which classes of defendants may satisfy their obligations by paying such fines and costs. The judge shall specify schedules of the amounts of such fines and costs consistent with the charter, this code, and other ordinances of the city. If the judge designates a provision as being eligible for payment at the violations bureau, the judge may also designate that provision as being eligible for payment by mail.

(c) Any person eligible to pay a fine and costs under the provisions of subsection (b) of this section to the violations bureau may pay the fine and costs before or on the arraignment date

specified in the summons, or after entering a plea at the arraignment but before trial, at the violations bureau upon entering a written plea of guilty. The bureau, upon accepting the prescribed fine and costs, shall issue a receipt to the person acknowledging payment thereof.

(d) The violations bureau shall:

(1) Accept designated fines, accept payment of costs, issue receipts, and accept designated deferred sentence pleas;

(2) Receive and issue receipts for bail bonds and enter the time of their appearance on the court docket; and

(3) Send records of pleas of guilty on which judgment is entered or for which a bond is forfeited to the Colorado Division of Motor Vehicles where required by statute, and follow such other procedures as prescribed by this code, other ordinances of the city, the Colorado Municipal Court Rules, or state law.

Ordinance Nos. 7193 (2002); 7408 (2005).

2-6-7 **Parking Infraction Office And Scofflaw List.**

(a) Office Established: The court administrator shall establish a parking infractions office to assist with clerical work relating to parking infractions, to be operated during the hours that the court administrator determines.

(b) Payment Of Fine: Any person wishing to pay a fine for a parking infraction may pay the fine before or after the date specified in the parking ticket at the parking infractions office. Such payment discharges the obligation to pay the fine and results in dismissal of the case.

(c) Courtesy Notice Of Overdue Parking Ticket:

(1) The administrator may give notice by first class mail to the registered owner of any vehicle for which there is an overdue parking ticket, stating that there has been no response to the ticket and:

(A) The date and the nature of the ticket overdue and the amount, including late fees, due;

(B) That a response is due within ten days after the date of mailing;

(C) That the owner shall, by said deadline, respond to the notice by paying the total amount due or by arranging with the violations bureau for contesting the charges, fees, and amounts due, in which case the owner shall post a cash bond for the total amount due or make other arrangements approved by a judge;

(D) That if the vehicle owner fails to respond within the prescribed time period, the owner will forfeit the right to a trial or hearing to contest the tickets and a default judgment will be entered;

(E) The letter may also explain the scofflaw provisions of this section.

(2) The notice allowed by this subsection is sufficient if mailed to the address provided by a government vehicle registration office. If the court administrator is unable, after exercising due diligence, to discover any mailing address, then notice is sufficient if it is published once

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in a newspaper of general circulation in the city, posted on the vehicle, personally served on the vehicle owner or driver, or provided by any other means that provides due process.

(3) If the date for response specified in the letter passes without payment of the fines and fees or posting of sufficient bond, a default judgment shall be deemed entered upon all tickets specified in the notice.

(d) Scofflaw List: As frequently as practicable, the court administrator shall prepare and update the scofflaw list (which may also be known as the "pick-up list"), consisting of vehicles involved in such number of overdue parking tickets as the administrator shall determine is efficient to include on the pick-up list.

(1) There is hereby imposed upon the owner of every vehicle on the scofflaw list a civil penalty of the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, to cover administrative costs. There is also hereby imposed upon the owner of every vehicle on the scofflaw list that is immobilized or impounded a civil penalty of the amount specified in section 4-20-55, "Court and Vehicle Impoundment Costs, Fees, and Civil Penalties," B.R.C. 1981, to cover the additional administrative costs.

(2) The court administrator shall give notice by first class mail to the registered owner of each vehicle on the scofflaw list, stating that the vehicle is on the scofflaw list and:

(A) The date and the nature of each ticket overdue and the amount due on each;

(B) That a scofflaw list fee in the amount specified in paragraph (d)(1) of this section has been imposed to cover administrative costs;

(C) The total amount currently due;

(D) A specific deadline for response, no less than ten days after the date of mailing;

(E) That the owner shall, by said deadline, respond to the notice. Response shall be by paying the total amount due. But for any ticket for which a courtesy notice has not previously been mailed and a default judgment entered, response may also be by arranging with the violations bureau for contesting the charges, fees, and amounts due, in which case the owner shall post a cash bond for the total amount due or make other arrangements approved by a judge;

(F) That if the vehicle owner fails to respond within the prescribed time period, the listed vehicle will be subject to immediate immobilization or impoundment. For any ticket for which a courtesy notice has not previously been mailed and a default judgment entered, the notice shall also state that if the date for response specified in the scofflaw notice passes without payment of the fines and fees or posting of sufficient bond, a default judgment shall be deemed entered upon all tickets specified in the notice, and the owner will forfeit the right to a trial or hearing to contest the tickets. If a default judgment has previously been entered, the notice shall so state;

(G) That an immobilization or impoundment fee in the amount specified in paragraph (d)(1) of this section will be imposed upon every vehicle immobilized or impounded to cover administrative costs; and

(H) That if the vehicle is impounded, the owner will also be required to pay the costs of towing and storage.

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(3) The notice required by paragraph (d)(2) of this section is sufficient if mailed to the address provided by a government vehicle registration office. If the court administrator is unable, after exercising due diligence, to discover any mailing address, then notice is sufficient if it is published once in a newspaper of general circulation in the city, posted on the vehicle, personally served on the vehicle owner or driver, or provided by any other means that provides due process.

(4) If the date for response specified in subparagraph (d)(2)(D) of this section passes without payment of the fines and fees or, if permitted, posting of sufficient bond, such vehicle may be immobilized or impounded and a default judgment, if not previously entered, shall be deemed entered upon all tickets specified in the notice.

(5) Upon contacting the driver of any vehicle on the scofflaw list for which no response has been made within the deadline stated in the notice while that vehicle is located upon any public property or private property open to the use of the public, a peace officer shall inform the driver thereof that violations are alleged against the vehicle to which no response has been made and request the driver forthwith to appear with the officer at the parking infractions office (or to the police department after the office's normal business hours) to respond to the charges in the manner indicated by this section. If such driver fails or refuses to comply with this request forthwith, or if such driver cannot demonstrate that the driver has on the driver's person sufficient cash or other means of payment of a type approved by the municipal court, or if the vehicle located is unattended at the time the officer initially determines that it is subject to impoundment or immobilization, the peace officer shall cause such vehicle to be immobilized or impounded.

(6) If the owner or an agent of the owner pays the fines and fees, including the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, if any, and all towing and storage charges, if any, or posts a bond to cover such fines, fees, and charges, or arranges any combination of payment and bond to cover the total due, the court administrator shall remove such vehicle from the scofflaw list and release it from immobilization or impoundment. If any parking ticket not included on the scofflaw list for which the owner is liable becomes overdue before the owner or agent appears to pay or post bond, such subsequent tickets shall also be paid or bond shall be posted therefor before the vehicle is removed from the scofflaw list or released from immobilization or impoundment.

(e) The owner of a vehicle that is subject to the procedures of this section and section 2-6-8, "Booting," B.R.C. 1981, is entitled to:

(1) A trial conducted under the usual procedures for allegations of violation of the provisions of chapter 7-6, "Parking Infractions," B.R.C. 1981, to dispute any of the underlying parking tickets not in default. Whether or not the vehicle was parked in violation of the provision alleged shall be the only issue at such a trial;

(2) A hearing, if a motion is filed with the court to set aside the default on any ticket on the ground that the notice required by this section before a default may be entered was not properly given;

(3) An administrative hearing to dispute the applicability of the scofflaw fee on the ground that a parking ticket was not served. Such hearing shall be conducted in the same manner as, and where applicable shall be combined with, the hearing under subsection 7-7-7(f), B.R.C. 1981, concerning the immobilization or impoundment fee. The fact that a person is found not guilty of one or all of the underlying parking tickets is not relevant to the issue of the applicability of the scofflaw fee; and

(4) A post-impoundment hearing to challenge the immobilization or impoundment fee as prescribed by subsection 7-7-7(f), B.R.C. 1981.

Ordinance Nos. 4969 (1986); 5039 (1987); 5617 (1994); 5686 (1994); 5760 (1995); 7193 (2002); 7408 (2005).

2-6-8 **Booting.**

(a) At the discretion of a peace officer, any vehicle on the scofflaw list subject to impoundment under section 2-6-7, "Parking Infraction Office And Scofflaw List," B.R.C. 1981, may first be immobilized by installing on such vehicle a device known as a "boot," which clamps and locks on to a wheel of the vehicle and impedes movement of such vehicle.

(b) The person installing the boot shall leave under the windshield wiper or otherwise attach to such vehicle a notice advising the owner that such vehicle has been booted by the City of Boulder for failure to pay or contest one or more parking tickets, that release of the boot may be obtained by paying the fines and fees due or by posting a bond to cover such amounts, that unless such payments are made, the vehicle will be impounded, and that it is unlawful for any person to remove or attempt to remove the boot, to damage the boot, or to move the vehicle with the boot attached.

(c) No parking restriction otherwise applicable to the vehicle applies while the vehicle is immobilized by a boot installed under the provisions of this section.

(d) Upon notification that the vehicle has been removed from the scofflaw list, the court administrator shall promptly remove the boot from such vehicle.

2-6-9 **Misconduct In Office.**

No officer of the municipal court or any city employee or agent receiving or having custody of any court bond, court cost, fine, penalty, or forfeiture, shall fail forthwith to remit it in accordance with the direction of the city manager. Violation of this section constitutes misconduct in office and is a ground for removal therefrom.

2-6-10 **Contempt.**

(a) Any person who fails to appear in response to any summons or subpoena served on such person commits contempt of court and upon proof thereof, in a hearing appropriate to the case, is subject to a fine of not more than $1,000.00, a sentence of not more than ninety days in jail, or both such fine and imprisonment.

(b) The judge may punish other contempts of court by a fine of not more than $1,000.00, imprisonment of not more than ninety days in jail, or both such fine and imprisonment upon proof thereof, after a hearing appropriate to the case.

Ordinance No. 7252 (2002).

2-6-11 **Municipal Court Cases To Be Public.**

All cases in the municipal court are open to the public.

2-6-12 City Attorney Is Prosecutor.

The city attorney or delegate thereof shall act as the prosecutor and represent the city in all municipal court proceedings as appropriate, with all the privileges, immunities, powers, and duties of such office.

2-6-13 Initiation Of Proceedings In Municipal Court.

(a) A proceeding in the municipal court is initiated by the filing of a complaint or the service of a summons and complaint; by any means provided in this code, the statutes of this state, or the Colorado Municipal Court Rules; or in any other manner that provides due process of law.

(b) A parking ticket is a form of summons and complaint[1].

(c) In a municipal court action it is sufficient in a complaint or summons and complaint to charge a violation of the charter, this code, or any ordinance of the city alleged to have been violated by referring to the section describing such violation, without referring to any subsection under the section violated.

(d) A peace officer may serve any process issued by the municipal court anywhere within Boulder County[2].

2-6-14 Penalty Assessment.

(a) The presiding judge may designate offenses under this code that are subject to the penalty assessment procedure and the amount of the assessment for each violation. But no violation for which provision for a plea of guilty at the violations bureau is not made may be designated as subject to the penalty assessment procedure. The judge shall notify the city manager, the city attorney, and the chief of police in writing of such designation and amount and any changes thereto.

(b) When a peace officer is authorized to serve a summons and complaint on any person, the officer may issue a penalty assessment notice if:

(1) The offense has been designated by the presiding judge;

(2) Only one offense has arisen out of the same episode of violation;

(3) No significant hazard to life or property was involved;

(4) The offense does not appear to be an intentional or reckless violation;

(5) A police officer would not be entitled to incarcerate the defendant under section 2-6-18, "Authority To Arrest And Incarcerate," B.R.C. 1981; and

(6) The circumstances reasonably persuade the officer that the person is likely to comply with the terms of the penalty assessment notice. Such circumstances may include the officer accompanying the person to a post office or mailbox and witnessing the deposit in the mail of the notice with payment of the fine attached.

[1]See Patterson v. Cronin, 650 P.2d 531 (Colo.) and paragraph 7-6-5(a)(1), B.R.C. 1981.
[2]31-4-112, C.R.S.

(c) Service of a penalty assessment notice upon the recipient is complete upon signature by the person of the penalty assessment acknowledgement of guilt or promise to appear. At that point, the person is obligated either to pay the specified fine or penalty by mail at the place and within the time specified on the notice or to appear at the place and time specified on the notice to be arraigned by the court.

(d) Payment of a penalty assessment by mail or at the violations bureau after signature of the penalty assessment "acknowledgement of guilt or promise to appear" constitutes:

(1) A plea of guilty;

(2) A conviction for the purposes of any penalty enhancement provisions on future offenses; and

(3) If driving a motor vehicle is involved, a conviction within the meaning of subsections 42-2-119, 42-2-123, and 42-4-1510, C.R.S., as amended.

(e) If a person served with a penalty assessment notice chooses not to plead guilty, such person shall appear as required in the notice. If the person withdraws a plea of not guilty and enters a guilty plea to the judge or, upon trial, if the person is found guilty, the fine imposed is that specified in the notice for the offense of which the person was found guilty. Court costs shall also be imposed, as prescribed by subsection 2-6-35(b), B.R.C. 1981.

(f) If a person who has paid a penalty assessment by mail appears at the time and place specified in the notice and petitions the judge to withdraw the plea of guilty, the petition shall be granted, and the person shall be arraigned. In such instance the amount paid shall be considered the bond. If such person appears and petitions the judge after the time for appearance has passed, the petition shall be entertained only upon a showing of excusable neglect, and granted only upon a prima facie showing of a meritorious defense, and then only if the appearance is made within thirty days after the time for appearance specified in the notice of penalty assessment.

2-6-15 Form Of Summons, Summons And Complaint, Complaint, Penalty Assessment Notice, And Parking Ticket.

(a) After consulting the city manager and city attorney, the presiding judge shall approve a standard summons and complaint form for routine use by peace officers that meets all the legal requisites of a summons and complaint and contains a place for the defendant to sign a promise to appear. The municipal court shall print and distribute the form in appropriate amounts to peace officers and may combine it with a penalty assessment notice.

(b) After consulting the city manager and city attorney, the presiding judge shall approve a standard penalty assessment notice that meets all the requirements of a summons and complaint except that it contains a place for the defendant to sign an acknowledgement of guilt or promise to appear, specifies the requirement that the defendant plead guilty by paying the fine or appear to answer the charge at the specified time and place; and contains a place to record the license number of the defendant's vehicle, if involved, the defendant's driver's license number, if any, the points to be assessed, if any, in accordance with section 42-2-123, C.R.S., as amended, and the fine. The municipal court shall print and distribute the form in appropriate amounts to peace officers. Failure of a peace officer to record any or all of the additional information correctly or at all is not grounds for dismissal, but failure to indicate points or the indication of too few points for the offense may not be corrected by amendment or otherwise after a record of conviction by acknowledgement of guilt and payment of fine under the penalty assessment procedure has been sent to the Colorado Division of Motor Vehicles.

(c) After consulting with the city manager and city attorney, the presiding judge may approve a combined summons and complaint and penalty assessment notice form.

(d) After consulting the city manager and city attorney, the presiding judge shall approve as to form a parking summons and complaint form designed to be served in accordance with paragraph 7-6-5(a)(1), B.R.C. 1981. The city manager shall print and distribute this form.

(e) Nothing in this chapter shall be construed to invalidate the use of any other form or type of summons, summons and complaint, or complaint that provides due process of law.

2-6-16 **Authority To Detain Temporarily.**

(a) A police officer may stop any person who the officer reasonably suspects is committing, has committed, or is about to commit a violation of the charter, this code or any ordinance of the city and may require that person to give his or her name, and address, identification if available, and an explanation of his or her actions.

(b) When a police officer has stopped a person for questioning pursuant to this subsection and reasonably suspects that the officer's personal safety requires it, the officer may conduct a pat-down search of that person for weapons.

(c) A police officer may stop and temporarily detain a person for the purpose of issuing or serving a summons or summons and complaint.

(d) A stop and temporary detention under the authority of this section constitutes an arrest for the purposes of section 5-5-2, "Resisting Arrest," B.R.C. 1981, but not otherwise.

Ordinance No. 5377 (1991).

2-6-17 **Authority To Charge.**

A peace officer may issue a summons and complaint or sign a complaint against any person for any violation of the charter, this code, or any ordinance of the city if:

(a) The violation has been or is being committed by a person in the officer's presence; or

(b) The officer has probable cause to believe that a violation has been or is being committed by the person and that the person has been or is committing it.

2-6-18 **Authority To Arrest And Incarcerate.**

(a) A police officer may arrest a person for a violation of the charter, this code, or any ordinance of the city if:

(1) The violation has been or is being committed by a person in the officer's presence; or

(2) The officer has probable cause to believe that a violation has been or is being committed by the person and that the person has been or is committing it.

(b) Whenever any police officer is authorized by this code to arrest any person, the officer has the authority to incarcerate that person if the officer has probable cause to believe that one or more of the following conditions exist:

(1) The person is not likely to desist from the conduct alleged to constitute a violation after issuance of a summons;

(2) The person is unlikely to appear in municipal court in response to a summons (but the fact that the defendant does not reside in the city is not alone such probable cause);

(3) The person refuses or is unable to post the bond required by this chapter;

(4) The person refuses service of a summons;

(5) The person refuses to sign the promise of appearance, if any, on the summons;

(6) The person refuses to identify himself or herself by giving complete name and address verifiable by reasonable supporting data; or

(7) The person falsely identifies himself or herself.

(c) A police officer shall incarcerate any person when the officer has a warrant or writ commanding that such person be arrested or has received information, which the officer reasonably believes to be reliable, that such warrant or writ exists.

2-6-19 **Booking.**

(a) Any person incarcerated solely because of inability to verify identity by reasonable supporting data shall be released by the booking officer after the booking procedure if the person signs a promise to appear.

(b) The booking officer shall release any person not arrested on a warrant or writ upon posting of the bond according to the schedule specified by the municipal court or upon order of a judge or upon order of any referee appointed for that purpose by a judge or upon a personal recognizance bond in the amount specified in the bond schedule on the order of any police officer of the rank of sergeant or above.

(c) Persons arrested on a warrant or writ shall be disposed of according to the command of the warrant or writ.

(d) Persons not released as provided in this section shall be held in custody as provided in subsection 2-6-24(e), B.R.C. 1981.

2-6-20 **Release.**

(a) Except when arresting on a warrant or writ, at any stage of the process from stopping to charging to incarceration up to the booking stage a police officer, at the officer's discretion, may:

(1) Issue the person a summons without arrest or incarceration;

(2) Detain the person and subsequently release with or without the issuance of a summons;

(3) Arrest the person and subsequently release with or without booking or incarceration or issuance of a summons.

(b) At and after booking, officers are governed by the provisions of section 2-6-19, "Booking," B.R.C. 1981.

2-6-21 **Protective Custody.**

Nothing in this code shall be construed to lessen the authority of a police officer to take a person into "protective custody" in compliance with state law, or to assist any person to obtain medical care who, in the opinion of the police officer, is in need of medical care by reason of injury or physical or mental condition.

2-6-22 **Use Of Force.**

An arrest may be made on any day and at any time of the day or night. All necessary and reasonable force may be used in making an arrest. All necessary and reasonable force may be used to effect an entry upon any building or property or part thereof to make an authorized arrest.

2-6-23 **Court Issued Warrants And Summons.**

(a) If a person fails to appear in court as required by a summons, fails to appear at any post-arraignment proceeding, or fails to comply with an order of the municipal court or a condition of release on bond, the judge may issue a warrant for the person's arrest.

(b) If any person fails to appear in municipal court as required by a subpoena or fails to comply with any subsequent order of the judge premised upon such subpoena, the judge may issue a warrant for the person's arrest.

(c) Upon the filing of a properly executed complaint by any person and with the agreement of the city attorney, the judge may issue a warrant for the arrest of an individual if the complaint is accompanied by an affidavit that sets forth facts sufficient to show probable cause to believe the alleged violation has been committed, that the individual accused has committed it, and that the offense and conditions are such that the defendant could be incarcerated as provided in section 2-6-18, "Authority To Arrest And Incarcerate," B.R.C. 1981. If the individual may not be incarcerated, the court shall issue a summons.

(d) Each municipal court warrant shall state the name of the person to be arrested, the charter, code, or ordinance section alleged to have been violated, the date and place of the alleged violation, that the person is alleged to have committed the offense, and the bond set for release on bail after arrest.

2-6-24 **Posting Bond.**

(a) Each person served with a summons who has signed a promise to appear is deemed to have given a personal recognizance in the amount of bond set for the violation on the bond schedule of the presiding judge.

(b) Each person served with a summons for violation of title 7, "Regulation Of Vehicles, Pedestrians, And Parking," B.R.C. 1981, whose driver's license or other identification does not show residence in the states (other than the State of Colorado) that have signed the "Nonresident Violator Compact[1]" shall post a cash bond to secure appearance at arraignment.

(1) Such bonds may be posted at the municipal court, at the headquarters of the city police department if the municipal court is not open, or by the defendant mailing a cash deposit to the municipal court in an envelope furnished by the citing officer with the citing officer as witness to the deposit of the funds in a mailbox.

[1]24-60-2101, C.R.S.

(2) A police officer of the rank of sergeant or above may waive the posting of a cash bond in cases of undue hardship and substitute therefor a written personal recognizance bond in a sum certain, according to the bond schedule set by the presiding judge.

(c) In order to secure appearance at trial, sentencing, and all other court proceedings, all cash, surety, and personal recognizance bonds posted prior to arraignment shall be continued for all cases not disposed of at arraignment, unless changed or modified by the judge at arraignment or in some other proceeding, in which case such bond shall be continued. Persons setting cases for trial who have not previously posted a cash bond shall post a cash bond in an amount established by the judge if the person has any history of failure to appear. In such cases the judge may accept personal recognizance bonds in a sum certain from indigent persons in lieu of cash bonds. In all other cases the judge may require a cash bond, or may continue, increase, or decrease any personal recognizance bond in the judge's discretion.

(d) The presiding judge shall establish a bond schedule of amounts that must be deposited to qualify for bail. The schedule shall be available at all times at the Boulder County jail and the city police department. If a person is arrested upon a warrant issued by the judge with bond set forth on the warrant, or if the person can meet the requirements of an applicable order of the judge, the person shall be released on bail. A booking officer shall promptly inform the defendant of the applicable bond requirements.

(e) If the person does not post a required bond, the person shall be brought before the judge or a referee appointed thereby to establish conditions of release (including, without limitation, a bond) pending arraignment before the judge. The conditions shall be in writing and set forth the date, time, and place of the person's appearance before the judge. The release conditions established by a referee may be modified by the judge, but except for the requirements of subsection (c) of this section, unless so modified, remain in effect until termination of the court proceeding against the person.

(f) The judge or referee of the municipal court may accept one or a combination of the following bonds:

(1) A personal recognizance consisting of the person's promise to appear in court for all proceedings and agreement to forfeit a sum certain for failure to appear;

(2) A cash or surety bond secured by the undertakings of a corporate or private surety acceptable to the judge or referee or by the deposit of an equal amount of cash or any other property in lieu thereof.

(g) In addition to the bonds set forth in subsection (f) of this section, the judge or referee may impose conditions of release, including, without limitation:

(1) Releasing the person into the care of the qualified person or organization responsible for supervising the defendant and assisting the defendant to appear in court;

(2) Imposing reasonable restrictions on the person's activities, movements, associations, and residences;

(3) Releasing the person during working hours but requiring the person to return to custody at specified times; or

(4) Imposing any other reasonable restrictions and conditions designed to assure the person's appearance before the municipal court.

(h) Any bond that may be posted or fine that may be paid in cash may also be paid by check, if the police or municipal court officer receiving such bond is satisfied that the check will be honored. The court administrator may enter into an agreement with one or more credit card companies for payments of bonds, costs, or fines by credit card and establish the conditions under which police or municipal court officials may accept payment by credit card.

Ordinance Nos. 4969 (1986); 5802 (1996); 7193 (2002); 7252 (2002).

2-6-25 **Forfeiture Of Bond And Default Judgment.**

(a) If a defendant in any case before the municipal court fails to appear according to the terms, requirements, and conditions of the appearance bond or appears and departs the court without leave, the bond shall be forfeited. If the bond was a personal recognizance bond, the judge may issue a writ of execution in the amount of the bond or may issue an arrest warrant with bond, if any, set in an amount determined by the judge, unless a default judgment is entered under the provisions of subsection (b) of this section.

(b) If the defendant in any case before the municipal court involving a violation for which jail is not a possible penalty and the fine cannot exceed $500.00 fails to appear for arraignment, any hearing, or trial, the judge may enter a default judgment against the defendant. In the case of a defendant which is not a natural person, the $500.00 limit does not apply. The amount of the default judgment shall be the appropriate penalty assessed after a finding of guilt or liability, the amount of any forfeited personal recognizance bond, the docket fee, and any additional costs assessable. The judge may set aside a judgment entered under this subsection on a showing of good cause or excusable neglect by the defendant, but only on motion to set aside made to the court not more than thirty days after entry of the default judgment. If a default judgment is entered, no warrant shall issue for the arrest of the defendant. A default judgment not timely set aside may only be satisfied by payment of the judgment. Any cash bond forfeit or payment on a forfeited bond by a surety shall not be applied against the judgment.

(c) If a surety bond is forfeited in a municipal court action, the surety shall pay the bond amount into the court within fourteen days of the forfeiture.

(d) The surety upon a bond forfeited in a municipal court action may apply to the judge for a return of the whole or part of the bond paid to the court by application in writing supported by an affidavit setting forth the grounds for the demand. Upon a showing of good cause for the return of the whole or a part of the bond amount, the judge shall order the court administrator to pay the amount determined by the judge to be due to the surety. The court shall make a verbatim record of all such proceedings.

Ordinance Nos. 5802 (1996); 7408 (2005).

2-6-26 **Deferred Sentence.**

(a) In any case in which the defendant has entered a plea of guilty, the judge accepting the plea has the power, with the written consent of the defendant and the defendant's attorney of record, if any, and the city attorney, to continue the case for a period not to exceed two years from the date of entry of such plea for the purpose of deferring judgment and sentence upon such plea. With the consent of the city attorney, the violations bureau may accept any plea of guilty entered before it under the provisions of this section and continue the case. But in such case, no jail term may be imposed upon proof of breach.

(b) Prior to entrance of a plea to be followed by a deferred judgment and sentence, the city attorney is authorized to enter into a written stipulation, to be signed by the defendant, and the defendant's attorney of record, if any, under which the defendant is obligated to adhere to such stipulation. The stipulation may contain any conditions listed in subsection 2-6-37(f), B.R.C. 1981; payment of the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, in administrative costs is one condition of every such stipulation. Upon full compliance with such conditions by the defendant, the plea or acknowledgment previously entered shall be withdrawn and the action against the defendant dismissed with prejudice. Such stipulation shall specifically provide that, upon a breach by the defendant of any condition, the judge shall enter judgment and impose sentence upon the previously entered plea of guilty. Whether a breach of condition has occurred shall be determined by the court upon application of the city attorney and upon notice of hearing thereon of not less than five days to the defendant or the defendant's attorney of record, if any, at the address given by the defendant on the stipulation. The burden of proof at such hearing is on the city attorney by a preponderance of the evidence, and the judge shall apply the rules of evidence for civil non-jury cases, but may receive and consider evidence not admissible under such rules if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(c) In signing a stipulation by which it is provided that judgment and sentence shall be deferred for a time certain, a defendant thereby waives all rights to a speedy trial and a prompt sentence.

Ordinance Nos. 5123 (1988); 5760 (1995).

2-6-27 **Deferred Prosecution.**

(a) In any case the judge may, prior to trial or entry of a plea of guilty and with the consent of the defendant, the defendant's attorney of record, if any, and the city attorney, order the prosecution of the offense to be deferred for a period not to exceed two years. Such deferral may be conditioned by written stipulation in the manner provided in subsection 2-6-26(b), B.R.C. 1981.

(b) Upon the defendant's full compliance with such conditions, the charge against the defendant shall be dismissed with prejudice. If any condition is violated, the defendant shall be tried for the offense for which the defendant is charged. Whether a breach of condition has occurred shall be determined by the court upon application of the city attorney and upon notice of hearing thereon of not less than five days to the defendant or the defendant's attorney of record, if any, at the address given by the defendant on the stipulation. The burden of proof at such hearing is on the city by a preponderance of the evidence, and the judge shall apply the rules of evidence for civil non-jury cases, but may receive and consider evidence not admissible under such rules if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(c) Upon consenting to a deferred prosecution as provided in this section, the defendant shall execute a written waiver of defendant's right to a speedy trial. Consent to a deferred prosecution under this section shall not be construed as an admission of guilt, nor shall such consent be admitted in evidence in a trial for the offense for which the defendant is charged.

Ordinance No. 4969 (1986).

2-6-28 **Jury Trial.**

(a) In proceedings where the defendant has a right under applicable state or federal constitution or law to trial by jury, the defendant may request a jury trial, but in all other proceedings all questions of fact and law shall be decided by the judge or referee[1].

(b) The city attorney may demand a trial by jury of any defendant in any case in which the defendant has a right to trial by jury, in which event no jury fees are required to be paid by any party.

2-6-29 **Jurors And Jury List.**

(a) Qualifications and exemptions of jurors in municipal court are those provided by state law[2].

(b) In the last quarter of each year, and at such other times as the presiding judge directs, the jury commissioner shall prepare a list of persons in the city who are qualified to serve as jurors and not exempt from jury service. A copy of the juror list that does not contain addresses of the jurors shall be kept in the jury commissioner's office for public inspection.

(c) The jury commissioner shall draw jurors under the procedures prescribed by the Colorado Uniform Jury Selection and Service Act[3].

(d) Absent a court order to the contrary, if counsel or pro se parties request a list of prospective jurors containing the jurors' names and addresses, the jury commissioner shall:

(1) Refer the request to the state court administrator for action consistent with state law if the city has a contract with that agency; or

(2) If the city does not have such a contract, refer the request to the presiding judge of the municipal court, who shall consider the requirements of the state statutes on the subject, the needs of the parties, and the protection of prospective jurors.

Ordinance No. 7252 (2002).

2-6-30 **Juror Fees.**

Jurors called before the municipal court under this chapter shall receive a fee of the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981.

Ordinance No. 5760 (1995).

2-6-31 **Juror Violations.**

(a) No person shall refuse or neglect to obey a lawful mandate, order, or direction of the jury commissioner or shall hinder, delay, or obstruct the service of any process issued by the commissioner, or shall refuse or neglect to appear, or shall refuse to answer any question touching upon the person's qualifications or the qualifications of any other person to serve as a juror.

[1]Charter section 87.
[2]13-71-107 through 114, C.R.S.
[3]Colorado Uniform Jury Selection and Service Act, 13-71-101, C.R.S.

(b) No person shall perform any act for the purpose of placing upon the jury list or omitting from the jury list such person's own name or the name of any other person.

(c) No jury commissioner or designate thereof or municipal court clerk shall place on or take from the jury list any name other than according to this chapter.

2-6-32 **Fee For Service Of Subpoena.**

Repealed.

Ordinance No. 7008 (1999).

2-6-33 **Witness Fees.**

Every witness subpoenaed and every witness who appears voluntarily at the written request of the city who makes claim therefor at the time of appearance may receive a witness fee of the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981. But no city officer or employee may receive such witness fee.

Ordinance No. 5760 (1995).

2-6-34 **Witness Immunity.**

When in the judgment of the city attorney the testimony of any witness or the production of any books, papers, or other evidence by any witness in any case or proceeding before the municipal court involving any violation of the penal laws of the city is necessary in the public interest, the city attorney may request that the judge instruct the witness to testify or produce evidence subject to the provisions of this section concerning witness immunity. Upon order of the judge, the witness shall not be excused from testifying or from producing books, papers, or other evidence on the grounds that the testimony required of the witness may tend to incriminate the witness or subject the witness to a penalty or forfeiture; but no such witness may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the witness is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, nor may testimony so compelled be used as evidence in any criminal proceeding against the witness in any court, except a prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

2-6-35 **Court Costs.**

(a) In any prosecution for violation of the charter, this code or any municipal ordinance based upon the complaint of any person other than a police officer or other employee of the city, if the complaining witness who signed a complaint fails or refuses to testify at the time of trial or if it appears to the judge, in a hearing under the procedures of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, that there was no reasonable ground for such complaint or that it was maliciously or imprudently entered, the judge in the judge's discretion may assess costs and penalties against such complaining witness in an amount not exceeding the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981.

(b) The judge shall assess court costs in the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, which shall be assessed

against all defendants upon entry of a conviction at or subsequent to arraignment, but the judge may suspend the costs in the interest of justice. No costs shall be assessed when conviction is by a plea of guilty entered by mail pursuant to the penalty assessment procedure prescribed by section 2-6-14, "Penalty Assessment," B.R.C. 1981, or at the violations bureau before arraignment pursuant to the procedure prescribed by subsection 2-6-6(b), B.R.C. 1981.

(c) The judge shall assess against a convicted defendant for all witnesses subpoenaed and appearing at the trial the fees prescribed by section 2-6-33, "Witness Fees," B.R.C. 1981, but may suspend these costs in the interests of justice.

(d) The judge may assess against a convicted defendant any other costs similar to those authorized by state law for proceedings in state courts including, without limitation, jury fees, and deposition costs[1].

(e) Costs for persons convicted after trial to the court are the amounts specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981.

(f) The judge shall assess the statutory administrative processing cost specified in section 42-2-118(1)(c), C.R.S., for any person against whom an outstanding judgment or warrant of this court was entered pursuant to section 42-4-1709(7), C.R.S., and shall remit half of the fee to the Colorado Department of Revenue as required by law.

(g) Unpaid costs may be collected only in the manner of any other civil judgment.

Ordinance Nos. 4879 (1985); 5081 (1987); 5525 (1992); 5760 (1995); 5802 (1996).

2-6-36 Sentencing, Consideration Of Presentence Confinement.

In sentencing a defendant to imprisonment, the sentencing judge shall take into consideration that part of any presentence confinement that the defendant has undergone with respect to the violation for which the defendant is to be sentenced. The judge shall state in pronouncing sentence, and the judgment shall recite what consideration has been given, but no sentence shall be set aside or modified on review because of alleged failure to give such consideration unless the sentence imposed is longer than the maximum permitted under this code for the offense less the amount of allowable presentence confinement and the judgment fails to recite that consideration has been given.

2-6-37 Sentence, Execution And Writ Of Commitment, Suspension, Probation And Default.

(a) The judge may sentence any person found guilty of a violation of the charter, this code, or any ordinance of the city to a fine, imprisonment, or both such fine and imprisonment as provided for such violation, together with allowable costs.

(b) If a defendant against whom any fine or penalty is assessed upon conviction fails to pay or satisfy it as directed by the judge, the judge may issue a writ of execution to provide for the satisfaction of such sentence.

(c) If a defendant is sentenced to imprisonment, the judge shall issue a writ of commitment directing the Boulder County Sheriff to take the defendant into custody and keep the defendant safely until the sentence is satisfied.

[1]16-11-502, C.R.S.

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(d) The judge may suspend, upon condition, in whole or in part, for two years or such stated shorter time as the judge deems appropriate, any fine, penalty, or imprisonment imposed against a defendant for a violation of the charter, this code, or any ordinance of the city, except a required minimum fine, penalty, or imprisonment. If no specific fine, penalty, or imprisonment is imposed, such sentence shall be considered to be a probation.

(e) The judge may sentence a defendant to probation for two years, or such stated shorter time as the judge deems appropriate, under such terms and conditions as deemed appropriate, except that any required minimum fine, penalty, or imprisonment shall be paid or served as a condition of probation. The judge may impose a probation supervision fee in the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, and payment of any such fee imposed shall be a condition of probation.

(f) The judge may impose any of the following conditions for a suspended sentence or probation:

(1) Refraining from violating any federal, state, or city law within the probation period following the conviction; unless specifically provided otherwise by the sentencing judge, this is a condition of every suspended sentence or probation;

(2) Restitution for damage or injury caused during the commission of the violation for which the defendant was convicted;

(3) Attendance at one or more sessions of a driver training school;

(4) Performance of a specified number of hours, not exceeding one hundred twenty, of community service tasks that will not injure the defendant's health or welfare. The judge may impose a community service administrative fee in the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, to cover the additional administrative costs;

(5) Participation in mental health evaluation and treatment; and

(6) Any other lawful condition reasonably related to the violation.

(g) Upon proof by a preponderance of the evidence of breach of any condition of a suspended sentence or probation after appropriate notice and a hearing thereon, the judge may forthwith execute any suspended sentence or, in case of a breach of probation, impose any sentence that could have been imposed at the time of entry of judgment. The judge shall apply the rules of evidence for civil non-jury cases, but may receive and consider evidence not admissible under such rules if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(h) The judge may stay execution to enable a defendant to pay a fine or penalty at a later date or in installments. If a defendant fails to meet the terms of the stay of execution allowed under this subsection, the judge shall issue a writ of execution and place the defendant in jail until such sentence is paid or satisfied.

(i) Every person against whom any fine or penalty is assessed under the charter, this code, or any ordinance of the city who refuses or neglects to pay it when demanded or violates any condition placed thereon by a judge may be committed to jail.

(j) A defendant imprisoned for refusing to pay a fine or penalty satisfies such fine at a rate set by the judge, but in no event at less than $6.00 per day of twenty-four hours, which is the rate if no rate of satisfaction is set forth. But no person shall be imprisoned under the terms of this section for failure to pay a fine or penalty or satisfy the terms of the stay of execution

or installment payment if such person satisfactorily demonstrates to the judge that the person has no estate whatsoever from which to pay such fine or part thereof, in which case the judge shall discharge the person from such fine or penalty.

Ordinance Nos. 4879 (1985); 5760 (1995); 7240 (2002).

2-6-38 **Confinement.**

The city shall use the jail of Boulder County for confinement of any person taken into custody for violation of the charter, this code or any ordinance of the city or imprisoned by order of the judge. In an emergency or civil disorder or if the city manager determines that there is insufficient room in the county jail or other places where prisoners are confined, the manager may designate temporary places of booking, temporary detention, or confinement, but shall not maintain them beyond a reasonable time after the emergency, civil disorder, or space limitation ends.

2-7-1

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 7 Code Of Conduct[1]

Section:

2-7-1 Purpose, Legislative Intent And Findings.

(a) Purpose: The purpose of this chapter is to protect the integrity of city government by:

(1) Defining and forbidding certain conflicts of interest that if left unchecked tend to compromise the ability of elected and appointed public officials and public employees to perform their duties without improper financial influence.

(2) Defining and discouraging certain actions that may create an appearance of impropriety that undermines public trust in the accountability and loyalty of elected and appointed public officials and employees.

(3) Protecting the integrity of city government by providing standards of conduct and guidelines for elected and appointed public officials and public employees to follow when their private interests as residents conflict with their public duties.

(4) Fostering public trust by defining standards of honest government and prohibiting the use of public office for private gain.

(b) Legislative Intent: It is the intent of the city council to:

(1) Prohibit public officials and public employees from acting on any matter in which he or she may have a conflict of interest.

(2) Establish aspirational guidelines to encourage public officials and public employees to avoid any appearance of impropriety.

(3) Require adherence to any provision of state or federal law that imposes a higher standard of conduct than this chapter.

[1]Adopted by Ordinance No. 4677. Amended by Ordinance Nos. 5396, 7286. Derived from Ordinance No. 3792. Repealed and reenacted by Ordinance No. 7442.

(c) Findings: The city council finds and determines that this chapter is necessary to protect the public health, safety, and welfare of the residents of Boulder.

2-7-2 Conflicts Of Interest Prohibited.

(a) Conflicts Prohibited: No public official or public employee shall make or participate in the making of any official action in which he or she knows or should have known that he or she would have a conflict of interest.

(b) Disclosure Required: Each public official or public employee shall disclose any conflict of interest and disqualify him or herself from participating in the relevant action as provided in section 2-7-10, "Disclosure And Recusal Procedure," B.R.C. 1981.

2-7-3 Use Of Public Office Or Confidential Information For Financial Gain.

(a) Use Of Position For Gain Prohibited: No city council member, employee, or appointee to a city board, commission, task force or similar body shall use his or her public office or position for financial gain.

(b) Use Of Confidential Information For Financial Gain Prohibited: No city council member, employee, or appointee to a city board, commission, task force or similar body shall use or disclose confidential information obtained as a result of holding his or her public office or position, to obtain financial gain, whether for personal gain; gain for his or her relative; gain of any property or entity in which the official or employee has a substantial interest; or gain for any person or for any entity with whom the official or employee is negotiating for or has any arrangement concerning prospective employment.

2-7-4 Duty To Maintain The Confidentiality Of Privileged Information.

(a) Duty Of A Member Of City Council, Board, Commission, Task Force Or Similar Body: No city council member or appointee to a city board, commission, task force or similar body shall disclose privileged or confidential information without a public majority vote granting the permission of the council or similar body that holds the privilege. The sanction for a member of the city council, board, commission, task force or similar body shall be censure of the body, reached by a majority vote of the body, not including the member charged with disclosing such confidential information.

(b) Duty Of A City Employee: No city employee shall disclose privileged or confidential information, obtained as a result of holding his or her public office or position, unless the employee has first received approval by the city manager acting upon the advice of the city attorney.

2-7-5 Gifts To Officials And Employees.

(a) Gifts Prohibited: No city council member or appointee to a city board, commission, task force or similar body, or city employee, or relative of such employee or official shall accept anything of value including, without limitation, a gift, a favor, or a promise of future employment if:

(1) The official or employee is in a position to take official action with regard to the donor; or

(2) The city has or is known to be likely to have a transactional, business, or regulatory relationship with the donor.

(b) Exceptions And Items Not Considered Gifts: The following shall not be considered gifts for purposes of this section, and it shall not be a violation of this chapter for a person to accept the same:

(1) Campaign contributions as permitted by law;

(2) An unsolicited, occasional non-pecuniary gift of a maximum amount of $50.00 or less in value. The maximum amount will be adjusted on January 1, 2006, and annually thereafter to reflect changes in the United States Bureau of Labor Statistics Consumer Price Index for the Denver-Boulder Consolidated Metropolitan Statistical Area for all Urban Consumers, All Goods, or its successor index;

(3) A gift from a relative;

(4) An award, publicly presented, in recognition of public service;

(5) Reasonable expenses paid by other governments or governmentally related organizations for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate in a panel, or represent the city;

(6) Items which are similarly available to all employees of the city or to the general public on the same terms and conditions; and

(7) A single unsolicited ticket given to a city council member and valued at not in excess of $150.00 to attend events open to the public on behalf of the city, such as awards dinners, nonprofit organization banquets and seminars, provided that:

(A) The ticket is offered only to the council member and has no resale value; and

(B) The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the city; and

(C) The ticket is not for a sporting event.

2-7-6 Prior Employment, Outside Employment, And Subsequent Employment.

(a) Prior Employment: No person shall be disqualified from service with the city as an official or employee solely because of his or her prior employment. Officials and employees shall not take official action with respect to their former employers for a period of six months from the date of termination of the prior employment.

(b) Disclosure Of Employment And Other Business Activities: All officials and employees, other than elected officials, shall report existing or proposed outside employment or other outside business interests that may affect their responsibilities to the city in writing to their appointing authorities prior to being appointed or hired. After being appointed or hired, all such people shall report any changes of employment or changes to outside business interests that may affect the person's responsibilities to the city, within thirty days after accepting the same. An employee that has received permission from the city manager may engage in outside employment or outside business interests.

(c) Disclosure By City Council Members: Members of the city council shall report any change in their employment status that could give rise to a conflict of interest under this chapter.

(d) Activities That Occur After Termination Of Employment Or Office: No former official or employee shall seek or obtain employment concerning matters upon which he or she took official action during his or her service with the city for six months following termination of office or employment. This provision may be waived by the city council or the city manager.

(e) Participation Of Former Officials Or Employees: No former official or employee shall appear before, or participate in, a city board, commission, task force or similar body on which he or she was a member or served directly as an employee concerning any matter or on which he or she took official action during his or her service with the city for twelve months following termination of office or employment. This prohibition may be waived by the city council by appointment or vote. This prohibition shall not apply to persons who appear before the city in their capacity as an elected official following termination of their office or employment with the city.

(f) Participation In Litigation After Termination: No former official shall engage in any action or litigation in which the city is involved on behalf of any other person or entity, if the action or litigation involves a matter upon which the person took official action during his or her service with the city for twelve months following termination of service with the city.

2-7-7 **Employment Of Relatives.**

(a) No official or employee shall appoint, hire, or advocate the appointment or hiring by the city any person who is his or her relative. In the event that an employee is concerned that the employee's decision to appoint, hire or advocate the appointment or hiring by the city a person who is the employee's relative may cause an appearance of violating this section, the employee may request that the city manager make such decision on the employee's behalf. Council-appointed officers may request the city council to make such an appointment or hiring decision on their behalf.

(b) The city may enter into transactions with companies, corporations or other business organizations that employ a relative of a city official or employee, provided that:

(1) The official or employee does not participate in the decision making that leads to hiring the company, corporation, or other business organization that employs his or her relative; or

(2) The business organization is a publicly-traded corporation that provides its services or products to the city on nondiscriminatory terms justified by the market facts and circumstances of each transaction; or

(3) The company, corporation, or business organization has been doing business with the city for at least one year prior to the date the city official's or employee's relative became employed by the company, corporation or other business organization, and the city official's or employee's relative is not directly employed upon matters involving the city and does not have his or her compensation tied in any manner to the success of the company, corporation, or other business organization, or its ability to obtain business or earn compensation from the city.

2-7-8 **Representing Others Before The City Prohibited.**

(a) City Council Members Barred From Representing Others: No city council member shall appear on behalf of himself or herself, or another person, before the city council or any city board, commission, task force or similar body. A city council member may be affiliated with a firm appearing on behalf of or employed by another person concerning any transaction with

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the city before such a body if the council member discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure And Recusal Procedure," B.R.C. 1981.

(b) Board, Commission Or Task Force Members Barred From Representing Others: An appointee to a city board, commission, task force or similar body may appear or be affiliated with a firm appearing concerning any transaction with the city under the following circumstances:

(1) An appointee may appear on his or her own behalf before the body of which he or she is a member to represent his or her personal interests, if the appointee discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure And Recusal Procedure," B.R.C. 1981, or before the city council;

(2) An appointee may appear on behalf of another person before any city body except the city council or the body of which the appointee is a member;

(3) A firm with which an appointee is affiliated may not appear on behalf of or be employed by another person concerning any transaction before the body of which the appointee is a member unless the appointee discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure And Recusal Procedure," B.R.C. 1981.

(c) City Employees Barred From Representing Others: No city employee shall appear on behalf of or be employed by another person concerning any transaction with the city or before the city council or any city board, commission, task force or similar body. An employee may appear before such a body on his or her own behalf or on behalf of such employee's spouse, parent, or child. Nothing in this chapter shall be deemed to prohibit the city manager from establishing additional policies and regulations to prevent conflicts of interest between city employees and the city.

(d) City Council Members And Municipal Court: No city council member who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm appearing on behalf of or employed by another person concerning any matter before the municipal court.

(e) City Employees And Municipal Court: No city employee who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm that appears on behalf of or is employed by another person concerning any matter before the municipal court. A non-attorney employee may appear before the municipal court on his or her own behalf, and an employee other than a municipal court judge may appear on behalf of such employee's spouse, parent, or child to the extent otherwise allowed by law. This authority is intended to allow employees to assist family members in matters before the municipal court to the extent permitted by law but not to promote the unauthorized practice of law.

(f) Board, Commission, Or Task Force Member And Municipal Court: An appointee to a city board, commission, task force or similar body may appear before the municipal court and may be affiliated with a firm appearing before the municipal court.

(g) Consent To Sue: No city council member or appointee to any city board, commission, task force or similar body shall be a party or by himself or herself or as an affiliate of a firm appear on behalf of a party in a civil law suit in which the city is an adverse party, unless the member or appointee first obtains the consent of the city council.

Ordinance No. 7517 (2007).

2-7-9 **Appearances Of Impropriety Discouraged.**

(a) These guidelines are intended to establish ethical goals and principles to help city council members, employees, and appointees to a city board, commission, task force or similar body to determine if their actions may cause an appearance of impropriety that will undermine the public's trust in local government.

(b) Violations of this section shall not constitute a violation of this chapter. Compliance with this section will not constitute a defense for violation of another subsection or section of this chapter.

(c) A city council member, employee, or appointee to a city board, commission, task force or similar body who determines that his or her actions may cause an appearance of impropriety should consider, but is not required to, disclose and recuse as prescribed by section 2-7-10, "Disclosure And Recusal Procedure," B.R.C. 1981, in the following circumstances:

(1) If the person is an employee of a state or federal government entity with a substantial interest in any transaction with the city;

(2) If the person has a close friend with a substantial interest in any transaction with the city, and the council member, appointee, or employee believes that the friendship would prevent such person from acting impartially with regard to the particular transaction;

(3) If the person has an interest in any transaction with the city that is personal or private in nature that would cause a reasonable person in the community to question the objectivity of the city council member, employee, or appointee to a city board, or commission;

(4) If the person is called upon to act in a quasi-judicial capacity in a decision regarding any of the situations described in paragraphs (c)(1), (c)(2), and (c)(3) of this section; or

(5) If the person owns or leases real property within six hundred feet from a parcel of property that is the subject of a transaction with the city upon which he or she must make a decision, and is not required to receive official notice of a quasi-judicial action of the city.

Ordinance No. 7453 (2006).

2-7-10 **Disclosure And Recusal Procedure.**

(a) Disclosure And Recusal: No person with a conflict of interest pursuant to subsection 2-7-2(a), B.R.C. 1981, and no person described in subsection 2-7-8(a) or (b), B.R.C. 1981, shall fail to give written notice of the interest described in such subsection to the city council or the city board, commission, task force or similar body of which the person is a member and the city manager as soon as reasonably possible after the interest has arisen. However, no written notice is required if such person discloses the conflict of interest on the record of a public meeting of the city council or the city board, commission, task force or similar body of which the person is a member. The interested council member, employee, or appointee shall thereafter:

(1) Refrain from voting upon or otherwise acting in an official capacity in such transaction;

(2) Physically absent himself or herself from the room in which a matter related to such transaction is being considered; and

(3) Not discuss any matter related to such transaction with any other member of the council, board, commission, task force, or similar body of which the person is a member.

(b) Recusal By The Council, Board, Commission, Task Force Or Similar Body: The city council and any city board, commission, task force or similar body may order recusal of one of its members if that member has an obligation to do so under this chapter and has failed to do so. Such an order is valid if reached after majority vote of the members of the body, not including the member whose recusal is sought, based on competent evidence.

2-7-11 **Enforcement.**

(a) Violations Prohibited: No person shall violate the requirements of this chapter.

(b) Complaints: A complaint alleging a violation of this chapter may be initiated by any of the following:

(1) Complaints Initiated By The City Manager Or City Attorney: The city manager or city attorney may initiate an investigation of any city employee, other than those directly reporting to the city council, if facts are alleged to the city manager in any form that, if true, would constitute a violation of the provisions of this chapter.

(2) Complaints Initiated By A Resident Or City Employee: A resident of the city or any city employee may initiate an investigation of any city council member, employee, or appointee to a city board, commission, task force or similar body by filing a sworn statement with the city clerk setting forth facts which, if true, would constitute a violation of a provision of this chapter.

(3) Complaints Initiated By The City Council: The city council may initiate an investigation of any of its employees, and of any city council member or appointee to a city board, commission, task force or similar body if facts are alleged to the council that, if true, would constitute a violation of the provisions of this chapter.

(c) Investigation Of A Complaint: The city manager (for city employees) or the city council (for all others) shall request the city attorney to conduct an investigation regarding a violation of this chapter. The city attorney may request that the city council appoint special counsel to investigate and prosecute any case that may cause the city attorney to have a conflict of interest or may cause an appearance of impropriety under the provisions of this chapter, or may violate any rule regarding professional responsibility.

(d) Response To All Complaints Required: A public official or body, or appointee thereof, conducting an investigation pursuant to subsection (b) of this section shall prepare written findings of fact and conclusions of law in response to all complaints that shall be made available to the public upon completion of the investigation. The response may include a finding that the complaint has no merit, is frivolous, is groundless, or is brought for purposes of harassment.

(e) Limitations: No action may be taken on any complaint that is filed later than twelve months after discovery of the facts supporting an allegation that a violation of this chapter occurred.

2-7-12 **Sanctions And Remedies For Violation.**

(a) Transactions Voidable: If a transaction including but not limited to a contract or sale is consummated contrary to the provisions of subsection 2-7-2(a), B.R.C. 1981, the city council may void the transaction.

(b) Removal By City Council: The city council may remove any of its employees and any member of a city board, commission, task force or similar body that it finds has willfully violated any provision of this chapter.

(c) Sanction Recommendations: If the party conducting an investigation pursuant to section 2-7-11, "Enforcement," B.R.C. 1981, finds that a city council member or an appointee to a city board, commission, task force or similar body, or employee has violated any provision of this chapter, the investigator shall provide its findings and recommendations to the city manager or city council, as appropriate, who or which in turn may take any of the following actions:

(1) In the case of a city council member, a motion of censure;

(2) In the case of a city employee, a motion for censure or a recommendation that the employee's appointing authority consider disciplining or discharging the employee;

(3) Removal as provided in subsection (b) of this section; or

(4) As an alternative or in addition to the sanctions imposed herein, the city council may resolve that any person or entity causing, inducing, or soliciting a public official or public employee to violate this chapter may not be involved in any transaction with the city, including but not limited to the award of any city contract, grant, loan or any other thing of value for a period of twelve months or that any such contract, grant, loan or thing of value be terminated, repaid or forfeited.

(d) Civil Remedies: Any person affected by a city transaction may commence a civil action in the District Court in and for the County of Boulder for equitable relief to enforce the provisions of this chapter upon a showing of willful violation of any provision of this chapter. Before filing such an action, the person shall present the claim to the city attorney to investigate in accordance with subsection 2-7-11(c), B.R.C. 1981. The city attorney or appointed special council shall have sixty days to act thereon. No civil action in district court pursuant to this subsection may be commenced later than twelve months after a violation of this chapter is alleged to have occurred.

(e) Criminal Sanctions: The city attorney, or special counsel authorized to act on behalf of the city attorney, acting on behalf of the people of the city, may prosecute any violation of this chapter in municipal court in the same manner that other municipal offenses are prosecuted.

(f) Defense: It shall be a defense to any charge of a violation of this chapter if the city council member, employee, or appointee to a city board, commission, task force or similar body obtained an advisory opinion pursuant to section 2-7-13, "Advisory Opinions And Outside Counsel Appointment," B.R.C. 1981, and was acting in accordance with the advice provided thereby.

2-7-13 **Advisory Opinions And Outside Counsel Appointment.**

(a) City Attorney To Provide Advisory Opinions: Any city council member, employee, or appointee to a city board, commission, task force or similar body may request an advisory opinion of the city attorney whenever a question arises as to the applicability of this chapter to a particular situation. The city attorney's advisory opinion may provide a specific defense from prosecution as set forth in section 2-7-12, "Sanctions And Remedies For Violation," B.R.C. 1981.

(b) Appointment Of Outside Counsel: If a significant controversy arises under this chapter, the city attorney may appoint a neutral outside counsel to assist in resolving the issue.

2-7-14 **Exemptions From Chapter.**

Nothing in this chapter shall be deemed to apply to a city employee or appointee to a city board, commission, task force or similar body who appears before any such body to urge action on a policy or issue of a general civic nature or to the relationship between the city council, the city, and a general improvement district. Participation in an improvement district shall not, in and of itself, constitute a conflict of interest for a city council or improvement district advisory committee decision concerning the district.

2-7-15 **Definitions.**

"Affiliated with" means an employee, partner, agent, stockholder, joint venturer, or corporate director of any business organization or a person who shares office space with such organization.

"Appear on behalf of" means to act as a witness, advocate, or expert or otherwise to support or oppose the position of another person.

"Conflict of interest" shall mean any situation in which a city council member, an appointee to a city board, commission, task force or similar body, or a city employee:

(a) Has a substantial interest in any transaction with the city;

(b) Has a relative with a substantial interest in any transaction with the city;

(c) Has a substantial interest as an affiliate of a firm with a substantial interest in any transaction with the city;

(d) Has a substantial interest as an affiliate of a firm appearing on behalf of or employed by a person with a substantial interest in any transaction with the city;

(e) Is an officer of an organization that has taken an official position on any transaction with the city;

(f) Is on the board of directors of an organization that is substantially affected by a transaction with the city;

(g) Is affiliated with a law, accounting, planning, or other professional firm that has substantial interest in any transaction with the city; or

(h) Is required to receive official notice of a quasi-judicial action from the city.

"Employment" means providing personal services as an employee or an independent contractor, with or without consideration.

"Gift" means any payment, entertainment, subscription, forbearance, service, or any other thing of value, rendering or deposit of money, which is transferred to a donee directly or in trust for his or her benefit. "Gift" shall not include campaign contributions as permitted by law.

"Official action" means any legislative, administrative, or quasi-judicial act of any public official or employee including, without limitation, participation in, or influence of, the decision-making process leading up to a vote or final determination.

"Public employee" or "employee" means any person holding any paid position of employment with the city, but shall not include consultants or contractors who have independent control over their work product.

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"Public official" or "official" means any person holding a position with the city by election and any person holding a position as an appointee of the city council or the city manager serving on any city board, commission, task force or similar body.

"Relative" means any person related to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including, without limitation, the following: spouse, parents, parents-in-law, children, children-in-law, brothers and sisters, brothers and sisters-in-law, grandparents, grandchildren, aunts, uncles, cousins, nephews, and nieces. A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

"Substantial interest" means a situation, including, without limitation, a financial stake in the outcome of a decision in which, considering all of the circumstances, would tend to influence the decision of a reasonable person faced with making the same decision.

"Transaction" means a contract of any kind; any sale or lease of any interest in land, material, supplies, or services; or any granting of a development right, any planning, zoning or land use or review process that may precede granting of a development right, license, permit, or application. A transaction does not include any decision which is legislative in nature that affects the entire membership of a class or a significant segment of the community in the same manner as the affected official or employee.

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 8 Purchasing Procedures[1]

Section:

2-8-1 Legislative Intent.

The purpose of this chapter is to prescribe purchasing procedures that the city will follow in contracting for constructing capital improvements, purchasing tangible property, obtaining insurance policies, purchased services, and consulting services, and selling obsolete, surplus, or unusable city property. To the extent inconsistent with state law, the council intends that these procedures supersede provisions of state law governing city purchasing procedures[2].

2-8-2 Definitions.

The following terms as used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Capital improvement" means a fixed public improvement, including, without limitation, streets, alleys, sidewalks, water or wastewater facilities, flood control facilities, traffic control devices, street lighting, parks, public structures, and landscaping.

"Consulting services" means services provided by individuals possessing specialized educational qualifications or practical expertise or professional certification, including, without limitation, architects, engineers, legal counsel, planners, accountants, and actuaries.

"Purchased services" means the purchase of labor, time, and effort, other than consulting services, which does not involve the delivery of tangible property or for which the tangible property component is minimal in relation to the personal services component, as determined by the city manager. This category includes, without limitation, maintenance and repair services and secretarial and clerical services.

[1]Adopted by Ordinance No. 5723. Derived from Resolution No. 72 and Ordinance Nos. 3550, 3569, 3578, 3659, 3671, 4732, 4879, 5175, 5249.
[2]24-91-103 and 38-26-107, C.R.S.

"Tangible property" means personal property and materials, including, without limitation, supplies, equipment, parts, printing, and consumable supplies, but not including insurance, real property leases, securities, or water rights.

Ordinance No. 5884 (1997).

2-8-3 When Formal Competitive Bidding Is Required.

(a) The city manager shall call for formal competitive bids on any of the following purchase categories: tangible property, capital improvement contracts, purchased services, consulting services, or insurance policies in an amount of $50,000.00 or more unless:

(1) The contract is awarded to a person who has been awarded a contract by another public agency through a competitive bid process within the last year and the unit prices in the city contract do not exceed the unit prices in the public agency contract;

(2) The contract is for goods to be re-sold by the city at retail; or

(3) The manager determines that it is not practical and advantageous to call for a competitive bid.

(b) The city manager shall call for formal competitive bids or conduct a public auction for the sale of any item of obsolete, surplus or unusable city property with an estimated value of at least $5,000.00 or for the sale of more than one item of such property with an estimated accumulative value in excess of $25,000.00. The property shall be sold to the highest bidder, unless the manager determines that it is not practical and advantageous to do so. The manager may require such bonds or other surety as the manager deems prudent to assure prompt payment. The city council shall be promptly notified by the city manager of any determination to donate or otherwise dispose of any item of city property with an estimated value of at least $5,000.00 or to donate or otherwise dispose of more than one item with an estimated accumulative value in excess of $25,000.00, other than through a formal competitive bid or a public auction. The city council may call this determination up for review within fourteen days of receiving notice.

(c) The city manager may call for competitive bids for any product or service.

Ordinance No. 6038 (1998).

2-8-4 Formal Bid Requirements.

(a) Each formal bid submitted to the city shall meet the following conditions:

(1) Each bid is signed, enclosed in a sealed envelope, and filed as stated in the advertisement for the bid.

(2) No bidder submits more than one bid.

(3) Each bid is accompanied by a check or bid bond equal to five percent of the bid, to be forfeited to the city if a bid is accepted and the bidder fails to sign a contract within fifteen days of acceptance, unless the city manager determines that it is not practical and advantageous to require a bid bond.

(b) The city manager may require that no bid be withdrawn for up to forty-five days after the date and time set for opening of bids, but a bid may be withdrawn up to twenty-four hours prior to expiration of the deadline for submitting bids.

(c) The city manager may waive technical irregularities in the bid requirements in this chapter or in the advertisement for bids, if the manager finds that such waiver does not compromise the integrity of the bidding process.

2-8-5 **Formal Bidding Procedure.**

(a) The city manager shall publish a notice of call for bids at least once in a newspaper of general circulation in the city containing:

(1) A description of the project or work to be performed or the product or service to be purchased;

(2) The location where copies of plans, specifications, and other documents may be examined;

(3) The time and place where bids will be received and time and place where bids will be opened;

(4) A statement that the city reserves the right to reject any or all bids and to waive any minor informalities or irregularities therein;

(5) Time and budget limitations, if applicable; and

(6) A statement that the proposal is prepared at the submitter's expense and becomes city record and therefore a public record.

(b) Among other conditions in a call for bids, the city manager may require standard brands of tangible property, recycled and environmentally preferable products, and a multiple-year relationship of up to five years with the selected bidder.

(c) Bids not submitted by the required deadline are ineligible for consideration and will not be opened, but the city manager may change the deadline at any time.

(d) Bids shall be opened by the director of finance and record or a representative designated by the director at the time and place provided in the advertisement for bids.

(e) Bidders may inspect the bids after they are opened in accordance with provisions of the Colorado Public Records Act[1]. However, if the city manager determines that all bids should be rejected and a re-bid may be necessary, the manager may hold the bid in confidence until the re-bid has been completed.

(f) Confidential data, if identified as such, will be held confidential upon request, if the request is made as part of the bid and if the city attorney determines that the data meet the requirements of the Colorado Public Records Act[1].

(g) The city manager is not required to maintain a bid list. The only formal notice of a call for bids is that published in a newspaper of general circulation in the city as prescribed by subsection (a) of this section.

[1]24-72-203, C.R.S.

(h) Nothing in this chapter shall preclude the city manager from issuing a call for bids in stages for the purpose of pre-qualifying bidders for projects, tangible property, or services required by the city. The city manager may pre-qualify prospective contractors or vendors and maintain a list for particular types of construction, tangible property, or services.

Ordinance No. 6038 (1998).

2-8-6 Informal Procedure For Bids Or Quotes.

(a) The manager may require an informal competitive bidding or quote procedure for any purchase or contract for which a formal competitive bid is not required under this chapter.

(b) An informal bid or quote requires requests to at least three vendors for prices.

(c) An informal bid or quote does not require detailed specifications or a published notice of call for bids.

(d) Although usually written, informal bids or quotes may be received orally.

(e) Bid bonds are usually not required for informal bids or quotes.

Ordinance No. 6038 (1998).

2-8-7 Selection Of Bids For Capital Improvement Contracts And Tangible Project Purchases.

The following criteria and procedures shall apply to capital improvement contracts and tangible property purchases:

(a) The city manager may reject any and all bids but otherwise shall accept the lowest bid satisfying the minimum bid requirements and the responsibility criteria prescribed by subsection (c) of this section. For purposes of this chapter, the definition of "lowest bid" will include consideration of initial cost and, when applicable, life-cycle cost, including, without limitation, maintenance cost, over the normal lifetime of the product and energy-efficiency in consumption of non-renewable fuels.

(b) The city manager shall determine if a bidder satisfies the minimum bid requirements and the responsibility criteria prescribed by subsection (c) of this section. If the manager determines that the lowest bidder does not meet the minimum bid requirements and responsibility criteria, the manager may reject the bid.

(c) In determining whether to accept a bid, the city manager shall consider the following responsibility criteria: the bidder's integrity, financial responsibility, skill, relevant technical expertise, ability to complete the contract promptly and satisfactorily, whether the bidder maintains a permanent place of business, whether the bidder has adequate plant, equipment, and support services to perform the contract, whether the bidder has previously performed similar work satisfactorily, whether the bidder is likely to be engaged in work that may impair the ability to finance the work covered by the bid or provide equipment for its proper execution, whether the bidder proposes a reasonable approach to achieve the objectives sought, and whether there have been or are any claims raising a substantial question about the bidder's ability to perform the contract.

(d) The city manager shall encourage the use and procurement of recycled and environmentally preferable products.

2-8-8 Selection Of Bids For Consultants, Purchased Services And Insurance.

In determining whether to accept a proposal for consultants' services, purchased services or insurance, the city manager shall determine, based on an evaluation of all of the proposals, which bidder best meets the needs of the city, considering whether each bidder:

(a) Possesses adequate technical and financial resources to perform the project or services or the ability to obtain the resources required for performance;

(b) Possesses necessary experience, organization, and technical skill in the relevant fields or the ability to obtain them, including, without limitation, arrangements with subcontractors;

(c) Proposes a reasonable approach to achieve the project or service objectives;

(d) Has a satisfactory record of performance in developing and implementing similar projects or providing similar services in other jurisdictions; and

(e) Will perform the project or services at a reasonable cost, compared with the level of effort to be expended.

2-8-9 Contract Requirements.

(a) The city manager shall execute all contracts for and on behalf of the city.

(b) All contracts shall be approved by the city attorney before they are executed by the city manager, unless the attorney determines that it is not practical and advantageous to do so.

(c) The city manager shall require a performance bond and a labor and material bond or equal security on all capital improvement contracts over $50,000.00 and may require such bonds or security on capital improvement contracts under $50,000.00.

(d) The last payment on a capital improvement contract where the total contract amount is $50,000.00 or more will not be made until at least ten days after a notice of intention to pay is published at least twice in a newspaper of general circulation in the city and after the city has received a release of statements of claim or liens. Claims against the contract payment shall be filed as prescribed by state law[1].

(e) The contract shall include provisions for retainage of contract sums as prescribed by state law[2], and may include provisions for retainage in contracts not covered by state law.

(f) The city may, by contract, require the contractor to waive, release, or extinguish its rights to recover costs or damages, or obtain an equitable adjustment, for delays in performing such contract, if such delay is caused, in whole or in part, by acts or omissions of the city or its agents, if the contract provides that an extension of time for completion of the work is the contractor's remedy for such delay. Such a clause is valid and enforceable, any provision of state law to the contrary notwithstanding[3].

(g) The city may, by contract, require the contractor to indemnify and hold harmless the city from the city's own precedent, concurrent, or subsequent negligence affecting a third party, so long as the injury or damage alleged by such third party also arose from a negligent act or omission of the contractor while working under the contract, or from a breach of the contract

[1]38-26-107, C.R.S.
[2]24-91-101 through 24-91-110, C.R.S.
[3]This subsection supersedes 24-91-103.5, C.R.S., and 24-91-101(2), C.R.S., to the extent it may have any application.

by the contractor. Such a clause is valid and enforceable, any provision of state law to the contrary notwithstanding[1].

Ordinance Nos. 5846 (1996); 6038 (1998).

2-8-10 Debarment Or Suspension.

The city manager is authorized to debar or suspend a vendor or contractor for just cause. No vendor or contractor shall be debarred or suspended until an opinion regarding the same has been obtained from the city attorney and until procedures recommended by the city attorney have been followed. The period of debarment shall be determined by the city manager on a case-by-case basis. Reasons for debarment or suspension include, without limitation, the following:

(a) Commission of fraud or a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract or subcontract;

(b) Conviction or indictment under a state or federal statute of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;

(c) Conviction or indictment under a state or federal antitrust statute;

(d) Failure or default without good cause to perform in accordance with the terms of any contract or unsatisfactory performance of any contract; or

(e) Debarment, disqualification or suspension by another government entity for any reason.

2-8-11 Prohibition Of The Purchase Of Tangible Property And Services From Persons That Conduct Business In Burma Except In Certain Circumstances.

Repealed.

Ordinance Nos. 5855 (1996); 7254 (2002).

2-8-12 Recycled And Environmentally Preferable Products.

The city manager shall adopt and may amend by rule an affirmative procurement policy for the use by city departments of recycled and environmentally preferable products.

Ordinance No. 5855 (1996).

2-8-13 City Manager May Adopt Rules.

The city manager may adopt rules to interpret and enforce this chapter.

Ordinance No. 5855 (1996).

[1]This subsection supersedes 13-50.5-102(8), C.R.S.

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 9 Police And Fire Pensions[1]

Section:

2-9-1 Legislative Intent.

The purpose of this chapter is to provide certain pension benefits for police officers and firefighters hired before April 8, 1978[2], supplemental to those required by state law.

Ordinance No. 4995 (1986).

2-9-2 Supplemental Pension Benefits.

(a) Police officers hired prior to April 8, 1978, or whose employment commenced on or after April 8, 1978, but before January 1, 1980, and who comply with the requirements set forth in section 31-30-1003(6)(b), C.R.S., shall have pension eligibility rights and receive benefits as set forth in The City of Boulder "Old Hire" Police Defined Benefit Plan and Trust Agreement (revised as of August 28, 1987).

(b) Firefighters who are members of the Boulder Firemen's Pension Fund who complete twenty years of service as firefighters with the city may cease their employment with the city at any time thereafter and may begin receiving pension benefits after reaching the age of fifty.

(c) Surviving spouses of firefighters who had retired under the provisions of subsection (b) of this section shall not begin to receive survivor benefits until the date upon which the deceased firefighter would have reached the age of fifty.

(d) Incremental payment for certain additional benefits provided by this section shall be made as follows:

An incremental contribution of 0.375 percent of the payroll of firefighters who are members of the Boulder Firemen's Pension Fund shall be paid to the Boulder Firemen's Pension Fund each pay period. The city shall pay fifty percent and the firefighters who are members of the Boulder Firemen's Pension Fund shall pay fifty percent of the incremental contribution. The incremental contribution shall continue through every pay period until there are no longer any members of the Boulder Firemen's Pension Fund employed by the city.

(e) After September 1, 1987, firefighters hired prior to April 8, 1978, who have completed twenty years of service as firefighters with the city and have reached the age of fifty shall receive, in addition to other pension benefits, an additional two percent per year of final salary up to a maximum increase of ten percent of final salary, for each additional complete year they are employed by the city after completing twenty years of service and reaching the age of fifty.

[1]Adopted by Ordinance No. 4995. Derived from Ordinance Nos. 3967, 4392.
[2]For police officers and firefighters hired after April 8, 1978, see sections 31-30-801 to 1016, C.R.S.

(f) Retroactive to January 1, 1990, the pension benefit paid to each retired firefighter is increased by five percent.

Ordinance Nos. 4995 (1986); 5072 (1987); 5086 (1987); 5344 (1990); 5439 (1991).

2-9-3 Partial Escalation Of Pension Benefits For Certain Retired Firefighters.

(a) The base pay level used in determining pension benefits for firefighters who retired before January 1, 1976, is the minimum monthly salary paid to the final rank of each such retired firefighter as of January 1, 1976, plus an additional six percent. The assistant chief's salary is to be the same as a captain's.

(b) The pension benefit paid to each firefighter who retired after December 31, 1975, and before January 1, 1979, is the amount to which such firefighter is entitled pursuant to state law[1], plus an additional six percent.

Ordinance No. 4995 (1986).

2-9-4 Pension Benefits For Surviving Spouses Of Certain Deceased Police Officers.

Each surviving spouse of a police officer who retired or died before January 1, 1974, shall receive the level of benefits which he or she would have received under the applicable provisions of state law[2] or this chapter had his or her spouse died or retired on January 1, 1974, plus an additional six percent.

Ordinance No. 4995 (1986).

2-9-5 Pension Benefits For Surviving Spouses Of Certain Deceased Firefighters.

(a) Each surviving spouse of a firefighter who retired or died before January 1, 1974, shall receive the level of benefits which he or she would have received under the applicable provisions of state law[3] or this chapter had his or her spouse died or retired on January 1, 1974, plus an additional six percent.

(b) Each surviving spouse of a firefighter who was in active service with the city as of January 1, 1990, and who dies while either in active service or retired shall receive survivor benefits equal in amount to the pension benefits that the deceased firefighter would have received if he or she had remained alive. If such a deceased firefighter had been eligible to receive pension benefits as of the date of his or her death but had not yet retired from active service, for purposes of determining the amount of the survivor benefits the date of the firefighter's death shall be deemed to be the date of his or her retirement.

Ordinance Nos. 4995 (1986); 5439 (1991).

[1] 31-30-408, C.R.S.
[2] 31-30-321, C.R.S.
[3] 31-30-407, C.R.S.

TITLE 2 GOVERNMENT ORGANIZATION

Chapter 10 Investment Of City Funds[1]

Section:

2-10-1 Legislative Intent.

This chapter establishes the city's investment scope, objectives, delegation of authority, standards of prudence, reporting requirements, internal controls, eligible investments, diversification, risk and safekeeping and custody requirements for invested funds.

Ordinance No. 5865 (1997).

2-10-2 Scope.

The provisions of this chapter shall apply to all financial assets of the city except bank checking accounts, pension, bond proceeds and reserves, or other trust funds. Monies held in bank checking accounts for operating purposes are covered under the provisions of the Colorado Public Deposit Protection Act and under section 2-2-4, "Selection Of City Depository," B.R.C. 1981.

Ordinance No. 5865 (1997).

2-10-3 Fund Pooling.

All excess cash, except for cash in certain restricted and special accounts, shall be pooled for investment purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proration their respective average balances bear to the total pooled balance. Interest earnings shall be distributed to the individual funds on a quarterly basis.

Ordinance No. 5865 (1997).

[1]Adopted by Ordinance No. 5585.

2-10-4 **Investment Objectives.**

The city's principal investment objectives are:

(a) Preservation of capital and protection of investment principal;

(b) Maintenance of sufficient liquidity to meet anticipated cash flows;

(c) Diversification to avoid incurring unreasonable market risks;

(d) Compliance with any city council directive related to socially or environmentally responsible investing;

(e) Maximization of funds available for investment;

(f) Maximization of investment earnings consistent with the objectives outlined in this section and within the provisions of this ordinance; and

(g) Conformance with all applicable city, state and federal law.

Ordinance No. 5865 (1997).

2-10-5 **Delegation Of Authority.**

(a) The city manager shall be responsible for the investment of all city funds and shall develop written administrative procedures and internal controls for the operation of the city's investment program which are consistent with this chapter. The procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the city.

(b) The city manager may delegate the manager's authority under this chapter to the director of finance and record, who may in turn delegate the authority to conduct investment transactions and manage the operation of the investment portfolio to one or more subordinates under the guidelines of written procedures for the investment program. The manager shall file any delegation to the director with the city clerk, and the city clerk's certificate of the record of delegation shall be sufficient proof of the validity of the delegation for all purposes. No person shall engage in an investment transaction except as provided under the terms of this ordinance.

(c) The city manager may establish an investment committee to review and recommend procedures for the operation of the city's investment program and to assist in monitoring administrative procedures and internal controls.

(d) The city may engage the support services of outside professionals for its financial program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of the city's resources. Such services may include engagement of financial advisors in conjunction with debt issuance, portfolio management, third party custodial services, and appraisals by independent rating services.

Ordinance No. 5865 (1997).

2-10-6 **Prudence.**

(a) The standard of prudence to be used for managing the city's assets shall be the "prudent investor" rule which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment considering the probable safety of their capital as well as the probable income to be derived[1]."

(b) The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The city recognizes that no investment is totally riskless and that the investment activities of the city are a matter of public record. Accordingly, the city recognizes that occasional measured losses are inevitable in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that the portfolio is adequately diversified and that the sale of a security is in the best long-term interest of the city[2].

(c) The city manager as well as authorized investment personnel shall report significant adverse credit changes or market price changes on city-owned securities to the city council in a timely fashion.

Ordinance No. 5865 (1997).

2-10-7 **Ethics And Conflicts Of Interest.**

Elected officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair, or create the appearance of an impairment of, their ability to make impartial investment decisions. Employees and investment officials shall disclose to the city manager any material personal financial interests they have in securities also owned by the city or in institutions that conduct investment business with the city.

Ordinance No. 5865 (1997).

2-10-8 **Authorized Investments[3].**

(a) All investments of the city shall be made in accordance with state law except as otherwise provided in this chapter. Only the following types of securities and transactions are eligible for use by the city:

(1) U.S. Treasury Obligations: Treasury bills, Treasury notes, Treasury bonds and Treasury strips with maturities not exceeding ten years from the date of purchase.

(2) Federal Agency Securities: Debentures and mortgage-backed securities issued by the Government National Mortgage Association (GNMA) with stated final maturities not exceeding ten years from the date of purchase. For the purposes of this section, a weighted average life does not constitute a stated final maturity.

[1] 15-1-304, C.R.S.

[2] "Elected or appointed officials or employees of public entities who, in the good faith performance of their duties as public officials, comply with the standards established in this part 6 for the investment of public funds in securities shall not be liable for any loss of public funds resulting from such investment." 24-75-601.4, C.R.S.

[3] 11-10.5-101 et seq., C.R.S., Public Deposit Protection Act; 11-47-101 et seq., C.R.S., Savings and Loan Association Public Deposit Protection Act; 24-75-601 et seq., C.R.S., Funds Legal Investments for Governmental Units; 24-75-603 et seq., C.R.S., Depositories; and 24-75-701 and 702 et seq., C.R.S., Local Governments - Local Government Pooling.

(3) Federal Instrumentality Securities: Debentures, discount notes, callable securities, step-up securities, and stripped principal or coupons with final maturities not exceeding ten years from the date of purchase issued by the following only: Federal National Mortgage Association (FNMA), Federal Farm Credit Banks (FFCB), Federal Home Loan Banks (FHLB), Federal Home Loan Mortgage Corporation (FHLMC), and Tennessee Valley Authority (TVA).

(4) Commercial Paper: Commercial paper with a maturity not exceeding two hundred seventy days from the date of purchase which is rated at the time of purchase at least A-1+ by Standard & Poor's, P-1 by Moody's, or F1+ by Fitch. If the commercial paper issuer has senior debt outstanding, the senior debt must be rated at the time of purchase at least A+ by Standard & Poor's, A1 by Moody's, or A+ by Fitch.

(5) Eligible Bankers Acceptances: Eligible bankers acceptances with a maturity not exceeding one hundred eighty days from the date of purchase, issued by a state or national bank which has a combined capital and surplus of at least $250,000,000.00, whose deposits are insured by the FDIC, and whose senior long-term debt is rated at the time of purchase at least A+ by Standard & Poor's, A1 by Moody's, or A+ by Fitch.

(6) Local Government Investment Pools: Local government investment pools authorized under 24-75-701 and 702, C.R.S., which: a) are "no-load" (i.e., no commission fee shall be charged on purchases or sales of shares); b) have a constant daily net asset value per share of $1.00; c) limit assets of the fund to investments authorized by State Statute; d) have a maximum stated maturity and weighted average maturity in accordance with Federal Securities Regulation 270-2a-7; and e) have a rating at the time of purchase of at least AAAm by Standard & Poor's, Aaa by Moody's, or AAA/V1+ by Fitch.

(7) Money Market Mutual Funds: Money market mutual funds registered under the Investment Company Act of 1940 which: a) are "no-load" (i.e., no commission fee shall be charged on purchases or sales of shares); b) have a constant daily net asset value per share of $1.00; c) limit assets of the fund to U.S. Treasury securities, Federal Instrumentality securities, repurchase agreements collateralized by U.S. Treasury and Federal Instrumentality securities, and commercial paper; d) have a maximum stated maturity and weighted average maturity in accordance with Federal Securities Regulation 270-2a-7; and e) have a rating at the time of purchase of at least AAAm by Standard & Poor's, Aaa by Moody's, or AAA/V1+ by Fitch.

(8) Time Certificates Of Deposit: Time certificates of deposit in state or nationally chartered banks or savings and loans which are insured by the FDIC with maturities not exceeding five years. Certificates of Deposit which exceed the FDIC insured amount shall be collateralized in accordance with the Colorado Public Deposit Protection Act or Savings and Loan Public Deposit Protection Act, and may only be purchased from financial institutions which have a Highline Data Peer Group Rating of twenty or better in the most recent publication of Highline Data Bank and Savings and Loan Quarterly.

(9) Repurchase Agreements And Reverse Repurchase Agreements: Repurchase agreements and reverse repurchase agreements with a maturity date of one hundred eighty days or less collateralized by U.S. Treasury securities listed in paragraph (a)(1) of this section or Federal Instrumentality securities listed in paragraph (a)(3) of this section with a maturity not exceeding ten years. For the purpose of this section, the term "collateral" shall mean purchased securities under the terms of the city-approved master repurchase agreement.

(A) The purchased securities shall have an original minimum market value including accrued interest of one hundred two percent of the dollar value of the transaction and the collateral maintenance level shall be one hundred two percent. Collateral shall be held in the city's custodian bank as safekeeping agent, and the market value of the collateral securities shall be marked-to-the-market daily based on the current day's bid price.

(B) Repurchase agreements and reverse repurchase agreements shall be entered into only with dealers who have executed a master repurchase agreement with the city and who are recognized as primary dealers by the Federal Reserve Bank of New York.

(C) Reverse repurchase agreements shall be transacted only with owned securities of the city, and the securities substituted shall be of like kind with a value of at least one hundred two percent of the securities sold.

(D) The city may utilize tri-party repurchase agreements provided that the city is satisfied that it has perfected interest in the securities used as collateral, and that the city has a properly executed tri-party agreement with both the counterparty and custodian bank.

(10) Corporate Bonds: Corporate Bonds issued by a corporation or bank with a final maturity not exceeding three years from the date of purchase, rated at least AA by Standard & Poor's, Aa2 by Moody's, or AA by Fitch at the time of purchase by each service that rates the debt. Authorized corporate bonds shall be U.S. dollar denominated, and limited to corporations organized and operated within the United States with a net worth in excess of $250,000,000.00. Ownership of corporate bonds shall be limited to twenty percent of the total portfolio, with no more than five percent of the portfolio held in any one issuer or its affiliates or subsidiaries.

(b) The foregoing list of authorized securities shall be strictly interpreted, and any deviation from this list must be preapproved by the city manager in writing. Securities other than those authorized in this chapter may be held by the city as of the date this chapter is adopted. All new purchases, however, shall be limited as specified in this section.

(c) Bond proceeds may, from time to time, be subject to the provisions of the Tax Reform Act of 1986 and federal arbitrage regulations. Due to the complexities of arbitrage law and the necessary immunization of yield levels, the reinvestment of such debt issuance may, upon the advice of bond counsel or financial advisors, deviate from the provisions of this chapter with written approval of the city manager.

(d) Investments shall not be made in any security on which the coupon rate is not fixed from the time the security is settled until its maturity date, other than shares in authorized money market mutual funds or local government investment pools, unless the coupon rate is:

(1) Established by reference to the rate on a United States Treasury security with a maturity of one year or less or to the United States dollar London interbank offer rate of one year or less maturity, or to the cost of funds index or the prime rate as published by the Federal Reserve; and

(2) Expressed as a positive value of the referenced index plus or minus a fixed number of basis points.

Ordinance Nos. 5865 (1997); 5983 (1998); 7162 (2001); 7302 (2003); 7361 (2004); 7418 (2005).

2-10-9 **Portfolio Maturities And Liquidity.**

To the extent possible, investments shall be matched with anticipated cash flow requirements. Unless matched to a specific cash flow requirement, the city will not invest in securities maturing more than ten years from the date of purchase. No more than twenty percent of the city's total portfolio shall be invested in instruments maturing in five years or more, and the city shall maintain at least five percent of its total portfolio in instruments maturing in thirty days or less. The weighted average maturity of city's portfolio shall at no time exceed five years.

Ordinance No. 5865 (1997).

2-10-10 **Social Responsibility.**

Investments shall be made in accordance with city ordinances and resolutions concerning social or environmental issues.

Ordinance No. 5865 (1997).

2-10-11 **Competitive Transactions.**

(a) Each investment transaction shall be competitively transacted with broker/dealers who have been authorized by the city. At least three broker/dealers shall be contacted for each transaction and their bid and offering prices shall be recorded. If the city is offered a security for which there is no other readily available competitive offering, authorized investment personnel shall document quotations for comparable or alternative securities.

(b) When purchasing original issue instrumentality securities, no competitive offering will be required, as all dealers in the selling group offer the securities at the same original issue price.

Ordinance Nos. 5865 (1997); 5983 (1998).

2-10-12 **Selection Of Financial Institutions Acting As Broker/Dealers And Broker/ Dealers.**

(a) The city manager shall maintain a list of authorized broker/dealers and financial institutions which are approved for investment purposes, and securities shall be purchased only from those authorized firms. To be eligible for authorization, firms which are commercial banks must be members of the FDIC, and all firms, including commercial banks, must also meet at least one of the following criteria:

(1) Be recognized as a primary dealer by the Federal Reserve Bank of New York;

(2) Report voluntarily to the Federal Reserve Bank of New York; or

(3) Qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

(b) Broker/dealers and other financial institutions will be selected by the city manager on the basis of their expertise in public cash management and their ability to provide service to the city's account. Approved broker/dealer representatives and the firm they represent shall be licensed to do business in the state and as such are subject to the provisions of the Colorado Revised Statutes, including, but not limited to, 24-75-601 et seq., C.R.S.

(c) Each broker/dealer, bank or savings and loan that has been authorized by the city manager shall be required to submit and annually update a broker/dealer information request form specified or approved by the city which includes the firm's most recent financial statements. The director shall maintain a file of the most recent broker/dealer information forms submitted by each firm approved for investment purposes.

(d) The city may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in section 2-10-8, "Authorized Investments," B.R.C. 1981.

Ordinance Nos. 5865 (1997); 5983 (1998); 7302 (2003); 7361 (2004); 7418 (2005).

2-10-13 **Selection Of Banks And Savings And Loans.**

(a) The city manager shall maintain a list of authorized banks and savings and loans which are approved to provide investment clearing and other banking services for the city. To be eligible for authorization, a bank or savings and loan must be a member of the FDIC and qualify as a depository of public funds in the state as defined in 24-75-603, C.R.S., as evidenced by a certificate issued by the state banking board or the state financial services board.

(b) The city manager shall utilize a commercially available bank rating service to perform a credit analysis on banks and savings and loans seeking authorization. Data obtained from the bank rating services will include factors covering overall rating, liquidity policy, credit risk policy, interest rate policy, profitability, and capital policy.

(c) The director shall annually review the most recent credit rating analysis reports performed for each approved financial institution. Banks or savings and loan associations that, in the judgment of the city manager, no longer offer adequate safety to the city shall be removed from the list.

Ordinance Nos. 5865 (1997); 7302 (2003); 7361 (2004); 7418 (2005).

2-10-14 **Safekeeping And Custody.**

(a) The city manager shall approve one or more financial institutions to provide safekeeping and custodial services for the city. Custodian banks shall be selected on the basis of their ability to provide service to the city's account and the competitive pricing of their safekeeping related services. A safekeeping agreement shall be executed with each custodian bank prior to that bank's engaging in safekeeping services. To be eligible for designation as the city's safekeeping and custodian bank, a financial institution shall qualify as a depository of public funds in the state as defined in 24-75-603, C.R.S., and be a Federal Reserve member financial institution.

(b) The director shall maintain a file of the credit rating analysis reports performed for each approved financial institution.

(c) It is the intent of the city that all purchased securities be perfected in the name of the city.

(1) All investment securities, except certificates of deposit, money market mutual funds, and local government investment pools purchased by the city will be delivered by either book entry or physical delivery and will be held in third-party safekeeping by a city approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

(2) All Fed wirable book entry securities owned by the city shall be evidenced by a safekeeping receipt issued to the city by the custodian bank stating that the securities are held in the Federal Reserve system in a customer account for the custodian bank which names the city as "customer."

(3) All DTC eligible securities shall be held in the custodian bank's Depository Trust Company participant account and the custodian bank shall issue a safekeeping receipt evidencing the securities are held for the city as "customer."

(4) All non-book entry (physical delivery) securities shall be held by the custodian bank's correspondent bank and the custodian bank shall issue a safekeeping receipt to the city evidencing that the securities are held by the correspondent bank for the city as "customer."

Ordinance Nos. 5865 (1997); 5983 (1998); 7302 (2003); 7361 (2004); 7418 (2005).

2-10-15 **Performance Benchmarks.**

The city manager shall periodically establish a benchmark yield for the city's investment portfolio, but in no case shall the benchmark be less than the three-month Treasury bill. When comparing the performance of the city's portfolio, all fees and expenses involved with managing the portfolio should be included in the computation of the portfolio's rate of return.

Ordinance No. 5865 (1997).

2-10-16 **Reporting.**

(a) The city manager shall prepare an annual report to the city council on the investment earnings and performance results of the city's investment portfolio. The report shall include a listing of the investments held by the city and the cost, book value and current market value of the portfolio. The report shall also include any recommendations the manager may have on amendments to the investment policy contained in this chapter.

(b) The city manager shall present to the investment committee, if one has been established pursuant to subsection 2-10-5(c), B.R.C. 1981, at least annually a review of the portfolio's adherence to appropriate risk levels and a comparison between the portfolio's total return and the established investment objectives and goals.

Ordinance Nos. 5865 (1997); 5983 (1998).

TITLE 3

REVENUE AND TAXATION

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TITLE 3 REVENUE AND TAXATION

Chapter 1 Definitions[1]

Section:

3-1-1 Definitions.

The following terms used in this title have the following meanings unless the context clearly indicates otherwise:

"Access services" means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

"Auction" means any sale at which tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof. The auctioneer at any retail sale defined in this section is a retailer or vendor as defined in this section, except when such auctioneer is acting as an agent for a duly licensed retailer or vendor or when selling only property that is exempt from taxation under section 3-2-6, "Exempt Property And Services," B.R.C. 1981. A sale made by such auctioneer is a retail sale as defined in this section. The business conducted by such auctioneer in accomplishing said sale is the transaction of "business" as defined in this section.

"Automotive vehicle" means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, and every device used or designed for aviation or for flight in the air. Automotive vehicle includes, without limitation, motor vehicles, trailers, or semi-trailers. Automotive vehicle does not include devices moved by human power or used exclusively upon stationary rails or tracks.

"Business" means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

"Capital lease" means a lease with characteristics of a purchase, including, without limitation, a lease term corresponding to the useful life of property, the lessee's payment of costs of property incidental to ownership, or the lessee's option to purchase for less than fair value.

"Charitable organization" means any entity which has been qualified by the United States Internal Revenue Service as a tax exempt organization under section 501(c)(3) of the United States Internal Revenue Code.

"City manager" means the city manager or the manager's authorized representatives.

"Computer software" means computer instructions as described in the definition of "taxable services" in this section. Computer software is subject to taxation in accordance with that definition and the provisions of chapter 3-2, "Sales And Use Tax," B.R.C. 1981.

[1]Adopted by Ordinance No. 4575. Amended by Ordinance Nos. 4593, 4610, 4594, 4633, 4640, 4643, and 4738. Derived from Ordinance Nos. 2803, 2955, 2974, 3110, 3133, 3278, 3288, 3320, 3501, 3662, 3881, 4335, 4388, 4396, 4406, and 4448.

"Construction equipment" means equipment actually used by a contractor licensed under chapter 4-4, "Building Contractor License," B.R.C. 1981, in the erection, installation, alteration, repair, or remodeling of a building or structure upon real estate.

"Construction materials" means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project. Construction materials include, without limitation, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

"Construction project" means the erection, installation, alteration, repair, or remodeling of a building or structure upon real estate and any other activity for which a building permit is required under this code or any other ordinance of the city.

"Consumer" or "purchaser" means any individual person or person engaged in business in the city who uses, stores, distributes, or otherwise consumes in the city tangible personal property or taxable services purchased from sources inside or outside the city.

"Deductions" means those items that may be deducted from gross taxable sales as provided in section 3-2-10, "Deductions," B.R.C. 1981.

"Department" means the city department of finance, of which the sales and use tax division is a part.

"Drugs dispensed in accordance with a prescription" means drugs dispensed in accordance with an order in writing, dated, and signed by a licensed physician, or given orally by or on behalf of a licensed physician, and immediately reduced to writing by a pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom the medicine or drug is offered and directions, if any, to be placed on the label.

"Engaged in business in the city" means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property for storage, use, or consumption within the city. Engaged in business in the city includes, without limitation, any one of the following activities:

(a) Directly, indirectly, or by a subsidiary, maintaining a building, store, office, salesroom, warehouse, or other place of business within the city;

(b) Sending one or more employees, agents, or commissioned sales persons into the city to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration, or for any other reason;

(c) Maintaining one or more employees, agents, or commissioned sales persons on duty at a location within the city;

(d) Owning, leasing, renting, or otherwise exercising control over real or personal property within the city; or

(e) Making more than one delivery into the city within a twelve-month period.

"Estimated percentage basis" means the permission by the city manager to a taxpayer to pay or satisfy in full a sales and use tax liability based on a percentage of gross sales or gross purchases.

"Excess tax" means that amount of tax collected by a taxpayer during a reporting period that exceeds the tax rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981, and that the taxpayer shall remit to the city as prescribed by section 3-2-4, "Vendor Liable For Tax," B.R.C. 1981.

"Exempt commercial packaging materials" means containers, labels, and shipping cases used by a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing, or bottling for sale, profit or use, that meet all of the following conditions:

(a) Used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor, or bottler to contain or label the finished product;

(b) Transferred by said person along with and as a part of the finished product to the purchaser; and

(c) Not returnable to said person for reuse.

"Family" means the heads of household plus the following persons who are related to the heads of the household: parents and children, grandparents and grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, first cousins, the children of first cousins, great grandchildren, great grandparents, great great grandchildren, great great grandparents, grandnieces, grandnephews, great aunts, and great uncles. These relationships may be of the whole or half blood, by adoption, guardianship, including foster children, or through a marriage or a domestic partnership meeting the requirements of chapter 12-4, "Domestic Partners," B.R.C. 1981, to a person with such a relationship with the heads of household.

"Food" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Food service establishment" means any place that is kept or maintained for the purpose of preparing or serving food, but does not include:

(a) Homes containing a family, and its nonpaying guests;

(b) Outdoor recreation locations where food is prepared in the field rather than at a fixed base of operations;

(c) Hospital and health care facility feeding operations licensed by the Colorado Department of Health or its authorized agents or employees;

(d) Child care centers licensed by the State of Colorado or Boulder County;

(e) Vending machines;

(f) Grocery stores and similar establishments, if such grocery store or similar establishment meets the qualifications for participation in the federal food stamp program, pursuant to 7 C.F.R. subparagraph 278.1(l)(i) and (ii), excluding sub-subparagraphs (A) through (C) of subparagraph (ii), as such subparagraphs exist on October 1, 1987, or are thereafter amended, whether or not such grocery store or similar establishment is actually authorized to so participate;

(g) Food or beverage manufacturing, processing, or packaging plants that are not categorized as food service establishments by the Colorado Department of Health;

(h) Food caterers that use the customer's kitchen to prepare food.

"Garbage collection" means any business which collects, removes, or hauls ashes, trash, waste, rubbish, garbage, industrial waste products, or any discarded material; but does not include the removal of sludge or fly ash or source separated recyclable materials.

"Gross sales" means the total amount received in money, credit, property, or other consideration valued in money for all sales, leases, or rentals of tangible personal property or taxable services.

"Income" means the gross amount of money received during the year by an individual or a family.

"Individual" means each person who is not a member of a family as defined in this chapter.

"License" means a city sales and use tax license.

"Linen services" means services involving provision and cleaning of linens, including, without limitation, rags, uniforms, coveralls, and diapers.

"Lodging services" or "public accommodation" means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative, or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, or similar establishment, for a continuous period of less than thirty days under any concession, permit, right of access, license to use, or other agreement, or otherwise.

"Medical supplies" means drugs, prosthetic medical and dental appliances, and special beds for patients with neuromuscular or similar debilitating ailments, when dispensed for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry, or podiatry; corrective eyeglass lenses (including eyeglass frames), and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs, and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries, insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin reactions, and human whole blood, plasma, blood products and derivatives. This term excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

"Net taxable sales" means gross sales less deductions authorized in this chapter.

"Newspaper" means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

"Occasional food sale" means a sale meeting all of the following criteria:

(a) The sale is made by a charitable organization meeting both of the following criteria:

(1) The organization has been in existence continuously for a period of five years.

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(2) The organization has had during the entire five-year period members engaged in carrying out the objects of the organization.

(b) The sale is made by one of the organization's active members.

(c) The sale occurs during a continuous sale period of no more than thirty days in any calendar year. A sale is deemed to occur when consideration is received by the organization for the item sold.

(d) Aggregate sales by the organization in the city total less than $500,000.00 in any calendar year.

(e) The goods sold are food.

(f) The goods sold bear conspicuously on their exterior or the packaging the name of the organization or its registered trademark.

"Person" means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee, or any person acting in fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

"Photovoltaic and solar thermal systems" shall mean products that are intended to and capable of converting sunlight for the purpose of generating electricity or hot water for domestic use, industrial processes, space heating, pools, or spas.

"Place or event open to the public," for the purposes of the admissions tax, means any place or event, the admission or access to which is open to members of the public upon payment of a charge or fee. This term includes, without limitation, the following places and events when a charge or fee for admission to such places and events is imposed upon members of the public:

(a) Any performance of a motion picture, stage show, play, concert, or other manifestation of the performing arts;

(b) Any sporting or athletic contest, exhibition, or event, whether amateur or professional, but participants in racing events which include running, walking, biking, or swimming shall not be deemed members of the public and no admissions tax shall be due on their entry fees to such events;

(c) Any lecture, rally, speech, or dissertation;

(d) Any showing, display, or exhibition of any type, such as an art exhibition; and

(e) Any restaurant, tavern, lounge, bar, or club, whether the admission is called a "cover charge," "door charge," or any other such term.

"Preprinted newspaper supplement" means an insert, attachment, or supplement circulated in a newspaper that: a) is primarily devoted to advertising; and b) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

"Price" or "purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

(a) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, and any money or other consideration paid over and above the value of the exchanged property is subject to tax; or

(b) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of the State of Colorado, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft, and any money or other consideration paid over and above the value of the exchanged property is subject to tax.

These terms include, without limitation:

(a) The amount of money received or due in cash and credits.

(b) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

(c) Any consideration valued in money, such as trading stamps or coupons, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price, and other media of exchange.

(d) The total price charged on credit sales including, without limitation, finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except that the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

(e) Installation and wheeling-in charges included in the purchase price and not separately stated.

(f) Transportation and other charges to effect delivery of tangible personal property to the purchaser.

(g) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires, and floor stock.

(h) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all of the materials used, and the labor and services performed, and the profit thereon.

These terms exclude:

(a) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.

(b) The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in the State of Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.

(c) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales[1].

[1]39-26-102(7), C.R.S.

"Primary employer" means a business or organization that generates at least seventy-five percent of its revenues from activities outside of Boulder County, and shall include, but is not limited to, those facilities of such business or organization devoted to manufacturing, research and development, data processing, telecommunications and publishing, but shall not include hotels, motels, retailers, or food service facilities. This definition shall be repealed and no longer in effect after December 31, 2007, unless extended by action of the city council.

"Prosthetic device" means any artificial limb, part, device, or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered, or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, without limitation, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, oxygen concentrators, and oxygen with related accessories.

"Purchase" or "sale" means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:

(a) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;

(b) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services, including, without limitation, access services and linen services;

(c) Performance of taxable services; or

(d) Barter or exchange for other property or services including coupons.

These terms exclude:

(a) Division of partnership assets among partners according to their interests in the partnership;

(b) Formation of a corporation by the owners of a business and transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

(c) Transfer of assets of shareholders in the formation or dissolution of professional corporations;

(d) Dissolution and pro rata distribution of a corporation's assets to its stockholders;

(e) Transfer of a partnership interest;

(f) Transfer in a reorganization qualifying under section 368(a)(1) of the Federal Internal Revenue Code, as amended;

(g) Formation of a partnership by a transfer of assets to the partnership or transfer to a partnership in exchange for a proportionate interest in the partnership;

(h) Repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(i) Transfer of assets from a parent corporation to a subsidiary corporation or corporations that are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(j) Transfer of assets from a subsidiary corporation or corporations that are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary that is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets; and

(k) Transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this chapter was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. To such extent, any transfer referred to in this subsection (k) shall constitute a sale. For the purposes of this subsection (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

"Resident" means a person who resides or maintains a domicile within the city or who maintains one or more places of business within the city at the time of a taxable transaction as defined in this chapter, notwithstanding the fact that the person has other places of residence or domicile or business outside the city prior to, during, or after the occurrence of a taxable transaction.

"Retail sales" means all sales except wholesale sales.

"Retailer" means any person selling, leasing, or renting tangible personal property or services at retail. Retailer shall include, without limitation, any:

(a) Auctioneer;

(b) Salesperson, representative, peddler, or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor, or employer;

(c) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

"Return" means the sales and use tax reporting form used to report sales and use tax.

"Sales tax" means the tax to be collected and remitted by a retailer on sales taxed under this chapter.

"Source separated recyclable materials" means clean, uncontaminated newspapers, magazines, cardboard, telephone books, loose paper, plastic containers, glass containers, aluminum cans, steel cans, segregated into categories by the customer before collection.

"Tangible personal property" means corporeal personal property that may be seen, weighed, measured, felt, or touched or is in any manner perceptible to the senses. Tangible personal property includes, without limitation, automotive vehicles as defined in this chapter and fifty-two

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percent of the purchase price of factory-built modular and mobile homes[1], but excludes real property; property that loses its identity when it becomes an integral and inseparable part of the realty and cannot be moved without serious damage to the realty or structure to which it is attached; accounts, stocks, bonds, mortgages, notes, and other evidences of indebtedness; professional and occupational licenses; and uncancelled United States postage or revenue stamps[2].

"Tax" means that use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

"Tax deficiency" means any amount of tax that is not reported or not paid on or before the due date.

"Taxable sales" means gross sales less any exemptions and deductions specified in this chapter.

"Taxable services" means:

(a) Transmission of intrastate electronic messages originating within the city by means of microwave, telephone, telegraph, or cable transmission, including cable, microwave, or other television service for which a charge is imposed, except that for mobile telecommunications services, the definition of taxable services shall be as set forth in the Federal Mobile Telecommunications Sourcing Act, 4 U.S.C. sections 116 to 126, as amended, which provides that taxes on mobile telecommunications services are to be collected and remitted to the jurisdiction where the customer's primary use of said services occurs, regardless of where the mobile telecommunications services originate, pass through, or terminate;

(b) Provision of access to transmission and switching equipment to transmit interchange telephone calls to, from, and within the city;

(c) Gas, electricity, steam, and heat for domestic, manufacturing, or commercial consumption and not for taxable resale;

(d) Meals purchased or sold in any restaurant, eating house, hotel, residential facility, school commissary, cafeteria, lodge, church, drugstore, club, resort, or any place at which meals or food are sold regularly or occasionally or that is required by law to have food or meals available for sale;

(e) Labor used to render tangible personal property sold or leased into a form usable by the purchaser or lessee and the charge for connecting or installing taxable services for the purchaser or lessee; and

(f) Computer software contained on cards, tapes, discs, coding sheets, or other machine-readable or human-readable form, including software that has been modified, so long as the price of the modifications does not exceed twenty-five percent of the price of the unmodified software and excluding software created specifically for the user.

"Taxpayer" means any person obligated to collect or pay tax under the terms of this chapter.

"Use" means the exercise, for any length of time, by any person within the city of any right, power, dominion, or control over tangible personal property or taxable services when leased or purchased at retail from any person inside or outside the city. Use need not be the ultimate use to which the property is put, as long as the user exercises dominion and control over the property and does not hold the property for resale. This term includes consumption, distribution, and storage, defined as follows:

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[1]39-26-114, C.R.S.
[2]Colo. Sales Tax. Reg. 26-102.15.

(a) "Consumption" means the act or process of consuming, including, without limitation, waste, destruction, use, or the normal use of tangible personal property or taxable services for the purposes for which it was intended.

(b) "Distribution" means the act of distributing any article of tangible personal property or taxable services purchased at retail for use or consumption, including, without limitation, the distribution of advertising, gifts, shoppers' guides, catalogues, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sale of other property or services.

(c) "Storage" means any keeping or possession of or exercise of dominion or control over, for any length of time, tangible personal property or taxable services when leased or purchased at retail from any person inside or outside the city.

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

"Wholesale sale" means any sale to a licensed retailer, jobber, dealer, or wholesaler for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to non-licensed retailers are not wholesale sales.

"Wholesaler" means any person selling to retailers, jobbers, dealers, or other wholesalers, for resale, and not for storage, use, consumption, or distribution.

Ordinance Nos. 4962 (1986); 5015 (1986); 5030 (1987); 5187 (1989); 5272 (1990); 5343 (1990); 5430 (1991); 6090 (1999); 7011 (1999); 7162 (2001); 7248 (2002); 7416 (2005); 7419 (2005); 7428 (2005); 7478 (2006); 7487 (2006).

3-1-2 **Intercity Claims For Recovery.**

The intent of this section is to streamline and standardize procedures related to situations in which a tax, penalty, or interest payment has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer to correctly collect and remit such payments to the city.

(a) As used in this section, "claim for recovery" means a claim for reimbursement directed to a municipality for taxes, penalties, and interest paid to the wrong taxing jurisdiction.

(b) When it is determined by the city manager that tax, penalty, or interest owed to the city has been reported and paid to another municipality, the city will promptly notify the taxpayer that such payments are being improperly collected and remitted, and that as of the date of the notice the taxpayer must cease improper tax collections and remittances.

(c) The city may make a written claim for recovery directly to the municipality that received tax, penalty, or interest owed to the city, or, in the alternative, may institute procedures for collection of the tax from the taxpayer. The decision to make a claim for a recovery lies in the sole discretion of the city. Any claim for recovery shall include a properly executed release of claim from the taxpayer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny, in whole or in part, the claim within ninety days of its receipt. The municipality to which the city submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the city will not be unreasonably withheld.

(d) Within ninety days after receipt of a claim for recovery, the city will verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and will notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the city will remit the undisputed amount to the municipality submitting the claim within thirty days of approval. If a claim is submitted jointly by a municipality and a taxpayer, the check will be made to the parties jointly. Denial of a claim for recovery will be made only for good cause.

(e) The city may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

(f) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date on which the municipality that was wrongly paid the tax receives the claim for recovery.

Ordinance No. 5430 (1991).

3-1-3 **Hearings And Appeals.**

(a) After paying the tax, filing a written claim for refund with the city manager, and receiving a notice of denial of the claim for refund, a taxpayer may request a hearing on any tax imposed by this title, except the sales and use tax imposed by chapter 3-2, "Sales And Use Tax," B.R.C. 1981, by filing a request for hearing within ten days of the date of mailing of the notice of refund denial. The request for hearing shall set forth the reasons for the refund amount that the taxpayer seeks and such other information as the manager may prescribe.

(b) The city manager shall conduct the hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall notify the taxpayer in writing of the time and place of the hearing at least thirty days before it is scheduled, unless the taxpayer agrees to a shorter time.

(c) In lieu of making a timely request for a hearing as provided by subsection (a) of this section, a taxpayer may request an extension of up to twenty days for seeking a hearing by filing a written request within ten days after the date of mailing of the refund denial or may file a written brief and such other documents and information as the taxpayer wishes and request the city manager to reconsider the action without a hearing. If the taxpayer requests a reconsideration of the manager's decision, the manager shall consider the request and render a decision, after which the taxpayer may request a hearing thereon within ten days of the date of mailing thereof, as provided in subsection (a) of this section.

(d) After a hearing held pursuant to subsection (b) of this section, the city manager shall send a determination notice to the taxpayer setting forth a decision, including any amount found due or amount of claim for refund denied and the grounds for allowing or rejecting the claim in whole or in part. The determination notice is an assessment that is due and payable within thirty days from its date, unless the taxpayer appeals the city manager's decision as provided in subsection (f) of this section.

(e) If ten days from the date of the mailing of the denial of refund no request for hearing has been made, no extension has been requested, and no request for reconsideration has been filed by the taxpayer, the notice previously mailed constitutes a final denial of refund.

(f) An aggrieved taxpayer may appeal the city manager's determination notice to the district court in and for Boulder County by filing a complaint for judicial review with the court

within thirty days of the date of the determination notice. Such review shall be made pursuant to Colorado Rule of Civil Procedure 106(a)(4).

Ordinance Nos. 5052 (1987); 5430 (1991).

3-1-4 **Telephone Exchange Access Facility Charge.**

(a) Every telephone service user shall pay monthly to the telephone service supplier, who shall remit the same to the Boulder Regional Emergency Telephone Service Authority, a telephone exchange access facility charge equal to the maximum charge permitted pursuant to section 29-11-102, C.R.S., or any successor statute as from time to time amended. But no charge shall be imposed upon more than one hundred exchange access facilities or their equivalent per customer billing.

(b) The Boulder Regional Emergency Telephone Service Authority may, by timely notice to the service supplier after determining that a lesser charge will suffice to pay the equipment, installation, and other directly related costs of the continued operation of an emergency telephone service, annually fix some lesser rate and communicate such rate to the telephone service suppliers as provided by law.

(c) This charge is levied pursuant to article 11 of title 29, C.R.S., to carry out the purposes of that article. The Boulder Regional Emergency Telephone Service Authority is organized pursuant to an intergovernmental agreement authorized by article 11 to carry out its purposes. The definitions found at section 29-11-101, C.R.S., apply to this section, and this section is to be interpreted and administered consistently with article 11 and to carry out its purposes.

(d) If the telephone service user owns the property upon which the telephone is located, the city manager may use the procedures specified in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981, to collect any uncollected charge. The manager may use any other proper means to collect such charges when not collected by the service supplier.

Ordinance Nos. 5062 (1987); 5430 (1991); 7313 (2003).

3-2-1

TITLE 3 REVENUE AND TAXATION

Chapter 2 Sales And Use Tax[1]

Section:

3-2-1 Legislative Intent.

(a) It is the intent of the city council in enacting this chapter that every person in the city who purchases at retail, leases, consumes, stores, or puts to any use any tangible personal property or taxable services is exercising a taxable privilege. All sales, leases, and purchases

[1]Adopted by Ordinance No. 4575. Amended by Ordinance No. 4593. Derived from Ordinance Nos. 2803, 2955, 2974, 3110, 3133, 3278, 3288, 3330, 3501, 3662, 3881, 4335, 4388, 4396, 4406, 4448.

of tangible personal property and taxable services defined in this chapter are taxable unless specifically exempted in this chapter[1]. The sales tax imposed on tangible personal property by this chapter applies to each transfer of ownership, possession, and control of such property and may occur more than once during the life of the property[2].

(b) The sales tax is a transaction tax levied upon all sales, purchases, and leases of tangible personal property and taxable services sold or leased by persons engaged in business in the city and is collected by the vendor or lessor and remitted to the city[3]. The use tax is levied upon the privilege of persons in the city to use, store, or consume tangible personal property located in the city and taxable services purchased or leased at retail and furnished within the city, whether purchased or leased inside or outside the city limits, and not subject to the sales tax imposed by this chapter. The use tax is remitted to the city by the person using, storing, or consuming the tangible personal property or taxable services. The use tax is a complement to the sales tax, and its purposes are to equalize competition between in-city and out-of-city vendors and lessors of tangible personal property and services and to eliminate incentives for city residents to leave the city to purchase or lease tangible personal property and taxable services.

3-2-2 **Imposition Of Tax.**

(a) On and after 11:59 p.m., December 31, 1967, there is hereby levied and there shall be collected and paid a sales or use tax on the full purchase price paid or charged for tangible personal property and taxable services purchased or sold at retail by every person exercising a taxable privilege in the city by the sale or use of such property and services. The sales tax is levied on all sales of tangible personal property or taxable services, except those specifically exempted and is collected by the vendor and remitted to the city. The use tax is levied upon the privilege of using in the city, personally or as part of rendering a service, tangible personal property or taxable services upon which a municipal sales or use tax has not been paid and is paid by either the vendor doing business in the city or the consumer. The following paragraphs prescribe rules for various taxable transactions:

(1) If tangible personal property is purchased for use exclusively in the rental or leasing business and is not at any time used for the purchaser's general business or personal use, use tax is not due upon the purchase of the tangible personal property, but a sales tax is due upon the rental or leasing of tangible personal property used in the rental or leasing business, regardless of whether a sales or use tax has been paid upon a previous purchase of the property.

(2) A resident of the city shall pay sales tax upon the purchase price paid or charged for automotive vehicles purchased for use or storage in the city. A resident of the city shall pay use tax under this chapter upon the purchase price paid or charged for automotive vehicles purchased outside of the city for use or storage within the city. No person may register an automotive vehicle for which registration is required until such person has paid all sales or use taxes due on the purchase of the vehicle. No resident shall register a vehicle at an address other than such resident's principal residence or place of business within the city for the purpose of evading the sales or use tax imposed by this chapter.

(3) A use tax is not due upon a registered vehicle used in the city by a business if the vehicle is registered to a bona fide business address outside the city.

(4) Motor vehicles used by automobile dealers for demonstrations are exempt from use tax if each such vehicle is available for and in fact used by licensed sales personnel of the

[1]Security Life & Acc. Co. v. Temple, 492 P.2d 63 (1972).
[2]Bedford v. Hartman Bros., 104 Colo. 190, 89 P.2d 584 (1939).
[3]See J. A. Tobin Construction Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

3-2-2

dealership for the promotion of business of selling vehicles. Vehicles used in the dealer's service or repair business are subject to a use tax. Demonstrator vehicles are subject to a sales tax when they are sold, regardless of whether a use tax has been paid for their use. Use tax is based upon the dealer's net invoice price of the vehicle. To be entitled to claim an exemption for demonstration vehicles, a taxpayer shall file with the sales tax return a certification of the use of all demonstration vehicles used in the business[1].

(5) A use tax is due upon tangible personal property that is utilized in the city if such use occurs within three years of the most recent sale of the property. No use tax shall be due on the use of tangible personal property within the city that occurs more than three years after the most recent sale of the property if, within three years following the date of such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

(6) The purchaser of tangible personal property acquired with the purchase of a business for use in the operation of such business shall pay a sales tax upon the purchase price of such property recorded in the bill or contract of sale, but in no event shall the tax be based upon a valuation of property less than its fair market value. If the purchase price of the property is not itemized in the bill or contract of sale, the tax shall be based upon the book value that the purchaser uses for income tax depreciation or upon the fair market value of the property if no book value has been established. Regardless of the method used to value the property, no deduction shall be made on account of any outstanding liabilities acquired by the purchaser of the business and property.

(A) Purchasers of a business are liable to pay all unpaid sales or use taxes of the seller of the business, if the purchasers have acquired the furniture, fixtures, and equipment of the business and engage in a similar business.

(B) Consumers from the business to be purchased who have accounts upon which sales or use tax is outstanding at the time of purchase of a business shall pay that tax at or before the time of sale.

(7) Whenever tangible personal property, including property sold in conjunction with the sale of a business, is sold under a conditional sales contract, lease-purchase contract, or capital lease contract, whereby the vendor or lessor retains title as security for all or part of the purchase price or whenever the vendor retains a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the sales tax is immediately due and payable upon the total selling price. There is no refund or credit for either party to the transaction if the property is repossessed by the vendor.

(8) A sales tax is due upon the purchase price paid for the transmission of intrastate electronic messages as defined in section 3-1-1, "Definitions," B.R.C. 1981.

(9) Construction equipment that is located within the city for a period of more than thirty consecutive calendar days shall be subjected to the full applicable use tax of the city.

(10) Construction equipment that is located within the city for a period of thirty consecutive days or less shall be subjected to the city's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by the tax rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981.

(11) Where the provisions of paragraph (a)(10) of this section are utilized, the credit provisions of subsection 3-2-9(b), B.R.C. 1981, shall apply at such time as the aggregate sales

[1]See Colorado Department of Revenue Sales and Use Tax - Special Regulations, 1 CCR 201-5, "Automotive Dealers And Demonstration Vehicles."

and use taxes legally imposed by and paid to other municipalities organized and existing under the authority of the Constitution or laws of the State of Colorado on any such equipment is equal to the tax that would otherwise be paid to the city on the full purchase price of the equipment by applying the tax rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981.

(12) In order to invoke the provisions of paragraph (a)(10) of this section, the taxpayer shall comply with the following procedure:

(A) Prior to or on the date on which the construction equipment is located within the boundaries of the city, the taxpayer shall file with the city manager an equipment declaration on a form provided by the city. Such declaration shall state the dates on which the taxpayer anticipates the construction equipment will be located within and removed from the boundaries of the city, shall include a description of each such piece of equipment, shall state the actual or anticipated purchase price of each such piece of equipment, shall state the actual amount of sales or use taxes paid to other municipalities and shall include such other information as reasonably deemed necessary by the city.

(B) The taxpayer shall file with the city an amended construction equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the city or, for equipment that is brought into the city for a project of less than ninety days' duration, no later than ten days after substantial completion of the project.

(C) The taxpayer need not report on any equipment declaration any construction equipment for which the purchase price was under $2,500.00.

(13) If the equipment declaration is given as provided in paragraph (a)(12) of this section, then as to any item of construction equipment for which the purchase price was under $2,500.00 that was brought into the boundaries of the city for thirty days or less for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as the rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981, and that such local sales or use tax was previously paid. In such case the burden of proof shall be on the city to prove such local sales or use tax was not paid.

(14) If the taxpayer fails to comply substantially with the provisions of paragraph (a)(12) of this section, the taxpayer may not invoke the provisions of paragraph (a)(10) of this section and all construction equipment shall be subject to the provisions of paragraph (a)(9) of this section.

(b) Vendors engaged in business in the city shall collect and purchasers shall pay the taxes levied by this chapter, notwithstanding the fact that either vendor or purchaser disputes the tax liability or claims an exemption. If the vendor or purchaser disputes the application of this chapter to any transaction, the vendor shall collect and the purchaser shall pay the tax, and the purchaser may thereafter apply to the city manager for a refund of such taxes paid, as provided in section 3-2-23, "Refunds (Applies To Entire Title)," B.R.C. 1981.

(c) Any purchaser or consumer accused of failing to pay a tax due under this chapter shall be found not guilty of that offense if it is demonstrated by a preponderance of the evidence that such purchaser or consumer paid the tax to a vendor who such purchaser or consumer reasonably believed would remit the tax to the city.

(d) Vendors shall remit to the city taxes collected according to their net taxable sales, whether or not each sales transaction consists of some items each of which has a retail sale price of less than the minimum taxable sale; but vendors may exclude from net taxable sales the amount of each individual sales transaction that is less than the minimum taxable sale.

(e) Every vendor required or permitted to collect the tax imposed by this chapter shall collect it upon the purchase price of tangible personal property purchased or leased outside the city and intended to be brought into the city for use, storage, or consumption, notwithstanding the following circumstances:

(1) That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the vendor at a point outside of the city as a result of solicitation by the vendor through the medium of a catalogue or other written advertisement, by radio or television advertising, or by any other means;

(2) That the purchaser's order or contract of sale was made or closed by acceptance or approval outside of the city or before the tangible personal property enters the city;

(3) That the purchaser's order or contract of sale provides that the property shall be, or it is in fact, procured or manufactured at a point outside the city and shipped directly to the purchaser from a point of origin; or

(4) That the property is mailed to the purchaser in the city from a point outside the city or delivered to a carrier at a point outside the city, F.O.B., or otherwise, and directed to the purchaser in the city, regardless of whether the cost of transportation is paid by the vendor or by the purchaser.

Ordinance Nos. 4873 (1984); 4962 (1986); 5187 (1989).

3-2-3 **Taxes Collected Are Held In Trust.**

All sums of money paid by a purchaser to a vendor or retailer as required by this chapter are public monies that are the property of the city. The vendor or retailer shall hold such monies in trust for the sole use and benefit of the city until the vendor or retailer pays them to the city manager[1].

3-2-4 **Vendor Liable For Tax.**

(a) Except as otherwise provided by section 3-2-14, "Methods Of Paying Sales And Use Tax," B.R.C. 1981, every vendor shall pay the tax rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981, on all taxable sales. On or before the twentieth day of each month, each vendor shall file a return to the city manager for the preceding calendar month and remit an amount equal to the percentage specified in section 3-2-5, "Rate Of Tax," B.R.C. 1981, of such sales and any excess tax collected over the specified percentage of such sales to the city manager[2].

(b) The vendor shall add the tax as a separate and distinct item in the sale, except that any retailer selling malt, vinous, or spirituous liquors by the drink may include in the sales price the tax imposed by this chapter. The tax shall be a debt from the purchaser to the vendor recoverable at law in the same manner as other debts. The vendor may not absorb the tax or advertise or state that the tax will be absorbed or will not be imposed. Nor may the vendor refund any part of the tax, except when the full sales price is refunded or a discount is made as provided in section 3-2-10, "Deductions," B.R.C. 1981.

Ordinance Nos. 4879 (1985); 5015 (1986); 5599 (1993).

[1] B.K. Sweeny Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1943).
[2] 39-26-105, C.R.S.

3-2-5 **Rate Of Tax.**

(a) Except as specified in subsection (b) of this section, the amount of the tax hereby levied is 3.56 percent of the purchase price of tangible personal property or taxable services sold or purchased at retail.

(b) The amount of the tax hereby levied on food sold in or by a food service establishment shall be the amount levied in subsection (a) of this section plus 0.15 percent of the purchase price of such food. Cover charges, admission or entrance fees, and mandatory service or service-related charges shall be included as part of the purchase price of such food. However, a mandatory service or service-related charge shall not be included as part of the purchase price of such food, if the full amount of the charge is passed on to the employees of the food service establishment who have provided direct service to each person paying the charge, and if all federal and state income and other applicable taxes due on such charge have been withheld by the food service establishment and paid to the appropriate government.

(c) Of said amount, 0.15 percent shall be deemed a phase I fire training center tax, which tax shall expire at 12:00 midnight on December 31, 2007; 0.25 percent shall be deemed a parks and recreation tax, which tax shall expire at 12:00 midnight on December 31, 2015; 0.38 percent shall be deemed a library bond (with the residual to the general fund) tax, which tax shall expire at 12:00 midnight on December 31, 2011; 0.33 percent shall be deemed an open space tax, which tax shall expire at 12:00 midnight on December 31, 2018; 0.15 percent shall be deemed a general sales and use tax, which tax shall expire at 12:00 midnight on December 31, 2012; 0.15 percent shall be deemed an open space tax, which tax shall expire at 12:00 midnight on December 31, 2019; and, beginning on January 1, 2005, 0.15 percent shall be deemed a general sales and use tax, which tax shall expire at 12:00 midnight on December 31, 2024. As each tax expires, the aggregate tax shall be reduced accordingly.

Ordinance Nos. 5015 (1986); 5047 (1987); 5222 (1989); 5492 (1992); 5780 (1996); 5794 (1996); 5882 (1997); 5958 (1997); 7248 (2002); 7323 (2003); 7505 (2006).

3-2-6 **Exempt Property And Services.**

Purchase, sale, or use of the following property and services is exempt from taxation under this chapter:

(a) Services, not otherwise taxable under this chapter, whose price is separately stated from the price of tangible personal property with which the services are sold;

(b) Services, not otherwise taxable under this chapter, whose price is not separately stated from the price of tangible personal property with which the services are sold, but that is calculated as a percentage of the total sales price of the property, and approved as exempt by the city manager upon written request;

(c) Tangible personal property sold at wholesale that is actually transformed by the process of manufacture and becomes through the manufacturing process a necessary and recognizable ingredient and component of the finished product, and whose presence in the finished product is essential to the use thereof in the hands of the ultimate consumer;

(d) Exempt commercial packing materials[1];

(e) Any wheeled vehicle exceeding either eight feet in width or thirty-two feet in length excluding towing gear and bumpers, without power to move, that is designed and commonly

[1]Bedford v. C.F. & I., Inc., 102 Colo. 538, 81 P.2d 752 (1938), Western Electric Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974). See also Colorado Department of Revenue Sales and Use Tax, ICCR 201-4, Regulation 26-102.20.

used for residential human occupancy in either temporary or permanent locations and that may be drawn over the public highways by a motor vehicle, after such vehicle has once been subject to the payment of sales or use tax under this chapter;

(f) Wholesale sales of taxable property to a licensed retailer, jobber, dealer, or other wholesaler for purposes of taxable resale, and not for the retailer's, jobber's, dealer's, or wholesaler's own consumption, use, storage, or distribution;

(g) Tangible personal property that is to be used, stored, or consumed outside the State of Colorado by persons residing or doing business outside the State of Colorado when the property is to be delivered to the purchaser outside the state by mail; by common, contract, or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance;

(h) Gasoline or motor fuel upon which has accrued or has been paid the tax prescribed by the Colorado Gasoline and Special Fuel Tax Law[1];

(i) Cigarettes;

(j) Medical supplies;

(k) Public accommodations, as defined in section 3-1-1, "Definitions," B.R.C. 1981;

(l) Admission to places or events as defined in section 3-1-1, "Definitions," B.R.C. 1981;

(m) Neat cattle; sheep, lambs, swine, and goats; and mares and stallions for breeding;

(n) Newspapers and newsprint and printer's ink used to produce newspapers, but not preprinted newspaper supplements;

(o) Sales of tangible personal property and taxable services that are to be used, stored, or consumed outside the city to persons who are not residents of the city and who do not engage in business in the city if the property or services purchased or sold are to be delivered to the purchaser outside the city by mail; by common, contract, or commercial carrier that is employed by the vendor to effect delivery; or by the vendor's conveyance;

(p) Motion picture prints when the exhibitor thereof charges admissions for exhibition and pays the admission tax imposed by chapter 3-4, "Admissions Tax," B.R.C. 1981;

(q) Tangible personal property owned by a resident but purchased when the purchaser was not a resident of the city and used for a substantial period of time outside of the city. When such property is an automotive vehicle, it may qualify as exempt property only if it was registered outside the city for a substantial period of time;

(r) Amounts paid by any purchaser as, or in the nature of, interest or finance charges on account of credit extended in connection with the sale or purchase of any tangible personal property if the interest is separately stated from the consideration received for the property;

(s) Tangible personal property brought into the city by a non-resident for temporary personal use;

(t) Automobile dealers' demonstration vehicles, subject to the conditions in paragraph 3-2-2(a)(4), B.R.C. 1981;

[1]39-27-111, C.R.S.

(u) All property and services whose sale, purchase, or use the city is prohibited from taxation by the laws or Constitution of the United States or the Constitution of the State of Colorado;

(v) All sales of food purchased with food stamps on or after October 1, 1987;

(w) Building materials for installation, use, or consumption on buildings which have been designated as landmarks and for which a landmark alteration certificate is required under chapter 10-13, "Historic Preservation," B.R.C. 1981, if, at the time of application for building permit, the applicant submits proof that the building has been so designated and accompanying affidavits of the owner and the contractor performing the construction on the building stating that the building materials will be installed, used, or consumed exclusively upon the building for which the permit has been issued and that at least thirty percent of the dollar value of the building permit shall be for exterior improvements. No person shall fail to comply with such an affidavit. No more than $25,000.00 of tax per year and no more than $12,500.00 of tax per site per year shall be exempted under this subsection; or

(x) "Occasional food sale," as defined in section 3-1-1, "Definitions," B.R.C. 1981.

Ordinance Nos. 4879 (1985); 5030 (1987); 5092 (1988); 5272 (1990); 5315 (1990); 5430 (1991).

3-2-7 **Exempt Persons.**

The following persons are exempt from payment of the tax imposed by this chapter on all purchases unless otherwise specified but not the duty to collect and remit the tax levied hereby on sales:

(a) The United States government and all departments and institutions thereof, the State of Colorado and the departments, institutions, and political subdivisions thereof, and the city, but only in the exercise of their governmental functions and only when purchases are supported by official government purchase orders and paid for by draft or warrant drawn on the government's account directly to the seller. But purchases or sales of tangible personal property or taxable services for the use in construction projects, as defined in section 3-1-1, "Definitions," B.R.C. 1981, provided under a construction contract to the government entity by an independent contractor are taxable[1].

(b) Charitable organizations, if:

(1) The purchase is of property or services to be used in the conduct of the organization's regular activities to foster its religious or charitable purpose[2];

(2) The purchase is paid for directly by the organization without reimbursement therefor, and the purchase generates for the organization no "unrelated business taxable income" as defined in section 512 of the United States Internal Revenue Code;

(3) The organization obtains from the city manager an exempt institution license under section 3-2-12, "Exempt Institution License," B.R.C. 1981, and presents the license to the vendor at the time of the purchase or sale; and

(4) The property or service purchased or sold is not for use in construction projects, as defined in section 3-1-1, "Definitions," B.R.C. 1981, when provided under construction contract to the charitable organization by an independent contractor.

[1]Temple v. Arthur Veneri Co., 470 P.2d 576 (1970).
[2]Security Life & Acc. Co. v. Heckers, 495 P.2d 225 (1972).

(c) Building contractors purchasing construction materials to be used for installation, use, or consumption on job sites or building construction addresses on which a city building permit has been issued, if:

(1) The value of the construction materials was included in determining the valuation of the construction for purposes of obtaining the building permit;

(2) The vendor records on the invoice of sale the job site address and building permit number; and

(3) The contractor has prepaid the tax directly to the city on the estimated or actual basis, calculated as a percentage of the construction valuation at the time the building permit is issued.

(d) Nonresidents of the city who bring tangible personal property into the city for personal use, storage, or consumption while they are temporarily within the city.

Ordinance Nos. 5430 (1991); 6090 (1999); 7162 (2001).

3-2-8 **Exemption Burden Of Proof.**

The burden of proving that any vendor, retailer, consumer, or purchaser is exempt from collecting or paying the tax upon any property or services sold or purchased, paying tax to the city manager, or making returns to the city manager is on the person asserting the claim of exemption[1].

3-2-9 **Tax Limited When Other Taxes Paid.**

The tax imposed under this chapter shall be reduced by the amounts of taxes paid to the city, other cities, or other states as follows:

(a) When a sales tax has been paid to the city under this chapter, no use tax is due upon the use, storage, or consumption of tangible personal property, but a sales or use tax is due upon the rental or leasing of such property.

(b) The city's use tax shall not apply to tangible personal property that was previously subjected to a sales or use tax of another municipality, organized and existing under the authority of the Constitution or laws of the State of Colorado, lawfully imposed on the purchaser or user, equal to or in excess of the rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981. A credit shall be granted against the city's use tax equal to the tax paid by reason of the imposition of a sales or use tax of the other municipality on the purchase or use of the property. The amount of the credit shall not exceed the rate set forth in section 3-2-5, "Rate Of Tax," B.R.C. 1981. The use tax credit set forth in this subsection shall not apply to a sales tax paid on construction materials.

(c) The city's sales tax shall not apply to the sale of construction materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit evidencing that a local use tax has been paid or is required to be paid.

(d) The city's use tax shall not apply to construction materials that are stored inside the city but are not used for any other purpose within the city.

Ordinance Nos. 4873 (1984); 4962 (1986); 5001 (1986); 7011 (1999).

[1]First Lutheran Mission of the Knolls v. Department of Revenue, 613 P.2d 351 (Colo. App. 1980).

3-2-10 **Deductions.**

The following amounts may be deducted from a taxpayer's gross sales:

(a) Exempt property and services set forth in section 3-2-6, "Exempt Property And Services," B.R.C. 1981;

(b) Gross sales that are represented by accounts not secured by a conditional sale contract or chattel mortgage, found to be worthless and actually and properly charged as bad debts for Colorado State income tax purposes; except that if any such accounts are thereafter collected by the taxpayer, the taxpayer shall pay the tax upon the amount so collected and the three year limitation of section 3-2-38, "Limitations," B.R.C. 1981, applies from the date on which the tax was payable without consideration for the write-off rather than from the date when the vendor actually writes off the debt;

(c) The sales price of property returned by the purchaser when the full sale price including the tax levied is refunded in cash or by credit;

(d) The amount of discount from the original sales price if the discount and corresponding decrease in sales tax due is actually passed on to the purchaser; but any allowed rebate, credit, or cash discount allowed for payment on or before a given date may only be deducted on the taxpayer's return that follows the customer's actual receipt of the discount. If the price upon which the tax was computed and paid to the city by the vendor is subsequently readjusted before the purchaser pays the vendor the tax, the taxpayer may request the city manager to approve a credit of such additional tax paid against the tax due on the next return the taxpayer files with the city;

(e) The amount of the fair market value of any exchanged or traded property that is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold; and

(f) The amount of each individual sales transaction that is less than the minimum taxable sale.

Ordinance No. 7248 (2002).

3-2-11 **Sales And Use Tax License.**

(a) No person shall engage in the business of selling at retail tangible personal property or taxable services without first having obtained a sales and use tax license from the city manager.

(b) Each license shall be numbered, show the name, residence, place, and character of business of the licensee, and be conspicuously posted in the place of business for which it is issued. No sales and use tax license is transferable.

(c) No person engaged in business in the city who regularly purchases or leases tangible personal property or taxable services for use, storage, or consumption in connection with said business, from sources within or without the city, shall use, store, or consume such property or services without first having obtained a sales and use tax license.

(d) The city manager shall issue a sales and use tax license to persons who pay the license fee prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete an application therefor, stating the name and address of the person and the business and such other information as the city manager may require. The manager shall not issue a sales and use

tax license until the manager has verified that the location of the business complies with the provisions of title 9, "Land Use Code," B.R.C. 1981.

(e) The license is valid so long as the business remains in continuous operation or the license is canceled by the licensee or revoked by the city.

(f) If business is transacted at two or more separate locations by one person, each location shall be separately licensed.

(g) Whenever a business entity that is required to be licensed under this chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new license for the business.

Ordinance Nos. 4803 (1984); 5599 (1993); 7162 (2001).

3-2-12 **Exempt Institution License.**

(a) No exempt institution shall purchase tax free in the city or use in the city tangible personal property or taxable services without payment of the tax imposed by this title unless the institution first obtains an exempt institution license from the city manager and presents its license or, if a government entity, its license number, to the vendor of tangible personal property or taxable services before making a purchase, lease, or use of the property or services.

(b) The application for an exempt institution license shall include the organization's certificate of incorporation and a copy of the institution's federal tax exemption letter, bylaws, and financial statements showing source of funds and expenditures.

(c) As a condition of obtaining an exempt institution license, the institution shall agree to make regular and complete reports of all purchases, both those that are not taxable and those that are taxable, including, without limitation, purchases of property and services resold to members and others and those used for other than the exempt purpose of the institution.

3-2-13 **Revocation Of License.**

After notice and an opportunity for a hearing under chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, the city manager may revoke the license of any person whom the manager finds to have violated any provision of this title.

3-2-14 **Methods Of Paying Sales And Use Tax.**

(a) Every contractor who builds, reconstructs, alters, or improves any building or other structure, including work performed for federal, state, or city governments or exempt institutions in the city, and every person engaged in the installation of poles, lines, cables, or other transmission or distribution facilities of public utilities, and who purchases tangible personal property or taxable services for use therein and every owner or lessee of realty or improvements to realty in the city who attaches tangible personal property to or causes to be performed taxable services upon said realty or improvements thereto shall pay the tax imposed by this chapter upon such tangible personal property or taxable services in one of the following ways:

(1) Payment to a vendor licensed by the city of tangible personal property or taxable services at the time and place of purchase thereof;

(2) Payment by either the owner, lessee, or general contractor or separately by a subcontractor electing to do so at the time a building or right of way permit is issued, on the estimated percentage basis, based on a percentage of the total valuation of the construction contract; or

(3) Filing a use tax return on a monthly or other basis approved by the city manager under subsection 3-2-15(d), B.R.C. 1981, and payment of the tax by the twentieth day of each reporting period for the previous reporting period after obtaining a sales and use tax license.

(b) Every person who engages in business in the city and who purchases, leases, or rents tangible personal property or taxable services for use, storage, or consumption in the city in connection with the business from sources within or without the city and taxable under this chapter and who has not paid the sales tax imposed by this chapter to a vendor required to collect the tax shall pay the city use tax, after obtaining a sales and use tax license, by filing a return on a monthly or other basis approved by the city manager under subsection 3-2-15(d), B.R.C. 1981, and remitting the tax by the twentieth day of each reporting period for the previous reporting period.

(c) Every resident of the city who purchases or leases any taxable property or taxable services for use, storage, or consumption in the city from sources within or without the city and who has not paid a sales tax under this chapter to a vendor required to collect it shall file a use tax return and pay the tax within thirty days from the purchase or lease of the taxable property or taxable services.

(d) Nonresident vendors engaged in business in the city shall collect and remit the sales and use taxes as prescribed in this chapter, but the nonresident vendor may petition the city manager to allow filing returns and paying taxes on a regularly audited and reasonable estimated payment basis on the grounds that the payment of the tax on individual sales will impose an undue hardship and that the type, occasion, and infrequency of sales warrants such exception. Estimated payments of the tax shall be based upon the proportion that the vendor's gross sales taxable under this chapter bear to the vendor's total gross sales.

Ordinance No. 4873 (1984).

3-2-15 **Tax Returns.**

(a) The city shall use and the taxpayer shall file its return upon the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the executive director of the State Department of Revenue by the first full month commencing one hundred twenty days after the effective date of the regulation adopting or revising such standard form.

(b) A vendor doing business in two or more locations, whether inside or outside the city, may file one return covering all such locations, but the vendor shall file a supplemental report showing gross sales and net taxable sales and taxes collected thereon for each such location.

(c) Taxpayers are required to file returns and pay sales and use taxes due according to the following schedule:

Average Sales And Use Tax Liability Per Month	Remittance Schedule
Up to $15.00	Annually
$15.01 to $300.00	Quarterly
Over $300.00	Monthly

(d) Upon request of a taxpayer whose regularly employed accounting methods are such that monthly returns may result in undue hardship, the city manager may accept returns at more convenient intervals or in installments that will nevertheless not jeopardize collection of the tax.

(e) The city manager may require a bond or other financial guarantee to secure payment of the tax on less frequent than monthly basis, as authorized in subsection (d) of this section, and may revoke permission to pay the tax on such basis if the tax due becomes delinquent.

Ordinance Nos. 4962 (1986); 7248 (2002).

3-2-16 City Council Empowered To Amend, Repeal, And/Or Revise Law.

The city council is authorized to reduce the retail sales and use tax imposed by this chapter and amend or repeal this chapter.

3-2-17 Duties And Powers Of City Manager.

(a) The city manager is authorized to administer the provisions of this title, issue licenses, adopt legislative and interpretive rules to implement this title, prescribe forms and provide a uniform method of adding the tax or its average equivalent to the purchase price, and permit taxpayers to pay tax on an estimated percentage basis or at less than monthly intervals.

(b) The city manager may, upon the request of a taxpayer or potential taxpayer, issue a written opinion on the applicability of this title and any provisions thereof to such taxpayer. The request shall be written and under oath shall include all information required by the manager. The manager's opinion shall be limited to the statement of facts as submitted and applicable ordinances in effect on the date of the opinion.

(c) The city manager may appoint such auditors, accountants, experts, and other persons as are necessary to carry out the manager's responsibilities under this title. The manager may delegate to such persons authority granted to the manager as necessary for administration of this title and shall bond any person handling money under this title.

(d) The city manager shall waive sales and use taxes otherwise payable under this chapter on construction projects for the rehabilitation of housing for low income persons whose income does not exceed thirty-five percent of the median income for Boulder County.

(e) The city manager or an agent thereof may compromise any civil or criminal dispute under this title to the extent of $500.00 before referring it to the office of the city attorney for prosecution. The city attorney or a delegate thereof shall compromise any criminal or civil case arising under this title, upon the manager's written request. Whenever a compromise of $500.00 or less is made by the manager or an agent thereof, the manager shall file a written opinion explaining the reasons therefor, which may include financial inability of the taxpayer to pay a larger amount, and a statement of:

(1) The amount of tax assessed;

(2) The amount of interest, penalties, and additional amounts imposed by this chapter on the taxpayer; and

(3) The amount paid under the terms of the compromise.

(f) The city manager shall make available to any requesting vendor a map showing the boundaries of the city. The requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it.

(g) The city manager may grant rebates of sales and use taxes paid by primary employers in connection with equipment acquisition, construction projects, construction equipment and construction materials when, in the judgment of the city manager, the rebate will serve the economic interests of the city by helping attract or retain a primary employer which contributes to a socially sustainable community. The city manager may promulgate interpretive guidelines to define more specifically the circumstances under which rebates may be granted and to establish application procedures or other matters necessary or desirable for implementation of this subsection. Any taxes rebated pursuant to this subsection shall be deemed payable by the city's general fund. This subsection shall not be used in connection with a taxpayer protest or as an off-set to an audit assessment. This subsection shall be repealed and no longer in effect after December 31, 2007, unless extended by action of the city council.

(h) The city manager shall rebate to the taxpayer the portion of sales and use taxes paid under this chapter for Photovoltaic and Solar Thermal Systems specified in this subsection. A portion of the sales and use taxes paid under this chapter for Photovoltaic and Solar Thermal Systems may be set aside by city council budget actions to create a reserve account dedicated to providing access to Photovoltaic and Solar Thermal Systems on housing for low or moderate income persons and on the facilities of site-based nonprofit entities operating in Boulder. The taxpayer rebate shall be the amount remaining after the reserve account set aside is deducted. This program shall be reviewed periodically for effectiveness, and shall not be deemed a change in taxing policy.

Ordinance Nos. 4962 (1986); 7478 (2006); 7487 (2006).

3-2-18 **Taxpayer Duty To Keep Records And Make Reports.**

(a) The city manager may require any person, by regulation or notice served on such person to make such return, render such statement, keep and furnish such records, or make such information reports as the manager may deem sufficient to demonstrate whether or not such person is liable for payment or collection of tax imposed by this title.

(b) Contractors who have prepaid an estimate of taxes on construction projects under paragraph 3-2-14(a)(2), B.R.C. 1981, shall, upon completion of each such project, report the actual costs of tangible personal property and taxable services used therein.

(c) Every taxpayer or other person liable to the city for sales or use tax under this title shall keep and preserve for a period of three years such books, accounts, and records, including, without limitation, original sales and purchase records, as may be necessary to determine the amount of tax that the taxpayer is liable to pay or collect[1].

(d) All such books, accounts, and records shall be open for examination at any time by the city manager or a duly authorized agent thereof. If the taxpayer or person does not keep the necessary books, accounts, and records within the city, such taxpayer or person may comply with this subsection by producing books, accounts, records or such information as the manager reasonably requires for examination within the city or at the place where such books, accounts, records or information are regularly kept.

[1]See Colorado Department of Revenue Sales Tax and Use Tax, ICCR 201-4, Regulation 26-116.

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(e) If a taxpayer refuses to furnish any of the foregoing books, accounts, records, or information upon request of the city manager or an agent thereof, the manager may apply to any judge of the District Court of the State of Colorado for a subpoena to require the taxpayer to appear before the manager, produce any of the foregoing information in the taxpayer's possession, and testify under oath before the manager.

(f) If the city manager is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the taxpayer's taxable sales, the manager may apply to any judge of the District Court in and for Boulder County for subpoenas to such other persons as the manager believes may have knowledge of the

(see following page for continuation of Section 3-2-18)

taxpayer's return or income. If the manager shows that the taxpayer cannot be found, evades service of subpoena, fails or refuses to produce records or give testimony, the judge may cause subpoenas to issue to the persons sought, requiring them to appear before the manager and give testimony regarding the taxpayer's return or income. If any of the persons so served with subpoenas fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

3-2-19 **Coordinated Audit.**

(a) Any taxpayer licensed in the city pursuant to section 3-2-11, "Sales And Use Tax License," B.R.C. 1981, and holding a similar sales tax license in at least four other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided in this section.

(b) Within fourteen days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the city manager, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon the city's right to recover tax owed by the vendor for the audit period.

(c) Except as provided in subsection (g) of this section, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of any passage-of-time based limitation upon the city's right to recover taxes owed for the proposed audit period may be audited by the city during the twelve months after such request is submitted only through a coordinated audit involving all of the listed Colorado municipalities electing to participate in such an audit.

(d) If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (b) of this section, the city manager will so notify the city manager or other appropriate official of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The city manager will then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the city manager will facilitate arrangements between the city and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The city manager will cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the city manager will, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited, the records

most likely to be required by participating municipalities for completion of the coordinated audit, and the proposed schedule for the coordinated audit.

(g) The coordinated audit procedure set forth in this section shall not apply:

(1) When the proposed audit is a jeopardy audit;

(2) To audits for which a notice of audit was given prior to the effective date of this section;

(3) When a taxpayer refuses to promptly sign a waiver of any ordinance that could limit, based upon passage of time, the city's right to recover for a portion of the audit period; or

(4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection (b) of this section.

Ordinance No. 5430 (1991).

3-2-20 **Preservation Of Tax Returns And Reports.**

(a) All reports and returns required under this title and received by the city shall be preserved for three years and thereafter until the city manager orders them to be destroyed.

(b) Except in accordance with judicial order or as otherwise provided by law, the city manager and agents, clerks, and employees thereof shall not divulge or make known in any way any information disclosed in any document, report, or return filed under this title except such information as is displayed on the tax license. The officials charged with the custody of documents, reports, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the manager in an action or proceeding under the provisions of this title when the report of a fact shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding, and no more[1].

(c) Nothing in this section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the city manager or an agent thereof and when so certified shall be evidence equally with the originals and may be received as evidence of their contents.

(d) Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the city attorney or other legal representatives of the city.

(e) Notwithstanding the provisions of this section, the city manager may furnish to the taxing officials of the State of Colorado, its political subdivisions, any other state, or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this title or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the manager to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax purposes.

[1]See Losavio v. Robb, 579 P.2d 1152 (1978).

(f) Notwithstanding the provisions of this section, the city manager may disclose:

(1) Names, addresses, and telephone numbers of the officers and owners of a sales, use, accommodations admissions or admissions tax licensee as that information has been provided to the city by the licensee;

(2) Information to an individual with whom, or an organization with which, the manager has contracted to assist the city in examining or auditing tax records or collecting taxes, provided that the individual or organization is required by contract not to disclose any of that information to any person other than the city manager and the authorized agents, clerks and employees thereof; and

(3) Information to an individual with whom, or an organization with which, the manager has contracted to assist the city in evaluating economic trends or revenue projections within the city, provided that the individual or organization is required by contract not to disclose any of that information to any person other than the city manager and the authorized agents, clerks and employees thereof.

(g) If a city employee or officer violates the provisions of this section, such employee or officer may be dismissed from office and may also be prosecuted for a violation of this section.

(h) No individual with whom, or organization with which, the manager has contracted pursuant to this section shall fail to comply with the confidentiality provisions of this section. Any such failure may be prosecuted for a violation of this section, and may constitute a basis upon which to terminate the individual's or organization's contract with the city.

Ordinance Nos. 5882 (1997); 7330 (2003).

3-2-21 **Restrictions On Employment By City Employees.**

No deputy, agent, clerk, or other officer or employee of the city engaged in any activity governed by this title shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding a sales and use tax license from the city for the purpose, directly or indirectly, of preparing tax returns or reports required by the city, the State of Colorado, its political subdivisions, any other state, or the United States or accept any employment for the purpose of advising, preparing materials or data, or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the city, the State of Colorado, its political subdivisions, any other state, its political subdivisions, or the United States.

3-2-22 **Penalties For Failure To File Tax Return Or Pay Tax (Applies To Entire Title).**

(a) If any person fails, neglects, or refuses to collect tax or to file a return and pay the tax required by this title or fails to remit the correct amount of tax; or underpays the tax on a regular basis; or underpays the tax because of negligence or fraud, the city manager shall make an estimate of the tax due, based on available information, and shall add thereto penalties, interest, and any additions to the tax. The manager shall serve upon the delinquent taxpayer personally or by first class mail directed to the last address of the taxpayer on file with the city, written notice of such estimated taxes, penalties, and interest, constituting a Notice of Final Determination, Assessment, and Demand for Payment due and payable within twenty calendar days after the date of the notice. The taxpayer may request a hearing on the assessment as provided in section 3-2-25, "Hearings (Applies To Entire Title)," B.R.C. 1981.

(b) The penalties assessed for failure to file returns or pay taxes as required by this title shall be:

(1) If a person neglects or fails to file a return or pay the tax on any return required under this title on the date prescribed therefor, determined including any extension of time for filing, such taxpayer is liable to pay a penalty of ten percent plus interest on such delinquent taxes at the rate imposed by subsection (j) of this section, plus one-half of one percent per month from the date when the return or payment was due until paid. In the case of non-filing or non-payment of the sales tax, the one-half percent per month penalty shall not exceed eighteen percent in the aggregate. The city manager shall assess the penalties by serving upon the taxpayer a Notice of Final Determination, Assessment, and Demand for Payment, as provided in subsection (a) of this section.

(2) In addition to any other penalties provided by this section, interest at twice the rate provided in subsection (j) of this section, shall be imposed on any use tax, finally determined to be due and unpaid under any provision of section 3-2-25, "Hearings (Applies To Entire Title)," B.R.C. 1981, from the date due until paid.

(c) If a taxpayer fails to file a return or pay the tax on any return required under this title on the date prescribed therefor, determined with regard to any extension of time for filing, due to fraud with the intent to evade the tax, is liable to pay a penalty of one hundred percent of the deficiency plus interest collected at a rate of three percent per month on the amount of the deficiency from the date the return was due until paid. The city manager shall assess the penalties by serving upon the taxpayer a Notice of Final Determination, Assessment, and Demand for Payment, as provided in subsection (a) of this section.

(d) If the amount of tax is understated on the taxpayer's return because of a mathematical error on the face of the return, the city manager shall notify the taxpayer by Notice of Final Determination, Assessment, and Demand for Payment of the amount of tax liability exceeding that shown in the return. The taxpayer has no right of appeal from this assessment but shall pay the tax due and assessed or file an amended return to show the correct amount of tax due within ten days from the date of the notice.

(e) If any amount of tax is not paid on or before the twentieth day following the end of the prescribed reporting period, interest on such amount at the rate imposed under subsection (j) of this section shall be paid for the period from such date until paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment.

(f) If any person liable to pay tax imposed by this title has repeatedly failed, neglected, or refused to pay the tax within the time specified for such payment and the city manager has been required to exercise enforcement proceedings through issuing a distraint warrant to enforce collection of taxes due, the manager may add to the amount of taxes due, together with all penalties and interest thereon otherwise provided in this title, the following penalties for recurring distraint warrants:

(1) For the second through fifth distraint warrants issued, the greater of fifteen percent of the delinquent taxes, interest, and penalties due or the sum of $25.00; and

(2) For six or more distraint warrants issued, the greater of thirty percent of the delinquent taxes, interest, and penalties due or the sum of $50.00[1].

(g) For good cause shown the city manager may waive any penalty assessed or interest imposed under this title.

[1]39-21-114(7), C.R.S.

(h) Interest prescribed under this title shall be paid upon notice and demand, shall be assessed, collected, and paid in the same manner as the tax to which it applies, and may be assessed and collected at any time during the period within which the tax to which the interest relates may be assessed and collected.

(i) If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this title on the portion of the tax so satisfied for any period during which, if the credit had been allowed, interest would have been allowed to the taxpayer upon the overpayment.

(j) When interest is required or permitted to be charged under any provisions of subsections (b) through (e) of this section, the rate of interest shall be one percent a month.

(k) The penalties provided in this section are not exclusive.

Ordinance Nos. 4962 (1986); 5039 (1987); 5430 (1991); 7011 (1999); 7162 (2001); 7248 (2002).

3-2-23 **Refunds (Applies To Entire Title).**

(a) The right of any person to a refund under this title is not assignable. An application for refund shall be completed by the purchaser or vendor who paid the tax, as shown on the invoice of sale.

(b) If a dispute arises between the purchaser and vendor as to whether or not a sale or purchase is exempt from taxation under this title, the vendor shall collect and the purchaser shall pay the tax and the vendor shall issue to the purchaser a sales receipt or paid invoice.

(c) Limitations on refund claims shall be as follows:

(1) An application for refund of sales or use tax paid under protest by a taxpayer which claims an exemption pursuant to section 3-2-6, "Exempt Property And Services," or 3-2-7, "Exempt Persons," B.R.C. 1981, shall be made within sixty days after the purchase, storage, use, or consumption of the tangible personal property or taxable services whereon an exemption is claimed.

(2) An application for refund of tax monies paid in error or by mistake shall be made within three years after the date of purchase, storage, use, or consumption of the tangible personal property for which the refund is claimed. For bad debt write-offs, the three-year limitation of section 3-2-38, "Limitations," B.R.C. 1981, applies from the date on which the tax was payable without consideration for the write-off rather than from the date when the vendor actually writes off the debt.

(3) Applications for refunds shall be made upon forms prescribed and furnished by the city manager, and the taxpayer shall support the claim for refund by the original paid invoice or sales receipt issued by the vendor and by the taxpayer's own affidavit establishing grounds for the exception and provide such other information as the manager may require.

(d) The city manager shall with due speed determine whether to grant the refund and shall notify the applicant in writing of that determination. Aggrieved applicants may appeal the initial decision by requesting a hearing from the manager thereon within twenty calendar days of the date of the decision, as provided in section 3-2-25, "Hearings (Applies To Entire Title)," B.R.C. 1981, and may appeal an adverse decision of the manager, as provided in section 3-2-26, "Appeals From City Manager's Decision (Applies To Entire Title)," B.R.C. 1981.

(e) If the city manager discovers from examining a return within the time periods provided for filing refund requests, upon a claim duly filed by the taxpayer, or upon final judgment of a court that tax, penalty, or interest paid by any taxpayer under this chapter exceeds the amount due or has been illegally or erroneously collected, the manager shall refund such improperly collected tax, penalty, or interest, regardless of whether the tax was paid under protest, together with interest provided in section 3-2-24, "No Interest On Overpayments And Refunds (Applies To Entire Title)," B.R.C. 1981. The manager shall issue a warrant for the payment to the taxpayer out of the reserve of the city general fund provided therefor. The manager shall keep on file a duplicate of such voucher and also a statement that sets forth the reasons that the refund was made.

(f) Whenever it is established that any taxpayer has, for any period under applicable statutes of limitations, overpaid a tax imposed by this title and that the taxpayer also has an unpaid balance of tax and interest accrued on the city manager's records for any other period, the manager shall credit the portion of the overpayment of tax plus interest allowable thereon that does not exceed the amount of such unpaid balance and shall refund the remainder.

(g) No applicant for a refund or other person supporting an application for refund shall make any false statement in connection with such application. The conviction of any person for violating this section is prima facie evidence that all refunds received by such person during the current calendar year were unlawfully obtained. The city manager may bring an action to recover such refunds. All refund application forms shall contain a summary of the penalty provisions provided in this subsection.

Ordinance Nos. 4812 (1984); 4962 (1986); 5430 (1991); 7248 (2002).

3-2-24 **No Interest On Overpayments And Refunds (Applies To Entire Title).**

(a) No interest shall be allowed and paid upon any overpayment under this title.

(b) Any portion of a tax or any interest, penalty, additional assessment, or addition to the tax that has been erroneously refunded shall bear interest at the rate stated in subsection 3-2-22(j), B.R.C. 1981, from the date of the payment of the refund to the date of its repayment by the taxpayer.

Ordinance Nos. 4812 (1984); 5430 (1991); 7011 (1999).

3-2-25 **Hearings (Applies To Entire Title).**

(a) A taxpayer may request a hearing on any proposed tax imposed under this title after receiving a Notice of Final Determination, Assessment, and Demand for Payment or denial of a claim for refund by filing a request for hearing within twenty calendar days of the date of mailing of the notice of final determination or refund denial. The city manager may allow a later filing of a hearing request if the taxpayer shows good cause for a late filing. The request for hearing shall set forth the reasons for and amount of changes in the notice of final determination or refund denial that the taxpayer seeks and such other information as the manager may prescribe.

(b) The city manager shall conduct the hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall notify the taxpayer in writing of the time and place of the hearing at least seven calendar days before it is scheduled, unless the taxpayer agrees to a shorter time. The hearing shall be held within sixty days of the date of receipt of the request for a hearing, unless the taxpayer agrees to a later date.

(c) The city manager shall conduct the hearing and may administer oaths and take testimony. The hearing officer on the appeal shall not be the same individual who determined the tax liability.

(d) In lieu of a request for hearing as provided in subsection (a) of this section, a taxpayer may request an extension of up to twenty calendar days for seeking a hearing by filing a written request within twenty calendar days after the date of mailing of the notice of final determination or refund denial or may file a written brief and such other documents and information as the taxpayer wishes within twenty calendar days after the date of mailing of the notice of final determination or refund denial and request the city manager to reconsider the action without a hearing. If the taxpayer requests a reconsideration of the manager's decision, the manager shall consider the request and render a decision, after which the taxpayer may request a hearing thereon as provided in subsection (a) of this section.

(e) The city manager may modify or abate in full the tax, penalty, and interest protested by the taxpayer or grant the requested refund, based on the evidence and argument presented.

(f) The city manager shall send a Determination Notice to the taxpayer setting forth a decision, including any amount found due or amount of claim for refund denied and the grounds for allowing or rejecting the claim in whole or in part. The determination notice is an assessment that is due and payable within thirty days from its date, unless the taxpayer appeals the city manager's decision as provided in section 3-2-26, "Appeals From City Manager's Decision (Applies To Entire Title)," B.R.C. 1981.

(g) If after twenty calendar days from the date of the mailing of the notice of final determination or refund denial, the tax has not been paid, no request for hearing has been made, no extension has been requested, and no request for reconsideration has been filed by the taxpayer, the Notice of Final Determination, Assessment, and Demand for Payment previously mailed constitutes a final assessment of the amount of tax specified, together with interest and penalties or a final denial of refund, except as to any amounts about which the taxpayer has filed a protest with the city manager.

Ordinance Nos. 4962 (1986); 5001 (1986); 5430 (1991); 5985 (1998).

3-2-26 **Appeals From City Manager's Decision (Applies To Entire Title).**

(a) An aggrieved taxpayer may appeal the city manager's Determination Notice to:

(1) The District Court in and for Boulder County by filing a complaint for judicial review with the court within thirty days of the date of the Determination Notice, under Colorado Rule of Civil Procedure 106(a)(4); or,

(2) For sales and use tax, the taxpayer may elect instead to appeal to the executive director of the Colorado Department of Revenue as provided in section 29-2-106.1, C.R.S., if all the transactions that are the subject matter of the city manager's Determination Notice occurred after January 1, 1986.

(b) Within fifteen days after filing the notice of appeal in cases proceeding under paragraph (a)(1) of this section, the taxpayer shall file with the District Court a bond in twice the amount of the taxes, interest, and other charges prescribed in the Determination Notice that are contested on appeal, or the taxpayer shall deposit the disputed amount with the city manager in lieu of a bond. The taxpayer may satisfy the bond requirement by a savings account or certificate of deposit issued by a state or national bank or by a state or federal savings and loan association in accordance with section 11-35-101, C.R.S., equal to twice the amount of taxes, interest, and other charges stated in the Notice and Final Determination. If

the taxpayer deposits the disputed amount with the manager, no further interest shall accrue on the deficiency contested during the pendency of the action. After final action of the Supreme Court of Colorado in the case or when time for appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the manager and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed by subsection 3-2-22(j), B.R.C. 1981, on the amount refunded, according to the final order in the case. No claim for refund of amounts so deposited with the manager need be made by the taxpayer in order for the court to order the manager to repay them as herein provided.

Ordinance Nos. 4962 (1986); 5001 (1986); 5430 (1991).

3-2-27 **Tax Constitutes Lien.**

(a) The sales and use tax imposed by this chapter, together with all penalties and interest pertaining thereto, is a first and prior lien on tangible personal property other than the goods, stock in trade, and business fixtures in which the taxpayer has an ownership interest, subject only to valid mortgages and other liens of record at the time of and prior to the recording of the notice of lien provided by subsection (c) of this section. When the tax is collected by a retailer or its agent, the sales and use tax imposed by this chapter together with all penalties and interest pertaining thereto, is a first and prior lien upon the goods, stock in trade, and business fixtures in which the retailer or agent has an ownership interest except for goods that have been purchased in the ordinary course of business by retail customers, and such lien takes priority over other liens or claims of whatsoever kind or nature on such property[1]. The personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created by this subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property used. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the city clerk. Motor vehicles which are properly licensed in this state showing the lessor as the owner thereof shall be exempt from the lien created by this subsection, except that said lien shall apply to the extent that the lessee has equity or a similar interest in the motor vehicle. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this subsection[2].

(b) Whenever the business or property of any taxpayer is placed in receivership, docketed in bankruptcy, seized under distraint for nonpayment of property taxes, or an assignment is made for the benefit of creditors, all taxes, penalties, and interest imposed by this title and for which the taxpayer is in any way liable under this title are a prior and preferred claim on the property of the taxpayer, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice of lien provided for in subsection (c) of this section property of the taxpayer other than the goods, stock in trade, and business fixtures. No sheriff, receiver, assignee, or other officer may sell the property of any taxpayer subject to the provisions of this title pursuant to process or order of any court without first ascertaining from the city manager the amount of any taxes, penalties, or interest due and payable under this title. If there are any such taxes, penalties or interest due, the sheriff, receiver, assignee, or other officer shall first pay the amount of said taxes, penalties, or interest due out of the proceeds of such sale of the property before paying any monies to judgment creditors or other claimants, except that the officer may pay costs of the proceedings and other pre-existing liens or claims as provided in this subsection.

[1]ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983); Dye Construction Co. v. Dolan, 589 P.2d 497 (Colo. App. 1978); Young v. Golden State Bank, 632 P.2d 1053 (Colo. App. 1981).
[2]Section 39-26-117(1)(b), C.R.S.

(c) If any tax, penalty, or interest imposed by this title and shown due by returns filed by the taxpayer or by assessments made by the city manager as provided in this title is not paid within ten days after it is due, the manager may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalty, and interest, the date of its accrual, and the fact that the city claims a first and prior lien on the real and personal property of the taxpayer, except as to pre-existing liens or claims of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer other than the goods, stock in trade, and business fixtures in which the taxpayer has ownership interest. The notice of lien shall be made on forms prescribed by the manager and verified by the manager or a duly qualified agent thereof and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or personal property or with any person in possession of any personal property or rights to property belonging to the taxpayer.

(d) The city manager shall release any lien as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties, and interest covered thereby, in the same manner as mortgages and judgments are released.

Ordinance Nos. 4873 (1984); 5001 (1986).

3-2-28 **Liens On Construction Improvements.**

(a) The full amount of unpaid taxes arising from and required to be reported on construction of personal property affixed to real property under this chapter, together with interest and penalties as herein provided, are a first and prior lien on the property of the taxpayer and take priority over all other liens of whatsoever kind and nature, except for liens for general taxes created by state law and for pre-existing liens or claims of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice of lien provided for in subsection 3-2-27(c), B.R.C. 1981.

(b) The city building inspector shall not make a final inspection on or issue a certificate of occupancy for any construction project unless a person has paid or arranged with the city manager to pay all taxes due under this chapter on all lumber, fixtures, and any other building materials and supplies used in or connected with the construction, reconstruction, alteration, expansion, modification, or improvement of any building, dwelling, or other structure or improvement to real property within the city.

3-2-29 **Sale Of Business Subject To Lien.**

(a) Any person who sells a business or stock of goods or quits business shall complete and file the returns required under this title within ten days of the date on which such person sold the business or stock of goods or quit business and indicate that it is a final return, that the business is sold, and the name and address of the purchaser of the business.

(b) A purchaser of a business who has acquired the furniture, fixtures, and equipment of the business and engages in a similar business shall withhold sufficient funds from the purchase money to cover the amount of taxes, penalties and interest imposed by this title due and unpaid until the former owner provides a receipt from the city manager that such taxes, penalties, and interest have been paid. If taxes, penalties, and interest imposed by this title are due and unpaid after the ten day period herein provided, such purchaser of the business is liable for the payment of the taxes, penalties and interest imposed by this title due and unpaid to the city to the same extent as the seller of the business or stock of goods. But the purchaser of the business is not liable for such taxes, penalties, and interest unless, within sixty days of the date that the final return is filed, the manager files a notice of lien in the

office of the clerk and recorder of the county where the property is located, stating the amount of taxes, penalties, and interest due or otherwise gives written notice to the purchaser of the business of the amount of taxes, penalties and interest due.

(c) Any person who obtains by purchase, foreclosure sale, or otherwise, except at a sale conducted pursuant to subsection 3-2-32(e), B.R.C. 1981, any goods, stock in trade, or business fixtures owned, leased, or used by any person takes them subject to any lien of the city for any delinquent taxes owned by the prior owner of the property and is liable to pay all delinquent taxes of the prior owner, but only up to and including the value of property so acquired.

Ordinance No. 4873 (1984).

3-2-30 **Certificate Of Discharge Of Lien.**

(a) If any real or personal property is subject to a lien for payment of tax due to the city under this title, the city manager may issue a certificate of discharge of any part of the property subject to the lien if the manager finds that the fair market value of that part of such property remaining subject to the lien is at least twice the amount of the unsatisfied tax liability plus all prior liens upon such property.

(b) If any real or personal property is subject to a lien for payment of tax due to the city under this title, the city manager may issue a certificate of discharge of any part of the property subject to the lien if the manager is paid in partial satisfaction of the tax liability an amount determined by the manager to be not less than the value of the city's interest in the part of the property so discharged. In determining the value of the part of the property to be discharged, the manager shall consider the fair market value of the property and the value of the liens that have priority over the city's lien.

(c) A certificate of release of lien issued under this section is conclusive evidence that the city's lien upon the property is extinguished, but does not extinguish or release any portion of the lien on property not specified in the release.

3-2-31 **Jeopardy Assessment.**

(a) If the city manager finds that collection of the tax will be jeopardized for any reason, the manager may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof. Notwithstanding the provisions of sections 3-2-25, "Hearings (Applies To Entire Title)," and 3-2-26, "Appeals From City Manager's Decision (Applies To Entire Title)," B.R.C. 1981, the tax shall then be due and payable forthwith, and the manager may proceed to collect the tax as provided in section 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," B.R.C. 1981.

(b) If the taxpayer subject to a jeopardy assessment provides security for payment of the tax satisfactory to the city manager, the manager may forego the jeopardy assessment collection proceedings.

3-2-32 **Enforcing The Collection Of Taxes Due (Applies To Entire Title).**

(a) The city manager may issue a warrant directed to any employee, agent, or representative of the city or any sheriff of any county of the state, commanding such person to distrain, seize, and sell the personal property of the taxpayer in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any statute of the

3-2-32

state of Colorado, for the payment of tax due together with interest and penalties thereon and costs of execution in the following circumstances:

(1) When any deficiency in tax is not paid within twenty calendar days from the date of the Notice and Final Determination, Assessment, and Demand for Payment and no hearing or extension or reconsideration has been requested;

(2) When any deficiency in tax is not paid within thirty days from the date of the Determination Notice and no appeal from such deficiency assessment has been docketed in any District Court in and for Boulder County or filed with the Colorado Director of Revenue during such time, except that if the city manager finds that collection of the tax will be jeopardized during such period, the manager may immediately issue a distraint warrant;

(3) When any deficiency in tax is not paid within the time prescribed in the judgment on any appeal to the District Court in and for Boulder County or the Colorado Director of Revenue;

(4) Immediately upon making a jeopardy assessment or issuing a demand for payment upon jeopardy assessment as provided in section 3-2-31, "Jeopardy Assessment," B.R.C. 1981; or

(5) After or concurrently with the filing of a notice of lien as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The city manager may apply to any judge of the municipal court for a warrant authorizing the manager to search for and seize property located within the city limits for the purpose of enforcing the collection of taxes under this title. Municipal judges shall issue such warrant after the manager demonstrates that:

(1) The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and

(2) At least one of the preconditions of subsection (a) of this section have been satisfied, but if a jeopardy assessment has been declared under section 3-2-31, "Jeopardy Assessment," B.R.C. 1981, the city manager sets forth the reasons that collection of the tax will be jeopardized.

(c) The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with Rule 241(C) and (D) of the Colorado Municipal Court Rules of Procedure.

(d) The taxpayer may contest a warrant previously issued under the procedure provided by Rule 241(E) of the Colorado Municipal Court Rules of the Procedure, except that no proceeding to contest such warrant may be brought after five days prior to the date fixed for sale of the distrained property.

(e) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, and shall leave a copy of such account, signed by the agent making such distraint, with the owner or possessor; at the owner's or possessor's usual place of abode with some family member over the age of eighteen years; at the owner's or possessor's usual place of business with a stenographer, bookkeeper, or chief clerk; or, if the taxpayer is a corporation, with any officer, manager, general agent, or agent for process, with a statement of the sum demanded and the time and place of sale. The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale and a description of the property to be sold in a newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the city manager, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two other public places within said county. The time fixed for the sale shall not be less than ten days nor more than sixty days from the date of

such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price that includes the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale does not equal the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased for the city. The property so purchased may then be sold by the agent or sheriff under such regulations as may be prescribed by the city manager for disposing of city property. The goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid together with the fees and other charges, or they may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(f) In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate is prima facie evidence of the right of the agent or sheriff to make such sale and conclusive evidence of the regularity of the proceedings in making the sale; it transfers to the purchaser all right, title, and interest of the delinquent taxpayer in and to the property sold. Where such property consists of certificates of securities or other evidence of indebtedness in the possession of the agent or sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply the purchaser with any proof of the taxpayer's authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the certificate. Any surplus remaining above first the city's taxes, penalties, interest, costs, and expenses of making the seizure and of advertising the sale and then any amounts distributed pro rata to other jurisdictions under recorded sales and use or personal property ad valorem tax liens shall be returned to the property owner or such person having a legal right to the property and, on demand, the city manager shall render an account in writing of the sale.

(g) In any case where a taxpayer has refused or neglected to pay any tax due to the city under this title and a lien has been filed as provided in subsection 3-2-27(c), B.R.C. 1981, the city manager may certify the amount of the tax due and unpaid interest, together with ten percent of the delinquent amount for costs of county collection, to the Boulder County Treasurer to be assessed and collected in the same manner as general taxes are assessed and collected, as provided in section 2-2-12, "City Manager May Certify Taxes, Charges And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance Nos. 4873 (1984); 5430 (1991).

3-2-33 **Recovery Of Unpaid Tax By Action At Law.**

(a) In addition to other remedies provided in this title, the city manager may also treat any such taxes, penalties, or interest due and unpaid as a debt due to the city from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the manager may recover at law the amount of such taxes, penalties, and interest in a county or district court of the county where the taxpayer resides or has a principal place of business that has jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the manager as herein provided is prima facie proof of the amount due.

(b) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings no bond shall be required of the city manager, nor shall any sheriff require of the manager an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The manager may also

prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

(c) In any case in which a taxpayer has refused or neglected to pay any tax, penalty, or interest due to the city under this title and a lien has been filed upon any real or personal property, the city manager may cause a civil action to be filed in the district court of the county in which is situated any such property subject to said lien to enforce the lien and subject any real or personal property or any right, title, or interest in such property to the payment of the amount due. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the court's findings concerning the interest of the parties and of the city. The proceedings in such action, the manner of sale, the period for and manner of redemption from such sale, and the execution of deed of conveyance shall be in accordance with the law of foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the property involved in such action if equity so requires.

(d) Any person having a lien upon or any interest in any real or personal property referred to in this section under or by virtue of any instrument duly filed of record in the office of the county clerk and recorder of the county in which such property is located prior to the filing of the notice that created a lien upon such property for taxes, penalties, or interest or any person purchasing such property at a sale to satisfy such prior lien or interest may make a written request to the city manager to file a civil action as provided in this section. If the manager does not file such civil action within two months after receiving such written request, such person may file a civil action in the district court of any county where any such property is situated asking for a final determination of all claims of the city to and all liens of the city upon the property in question. Service of the process in such action upon the city shall be made upon the manager or an agent thereof. The court shall in such civil action adjudicate the matters involved therein in the same manner as in the case of civil actions filed under subsection (c) of this section.

3-2-34 City May Be A Party Defendant.

In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein, and in any such action service of summons upon the city manager or any person in charge of the manager's office is sufficient service upon the city.

3-2-35 Injunctive Relief.

The city manager may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this title.

3-2-36 Obligations Of Fiduciaries And Others.

(a) For the purpose of facilitating settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and the assets of corporations in the process of dissolution or that have been dissolved, the city manager may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any of the periods of tax liability under this title. Payment in accordance with such agreement fully satisfies the tax liability for the periods that the agreement covers, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability therefor.

(b) Except as provided in subsection (d) of this section, any personal representative of a decedent or the estate of a decedent, any trustee, receiver, or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved who distributes the estate or fund under such person's control without having first paid any taxes covered by this title due from such decedent, decedent's estate, trust estate, receivership, or corporation and that may be assessed within the periods authorized by this title is personally liable to the extent of the property distributed by such person for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership, or corporation imposed by or due under this title and assessed within the periods authorized by this title.

(c) The distributee of a decedent's estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation is liable under this title to the same extent that the decedent, trust estate, fund or corporation is liable under this title.

(d) If a tax under this title is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issues within eighteen months after the decedent's personal representative files with the city manager a written request for such determination, filed after it has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

(e) If a tax under this title is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issued within eighteen months after the corporation files with the city manager a written request for such determination, filed after it has filed the corporation's return, but only if the request states that the dissolution was begun in good faith before the expiration of the eighteen month period and the dissolution is completed. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

3-2-37 **Violations Of Tax Chapter.**

(a) No person shall fail or refuse to make any return required to be made, make any false or fraudulent return or any false statements in any return, fail or refuse to pay to the city manager any taxes collected or taxes, penalties, or interest due to the city, evade the collection and payment of the tax in any manner, fail to keep or disclose records required by this title, or violate any of the requirements of this title.

(b) Each and every twenty-four hours during which any violation of this title continues constitutes a distinct and separate violation thereof subject to the penalties prescribed in section 5-2-4, "General Penalties," B.R.C. 1981.

3-2-38 **Limitations.**

(a) Except as otherwise provided in this section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this title shall not be assessed, nor shall credit be taken, notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action be commenced to collect the taxes more than three years after the date on which the tax was payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of

such period, in which case the lien shall continue for only one year after the filing of notice thereof.

(b) Proceedings for collection of taxes, interest, and penalties may be commenced at any time in the case of a false or fraudulent return filed with the intent to evade tax and in the case of a taxpayer who fails to file a return as required under this title.

(c) For purposes of this section, a tax return filed before the last day prescribed by law or regulation issued under this title for filing of returns shall be considered to be filed on such last day.

(d) Where before the expiration of the time prescribed in this section for the assessment of tax, both the city manager and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon time. The period to which the manager and taxpayer agree may be extended by subsequent agreement in writing made before the expiration of the previously agreed upon time.

(e) Nothing in this section shall be construed to limit any right of any statute on the effective date of this title.

(f) In the case of failure to file a return, the sales tax, use tax, or both may be assessed and collected at any time.

Ordinance No. 4962 (1986).

3-2-39 **Earmarked Revenues.**

(a) The amount of the sales and use tax revenue attributable to the levy and collection of one cent of sales and use tax for each fiscal year shall be set aside in a separate fund entitled "Open Space and Street Fund," and expended by the city only as follows:

(1) To pay a portion of the tax refund program as provided under chapter 3-5, "Tax Refund Program," B.R.C. 1981, as amended, such portion to be $160,000.00 for 1984, and an equivalent amount as adjusted by the change in the Consumer Price Index each year thereafter.

(2) All other monies accruing to the open space and street fund shall be expended only for the acquisition of open space real property or interest in real property, or for the payment of indebtedness incurred for such acquisition, and for such expenditures as may be necessary to protect open space properties or interest in real properties so acquired from any and all threatened or actual damages, loss, destruction, or impairment from any cause or occurrence, and also for projects related to transportation or for or related or appurtenant to transportation services or facilities, including, without limitation, studying, acquiring, constructing, providing, operating, replacing, or maintaining transportation services or facilities and all services and facilities incidental or appurtenant thereto, and the payment of indebtedness for any such expenditures.

(b) Prior to the adoption of the city's budget for the succeeding fiscal year, the city council shall review the revenues and expenditures of the open space and street fund in order to assure that the period 1968–1969 and in every succeeding two-year period, the expenditures of monies during said period for acquisition of open space real property or interests in real property, or the payment of indebtedness incurred therefor, and the expenses as may be necessary to protect open space real properties or interests therein so acquired from any and all threatened or actual damages, loss, destruction, or impairment from any cause or occurrence, do not exceed forty percent of the revenues accruing or expected to accrue to said

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fund during said two-year period, exclusive of that portion necessary to pay the portion of the tax refund program specified in paragraph (a)(1) of this section and exclusive of that portion authorized for transfer and transferred to the general fund; and to assure that in such two-year period the expenditures of monies for transportation and related or appurtenant facilities or service or indebtedness therefor described in paragraph (a)(2) of this section, do not exceed sixty percent of the revenues accruing or expected to accrue to said fund during such two-year period, exclusive of that portion necessary to pay the portion of the tax refund program specified in paragraph (a)(1) of this section and exclusive of that portion authorized for transfer and transferred to the general fund of the city.

(c) Pledged sales and accommodations tax revenue, as defined in the cooperation agreement dated May 7, 2003, between the city, the City of Boulder Central Area General Improvement District, and the Boulder Urban Renewal Authority, means the 1.6 percent sales tax levied by the city on the retail sale of taxable goods and services within the Boulder Urban Renewal Authority's 9th and Canyon Tax Increment Area, which 1.6 percent includes the 1.0 percent general sales tax allocable to the city's general fund and the 0.6 percent transportation sales tax allocable to the city's transportation fund, each of which is a permanent city sales tax and does not have a stated expiration date, and the 5.5 percent accommodations tax in the nature of a sales tax levied by the city on the price paid for the rental of hotel rooms located within the tax increment area; but this shall not include any such tax if the same is repealed. This revenue is pledged to the Authority to support the District's bonds for the facility it constructed in the Tax Increment Area.

(d) From January 1, 1993 through December 31, 1993 the amount of sales and use tax revenue attributable to the levy and collection of the 0.15 percent of sales and use tax shall be used for general fund purposes. From January 1, 1994 through December 31, 1998, and thereafter for any remaining balances and interest thereon, the amount of sales and use tax revenue attributable to the levy and collection of the 0.15 percent of sales and use tax shall be set aside and used only for the following purposes:

(1) Forty percent shall be paid into a human services fund, to be expended only for human services, including, without limitation, programs for health care, child care, mental health services, services for youth, services for the elderly and services for the disabled, prevention and mitigation of childhood physical and sexual abuse and domestic violence, emergency shelter for the homeless, family support services, job training, job development, and job placement. All such expenditures shall be consistent with a human services master plan to be adopted by the city council.

(2) Twenty percent shall be paid into a parks and recreation fund, to be expended as set forth in this paragraph. Prior to the issuance of bonds supported by this fund, the monies in the fund shall be paid into the permanent park and recreation fund. After the issuance of such bonds, the monies of this fund shall be expended by the city council for the payment of the principal of and premium, if any, and interest and reserves, if any, on such bonds, for the following parks and recreation projects: softball fields, soccer fields, and other parks and recreation capital improvements, including, without limitation, refurbishment of parks and recreation facilities, together with all necessary incidental appurtenant facilities, structures, furnishings, and equipment. Any monies remaining in the fund on the day following any principal payment date on the bonds shall be expended by the city council to defray operations and maintenance costs associated with the softball fields, soccer fields, and other parks and recreation capital improvements, to the extent reasonably required therefor. Any monies thereafter remaining in the fund shall be paid into the permanent park and recreation fund.

(3) Eight percent shall be paid into an environmental fund, to be expended only for environmental projects, including, without limitation, a recycling center, a hazardous waste drop-off center, and a pollution prevention program.

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(4) Eight percent shall be paid into a youth opportunity fund, to be expended only for culture and arts programs, recreation, sports, and other youth activities for young persons who are otherwise underserved in such programs, and to enhance the availability and attractiveness of such programs to young persons. Youth as used in this paragraph means persons under the age of twenty-one, or through graduation from high school, whichever comes first.

(5) Four percent shall be paid into an arts and cultural fund, to be expended only for the arts, culture, and maintenance of city buildings used for the arts and culture, including, without limitation, stabilization of arts and cultural services delivery entities and development of arts and cultural programs, which may include, without limitation, community outreach, arts in education, and access to arts and culture by underserved populations. All such expenditures shall be consistent with an arts and culture master plan and other relevant plans to be adopted by the city council.

(6) The remaining twenty percent shall be available for appropriation for basic municipal services, including, without limitation, parks and recreation facilities refurbishment and municipal facilities refurbishment, but if the city council finds that basic municipal services can be funded adequately without use of all or part of this portion of the tax, then the portion of the tax not allocated to basic municipal services shall be earmarked for and distributed to the five funds listed above. After the issuance of bonds supported by the revenues described in this paragraph, the revenues shall be expended by the city council for the payment of the principal of, and premium, if any, and interest and reserves, if any, on such bonds, together with all necessary incidental appurtenant facilities, structures, furnishings, and equipment. Any such revenues on the day following any principal payment date on the bonds may be used for any basic municipal services purpose.

(7) For the year 1999 and thereafter, the city council may, after considering the recommendations of a citizen review committee appointed for that purpose, adjust the earmarking set forth in this subsection, except to the extent required for the repayment of bonds.

(e) Effective January 1, 1988, the amount of the sales and use tax revenue attributable to the levy and collection of 0.38 percent of sales and use tax and required for payments on related bonds shall be set aside as follows:

Beginning at such time as any bonds are issued by the city pursuant to authority granted by the electors in November, 1987, for the purpose of acquiring any real or personal property or any interest therein and constructing and equipping library buildings, not in a floodway, the city manager shall determine the amount, if any, reasonably necessary for the payment within the next payment period following such determination of principal, interest, premium, if any, and reserves on such bonds and shall set aside a pro rata portion of such monies in a separate "Library Bond Fund." The monies of said fund shall be expended by the city council solely for the above-stated principal, interest, premium, and reserve bond payment purposes. The residual amount shall be added to the general fund of the city.

(f) From January 1, 1990 through December 31, 2018, the amount of the sales and use tax revenue attributable to the levy and collection of 0.33 percent of sales and use tax shall be set aside in an open space fund for the acquisition, maintenance, preservation, retention, and use of open space lands as defined in section 170 of the charter, and the payment of any indebtedness and tax refunds related thereto.

(g) From January 1, 1996 through December 31, 2015, the amount of the sales and use tax revenue attributable to the levy and collection of 0.25 percent of sales and use tax approved by the electors in November, 1995, shall be set aside in a separate fund and pledged for the payment of the principal, interest, and premium, if any, on the park bonds concurrently approved by the electors, and then for: development, operation, and maintenance of the land and improvements purchased or constructed with the proceeds of the bonds; renovation and

refurbishment or replacement of four pools; renovation and replacement of recreation facilities, playgrounds, mountain park trails, and the civic park complex; improvements to recreation centers and development of new recreation projects to be determined in the future through the master planning process by the city council; maintenance of the community park site in north Boulder; development of a mountain parks environmental education program; and for renovation of city-owned historical and cultural facilities; with the remainder being dedicated for parks and recreation purposes.

(h) From January 1, 2007 through December 31, 2007, the amount of the sales and use tax revenue attributable to the levy and collection of 0.15 percent sales and use tax approved by the electors in November, 2006, shall be used for funding construction of phase I of a fire training center and, if any funds remain after construction of phase I, using the funds for construction of phase II or the purchase of fire apparatus, or both.

(i) From January 1, 2004 through December 31, 2019, the amount of sales and use tax attributable to the levy and collection of 0.15 percent sales and use tax approved by the electors in November, 2003, shall be used to provide additional revenues for open space purposes as defined in the charter, and the payment of any indebtedness therefor.

Ordinance Nos. 4812 (1984); 4879 (1985); 5015 (1986); 5047 (1987); 5222 (1989); 5492 (1992); 5780 (1996); 5958 (1997); 7323 (2003); 7505 (2006).

3-2-40 **Participation In Simplification Meetings And Central Registry.**

(a) The city manager will cooperate with and participate on an as-needed basis in a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

(b) In order to initiate and maintain a central registry of sales and use tax ordinances, the city manager will file with the Colorado Municipal League a copy of the city's sales and use tax chapter prior to the enactment of this ordinance.

(c) In order to keep the central registry current, the city manager will file any proposed amendment to the sales and use tax chapter with the Colorado Municipal League prior to its effective date.

(d) Failure to file any such ordinance or amendment shall not invalidate such ordinance or amendment.

Ordinance No. 5430 (1991).

3-2-41 **Revenue Changes.**

Pursuant to article X, section 20 of the Colorado Constitution, the qualified electors of the City of Boulder authorize the city to collect, retain, and expend the full proceeds of the city's sales and use tax, admissions tax, and accommodations tax, and all available non-federal grants, notwithstanding any state restriction on fiscal year spending, including, without limitation, the restrictions of article X, section 20 of the Colorado Constitution. Such taxes and grants shall be excluded from the definition of fiscal year spending contained in article X, section 20 of the Colorado Constitution on and after January 1, 1993. Nothing in this section shall be interpreted to authorize any increase in the rate of taxation of the sales and use tax, the admissions tax, or

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the accommodations tax, without a vote of the people if and when required pursuant to article X, section 20 of the Colorado Constitution.

Ordinance No. 5579 (1993).

TITLE 3 REVENUE AND TAXATION

Chapter 3 Public Accommodations Tax[1]

Section:

3-3-1 Legislative Intent.

The city council intends that every person who, for consideration, leases or rents any hotel room, motel room, or other accommodation located in the city for lodging purposes shall pay and every person who furnishes for lease or rental any such accommodation shall collect the tax imposed by this chapter.

Ordinance No. 5882 (1997).

3-3-2 Imposition And Rate Of Tax.

On and after January 1, 1985, there is and shall be paid and collected an excise tax of five and one-half percent on the price paid for the leasing or rental of any hotel room, motel room, or other "public accommodation[2]" located in the city for lodging purposes.

Ordinance Nos. 4865 (1984); 5882 (1997).

3-3-3 Liability For Tax.

(a) No lessee or renter of a hotel room, motel room, or other accommodation located in the city and used for lodging purposes shall fail to pay, and no lessor or renter of such accommodation shall fail to collect the tax levied by this chapter.

(b) The burden of proving that any transaction is not subject to the tax imposed by this chapter is upon the person upon whom the duty to collect the tax is imposed.

Ordinance No. 5882 (1997).

[1]Adopted by Ordinance No. 4610. Derived from Ordinance No. 3660.
[2]Defined in section 3-1-1, "Definitions," B.R.C. 1981.

3-3-4 Taxes Collected Are Held In Trust.

All sums of money paid by a person who leases or rents any hotel room, motel room, or other accommodation as the public accommodations tax imposed by this chapter are public monies that are the property of the city. The person required to collect and remit the public accommodations tax shall hold such monies in trust for the sole use and benefit of the city until paying them to the city manager.

3-3-5 Definition.

As used in this chapter, "lodging purposes" means any use of a hotel room, motel room or other accommodation other than for meeting or eating.

Ordinance No. 5882 (1997).

3-3-6 Exempt Transactions.

The following entities and transactions are exempt from the duty to pay tax under this chapter but not the duty to collect and remit the tax levied hereby:

(a) The United States Government, the State of Colorado, its departments and institutions, and the political subdivisions thereof including the city, when acting in their governmental capacities and performing governmental functions and activities, and when the government's obligation is paid for directly to the licensee by a purchase card or a draft or warrant drawn on the government's account; and

(b) Religious, charitable, and quasi-governmental organizations but only in the conduct of their regular religious, charitable, and quasi-governmental capacities, only if each such organization has obtained an exempt organization license under section 3-2-12, "Exempt Institution License," B.R.C. 1981, and furnishes the exempt tax license to the person who rents or leases public accommodation to the organization, and only if the organization's obligations have been paid for directly by it to the public accommodations tax licensee without reimbursement therefor.

Ordinance Nos. 5882 (1997); 6090 (1999).

3-3-7 Licensing And Reporting Procedure.

(a) Every person with a duty to collect the tax imposed by this chapter shall obtain a license to collect the tax and shall report such taxes collected on forms prescribed by the city manager and remit such taxes to the city on or before the twentieth day of the month for the preceding month or months under report.

(b) The city manager shall issue a public accommodations tax license to persons who pay the fee prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete an application therefor stating the name and address of the person and the business and such other information as the manager may require. The license shall be numbered, show the name, residence, place, and character of the business of the license of the licensee, and be conspicuously posted in the place of business for which it is issued. No public accommodations tax license is transferable. The manager shall not issue a public accommodations tax license until the zoning administrator has verified that the location of the business complies with the provisions of title 9, "Land Use Code," B.R.C. 1981. The license is effective until December 31 of the year of issue, unless sooner revoked.

(c) The license is valid so long as the business remains in continuous operation or the license is canceled by the licensee or revoked by the city.

(d) Whenever a business entity that is required to be licensed under this chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new public accommodations tax license.

(e) The license may be revoked as provided in section 3-2-13, "Revocation Of License," B.R.C. 1981.

Ordinance Nos. 4803 (1984); 5599 (1993); 5882 (1997).

3-3-8 Maintenance And Preservation Of Tax Returns, Reports, And Records.

(a) The city manager may require any person to make such return, render such statement, or keep and furnish such records as the manager may deem sufficient and reasonable to demonstrate whether or not the person is liable under this chapter for payment or collection of the tax imposed hereby.

(b) Any person required to make a return or file a report under this chapter shall preserve those reports as provided in section 3-2-18, "Taxpayer Duty To Keep Records And Make Reports," B.R.C. 1981.

(c) The city manager shall maintain all reports and returns of taxes required under the chapter as provided in section 3-2-20, "Preservation Of Tax Returns And Reports," B.R.C. 1981.

Ordinance No. 5882 (1997).

3-3-9 Interest And Penalties For Failure To File Tax Return Or Pay Tax.

(a) Penalties for failure of a person to collect the accommodations tax or to make a return and remit the correct amount of tax required by this chapter and procedures for enforcing such penalties are as prescribed in section 3-2-22, "Penalties For Failure To File Tax Return Or Pay Tax (Applies To Entire Title)," B.R.C. 1981.

(b) Interest on overpayments and refunds is as prescribed in section 3-2-24, "No Interest On Overpayments And Refunds (Applies To Entire Title)," B.R.C. 1981.

Ordinance No. 5882 (1997).

3-3-10 Refunds.

Refunds of taxes paid under this chapter are as prescribed in section 3-2-23, "Refunds (Applies To Entire Title)," B.R.C. 1981.

Ordinance No. 5882 (1997).

3-3-11 Hearings And Appeals.

Repealed.

Ordinance Nos. 5052 (1987); 5882 (1997).

3-3-12 Enforcement Of Tax Liability.

(a) The public accommodations tax imposed by this chapter, together with all interest and penalties pertaining thereto, is a first and prior lien on tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien, as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The provisions of sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale Of Business Subject To Lien," 3-2-30, "Certificate Of Discharge Of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," 3-2-33, "Recovery Of Unpaid Tax By Action At Law," 3-2-34, "City May Be A Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations Of Fiduciaries And Others," 3-2-37, "Violations Of Tax Chapter," and 3-2-38, "Limitations," B.R.C. 1981, govern the authority of the city manager to collect the taxes, penalties and interest imposed by this chapter.

Ordinance No. 5882 (1997).

3-3-13 Duties And Powers Of City Manager.

The city manager is authorized to administer the provisions of this chapter and has all other duties and powers prescribed in section 3-2-17, "Duties And Powers Of City Manager," B.R.C. 1981.

Ordinance No. 5882 (1997).

3-3-14 City Employee Conflicts Of Interest Prohibited.

No deputy, agent, clerk, or other officer or employee of the city engaged in any activity governed by this chapter shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding a public accommodations tax license from the city for the purpose, directly or indirectly, of preparing tax returns or reports required by the city, the State of Colorado, its political subdivisions, any other state, or the United States, or accept any employment for the purpose of advising, preparing materials or data, or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the city, the State of Colorado, its political subdivisions, any other state, its political subdivisions, or the United States.

Ordinance No. 5882 (1997).

TITLE 3 REVENUE AND TAXATION

Chapter 4 Admissions Tax[1]

Section:

3-4-1 Legislative Intent.

The city council intends that every person who pays to gain admission to any place or event in the city that is open to the public shall pay and every person, whether owner, lessee, or operator, who charges or causes to be charged admission to any such place or event shall collect the tax imposed by this chapter.

3-4-2 Imposition And Rate Of Tax.

On and after January 1, 1971, there is levied, and shall be paid and collected, an excise tax of five percent on the price paid to gain admission to any place or event in the city that is open to the public[2].

3-4-3 Liability For Tax.

(a) No person who pays to gain admission to any place or event in the city that is open to the public shall fail to pay and no person, whether owner, lessee, or operator, who charges or causes to be charged admission to any place or event in the city that is open to the public shall fail to collect the tax levied by this chapter. If an owner or operator of a facility leases or rents such facility to another party who conducts an event open to the public in such facility, such owner or operator is not liable for collecting and remitting the tax if the party to whom the facility is leased or rented is at the time of the leasing or rental licensed to collect and remit the tax.

(b) The burden of proving that any transaction is not subject to the tax imposed by this chapter is upon the person upon whom the duty to collect the tax is imposed.

[1]Adopted by Ordinance No. 4610. Derived from Ordinance No. 3661.
[2]Defined in section 3-1-1, "Definitions," B.R.C. 1981.

3-4-4 Taxes Collected Are Held In Trust.

All sums of money paid by a person to gain admission to any place or event in the city that is open to the public as the admissions tax imposed by this chapter are public monies that are the property of the city. The person required to collect and remit the admissions tax shall hold such monies in trust for the sole use and benefit of the city until paying them to the city manager.

3-4-5 Exempt Transactions.

(a) The following entities are exempt from the duty to pay the tax imposed by this chapter but not the duty to collect and remit the tax levied hereby:

(1) The United States government and the State of Colorado, its departments and institutions, and the political subdivisions thereof including the city, when acting in their governmental capacities and performing governmental functions and activities, and when the government's obligation is paid for directly to the licensee by a purchase card or a draft or warrant drawn on the government's account[1];

(2) Religious, charitable, and quasi-governmental organizations, but only in the conduct of their regular religious, charitable, and quasi-governmental capacities and only if each such organization has obtained an exempt institution license under section 3-2-12, "Exempt Institution License," B.R.C. 1981, and furnishes the exempt institution license to the person who charges or causes to be charged admission to any place or event in the city that is open to the public, and only if the organization's obligations have been paid for directly by it to the admissions tax licensee without reimbursement therefor;

(3) Any person who refunds an admission price for any reason, either before or after an event has taken place, and refunds the admission tax along with the admission price;

(4) Any person who provides free "passes" or complimentary admission tickets or otherwise fails to charge an admission price for admission to a place or event open to the public, but if such person imposes a reduced admission charge for any such "pass," complimentary admission, or otherwise, the tax imposed by this chapter applies to the actual amount of such reduced admission charge.

(b) The following transactions are exempt from the tax imposed by this chapter:

(1) Any admission fee paid or charged to gain entry into any event sponsored or conducted by the city.

(2) Any admission fee paid or charged to gain entry into any event sponsored or conducted by a Boulder licensed charitable organization.

Ordinance Nos. 5001 (1986); 6090 (1999); 7456 (2006).

3-4-6 Licensing And Reporting Procedure.

(a) Every owner, operator, or person who has the duty to collect tax imposed by this chapter shall obtain a license to collect the tax and shall report such taxes on forms prescribed by the city manager and remit such taxes to the city within the following time periods:

[1]City of Boulder v. Regents, 179 Colo. 420, 501 P.2d 123 (1972).

(1) For regularly continuing or recurring events, including, without limitation, showing films in motion picture theaters, on or before the twentieth day of the month for the preceding month or months under report, and

(2) For single, noncontinuing or nonrecurring events, including, without limitation, a single performance of a concert, within five calendar days of the performance or event, unless the manager after specific, advance request allows a longer time.

(b) The city manager shall issue an admissions tax license to persons who pay the fee prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete an application therefor stating the name and address of the person and the business and such other information as the manager may require. The license shall be numbered, show the name, residence, place, and character of the business of the licensee, and be conspicuously posted in the place of business for which it is issued. No admissions tax license is transferable. The license is effective until the thirty-first day of December of the year of issue, unless sooner revoked.

(c) The license fee for regularly continuing and recurring events and for single, noncontinuing or nonrecurring events is that prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981.

(d) The license is valid so long as the business remains in continuous operation or the license is canceled by the licensee or revoked by the city.

(e) Whenever a business entity that is required to be licensed under this chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new admissions tax license.

(f) The license may be revoked as provided in section 3-2-13, "Revocation Of License," B.R.C. 1981.

(g) The city manager may require a deposit from persons applying for an admissions tax license for a single, noncontinuing or nonrecurring event.

Ordinance No. 5599 (1993).

3-4-7 Maintenance And Preservation Of Tax Returns, Reports And Records.

(a) The city manager may require any person to make such return, render such statement, or keep and furnish such records as the manager may deem sufficient and reasonable to demonstrate whether or not such person is liable under this chapter for the payment or collection of the tax imposed by this chapter.

(b) Any person required to make a return or file a report under this chapter shall preserve such reports as provided in section 3-2-18, "Taxpayer Duty To Keep Records And Make Reports," B.R.C. 1981.

(c) The city manager shall maintain all reports and returns of taxes required under this chapter as provided in section 3-2-20, "Preservation Of Tax Returns And Reports," B.R.C. 1981.

3-4-8 Interest And Penalties For Failure To File Tax Return Or Pay Tax.

(a) Penalties for failure of a person to collect the admissions tax or to make return and remit the correct amount of tax required by this chapter and procedures for enforcing such penalties are as prescribed in section 3-2-22, "Penalties For Failure To File Tax Return Or Pay Tax (Applies To Entire Title)," B.R.C. 1981.

(b) Interest on overpayments and refunds is as prescribed in section 3-2-24, "No Interest On Overpayments And Refunds (Applies To Entire Title)," B.R.C. 1981.

3-4-9 **Refunds.**

Refunds of taxes paid under this chapter are as prescribed in section 3-2-23, "Refunds (Applies To Entire Title)," B.R.C. 1981.

3-4-10 **Hearings And Appeals.**

Repealed.

Ordinance No. 5052 (1987).

3-4-11 **Enforcement Of Tax Liability.**

(a) The admissions tax imposed by this chapter, together with all interest and penalties pertaining thereto, is a first and prior lien on tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages and other liens of record at the time of and prior to the recording of the notice of lien provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The provisions of sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale Of Business Subject To Lien," 3-2-30, "Certificate Of Discharge Of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," 3-2-33, "Recovery Of Unpaid Tax By Action At Law," 3-2-34, "City May Be A Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations Of Fiduciaries And Others," 3-2-37, "Violations Of Tax Chapter," and 3-2-38, "Limitations," B.R.C. 1981, providing for enforcement of collection of taxes due govern the authority of the city manager to collect the taxes, penalties and interest imposed by this chapter.

3-4-12 **Duties And Powers Of City Manager.**

The city manager is authorized to administer the provisions of this chapter and has all other duties and powers prescribed by section 3-2-17, "Duties And Powers Of City Manager," B.R.C. 1981.

3-4-13 **City Employee Conflicts Of Interest Prohibited.**

No deputy, agent, clerk, or other officer or employee of the city engaged in any activity governed by this chapter shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding an admissions tax license from the city for the purpose, directly or indirectly, of preparing tax returns or reports required by the city, the State of Colorado, its political subdivisions, any other state, or the United States, or accept any employment for the purpose of advising, preparing materials, or data, or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the city, the State of Colorado, its political subdivisions, any other state, its political subdivisions, or the United States.

TITLE 3 REVENUE AND TAXATION

Chapter 5 Tax Refund Program[1]

Section:

3-5-1 Legislative Intent.

The purpose of this chapter is to make refunds of estimated sales tax on the purchase of food to certain qualifying low income families and individuals in order to make more equitable the burden placed upon them by city sales taxes.

Ordinance No. 5554 (1993).

3-5-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates others:

"Disabled" means a person receiving Supplemental Security Income or Social Security Disabled Income or certified as disabled by the Center for People with Disabilities, the Developmental Disabilities Center, or the Mental Health Center in and for Boulder County.

"Family" is defined in section 3-1-1, "Definitions," B.R.C. 1981.

"Income" means total income and is found on the following tax forms in the following places:

I.R.S. Form 1040	Line 22 "Total Income"
I.R.S. Form 1040EZ	Line 4 "Adjusted Gross Income"
I.R.S. Form 1040NR	Line 23 "Total Effectively Connected Income"

"Individual" is defined in section 3-1-1, "Definitions," B.R.C. 1981.

Ordinance Nos. 5554 (1993); 7177 (2002).

3-5-3 Qualifications For Tax Refund.

Every person desiring to claim a tax refund shall submit to the city manager a verified, written application therefor signed under oath, on the form specified by the city manager and with the attachments required by the city manager, filed between March 1 and June 30 of the year subsequent to the year for which the refund application is made. Each applicant must satisfy the following qualifications to be entitled to a refund in the amount provided in section 3-5-4, "Refund Amount," B.R.C. 1981:

[1]Adopted by Ordinance No. 4610. Amended by Ordinance Nos. 4643, 4681, 4738, 7266. Derived from Ordinance Nos. 3974, 4010, 4071, 4198, 4331, 4406, 4476.

(a) The applicant must be one of the following categories of families or individuals:

(1) A family at least one of the members of which is a child under the age of eighteen who is the son or daughter of one of the other persons who is claiming the dependant deduction on his/her tax return as set forth on I.R.S. Form 1040, Section 6c, "Exemptions," or I.R.S. Form 1040NR, Section 7c, "Dependents;" or

(2) An individual who is disabled or over the age of sixty-one and who is not a member of a family which has applied or which subsequently applies for a refund for the same year.

(b) The applicant must have been a resident of the City of Boulder during the entire year for which the refund application is made.

(c) The applicant's income during the year for which the refund is requested must be no greater than fifty percent of the Area Median Income for Boulder County by family size, as published by the United States Department of Housing and Urban Development, or its successor agency, for such year.

Ordinance Nos. 4812 (1984); 4897 (1985); 4971 (1986); 5470 (1992); 5554 (1993); 7177 (2002); 7202 (2002).

3-5-4 **Refund Amount.**

(a) If the applicant meets the requirements for a refund as set forth in section 3-5-3, "Qualifications For Tax Refund," B.R.C. 1981, the city manager shall refund, for calendar year 2001, $61.00 per individual and $183.00 per family.

(b) For each calendar year after 2001, the city manager shall also adjust the refund amounts set forth above in accordance with the change in the cost of living for the previous calendar year as shown in the "all items" category of the United States Department of Labor Consumer Price Index for all Urban Consumers for the metropolitan statistical area which includes the city. In the event that either of these data has not been published as of the start of the refund program during any particular year, then for the refund program during that year, the manager shall adjust the income levels, or the refund amounts, based on the manager's best estimate of the unknown data, but the manager shall take the subsequently published data, rather than the estimated data, into account in setting the qualifying income levels or refund amounts for the refund program for the following year.

Ordinance Nos. 4897 (1985); 4971 (1986); 5043 (1987); 5115 (1988); 5185 (1989); 5283 (1990); 5385 (1991); 5470 (1992); 5554 (1993); 7177 (2002).

3-5-5 **Administration Of Chapter.**

(a) The city manager shall administer the program established by this chapter and may prepare a refund application form, specifying attachments, such as, without limitation, income tax forms and other proof of income and residency, adjust qualifying income levels and refund amounts, adopt rules and regulations consistent with the provisions of this chapter, and audit and verify the applications submitted pursuant to this chapter. The city manager shall provide public notice of the tax refund application period annually, at least two weeks before it starts.

(b) Any refund application form shall require the claimant to verify and sign the application under oath. Any applicant who receives a refund based upon information provided by the applicant that is materially incorrect shall, within fifteen days of the mailing by first class

3-5-5

mail of a written demand therefor from the city manager, repay the city the full amount of any excess refund that was based on this incorrect information, together with a penalty. The penalty shall be interest at the rate of eighteen percent per annum on the excess refund from the date the city paid the applicant the refund to the date the excess refund is repaid to the city.

(c) The burden of proving entitlement to a tax refund under this chapter is on the applicant. The city manager may require reasonable information to support the refund application, as long as such information is uniformly required of all similarly situated applicants. Upon audit, the manager may require all reasonable information necessary to support the claim of tax refund.

(d) If the city manager denies any claim for tax refund, the manager shall state the reasons therefor in writing to the claimant and indicate all or the portion of the claim that is being denied. If a claimant wishes to appeal the decision of the program administrator, the claimant must do so in writing within fourteen days of the date of mailing of the notice of denial. The claimant shall be thereupon entitled to a hearing before the manager to appeal the decision of the director, under the procedures established pursuant to sections 3-2-25, "Hearings (Applies To Entire Title)" and 3-2-26, "Appeals From City Manager's Decision (Applies To Entire Title)," B.R.C. 1981.

Ordinance Nos. 5052 (1987); 5554 (1993); 7177 (2002).

TITLE 3 REVENUE AND TAXATION

Chapter 6 Occupation Tax On Local Exchange Telephone Service Suppliers[1]

Section:

3-6-1 Application Of Chapter.

A tax is levied by this chapter upon the services of any local exchange telephone service supplier provided in the city.

3-6-2 Definitions.

The following words and phrases as used in this chapter shall have the following meanings:

"Annual line count" means the total number of lines having service addresses located within the city for which each provider subject to this chapter provided basic local exchange service as of the last business day of October of each year.

"Basic local exchange service" means "basic local exchange service" or "basic service" authorized, by a certificate of public convenience and necessity, or otherwise, under title 40, article 15, Colorado Revised Statutes, as amended or recodified from time to time.

"Inhabitant" means any individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity residing or having a place of business within the city.

"Line" means a separate telephone number or telephone circuit identification number provided to an inhabitant at retail, having a service address located within the city except that, to the extent that a provider provides basic local exchange service through trunks, a line means an individual circuit, or its functional equivalent, provided to a customer at retail.

"New basic local exchange service provider or new provider" means any company or entity other than the incumbent provider who enters the business of providing basic local exchange service.

"Provider" means a company or entity providing basic local exchange service, through use of its own or leased facilities, through resale, or through any combination thereof.

[1]Adopted by Ordinance No. 4610. Amended by Ordinance No. 5425. Derived from Ordinance Nos. 3664, 4100, 4115. Repealed and reenacted by Ordinance No. 7163.

3-6-3 Tax Levied; Amount.

(a) There is levied on and against each provider operating in the city a tax on the occupation and business of providing local exchange service at retail to inhabitants of the city.

(b) The annual amount and payment rates and times of the tax shall be as follows:

(1) All providers shall pay a tax of up to a total of $768,000.00 per year.

(2) The tax shall be determined by dividing $768,000.00 by the annual line count, determined under this chapter, and multiplying the result by the number of lines the provider provides within the city. Expressed as a formula, the calculation shall be as follows:

($768,000.00 ÷ annual line count) x provider lines = provider tax

(3) The tax levied against each provider shall be calculated by the city manager by the last business day of November, shall be effective on the first calendar day of the immediately following year, and shall be paid in full on or before February 20 of that year. The city manager shall promptly notify each provider of its annual tax and of its monthly amount for the next calendar year.

(4) Each new provider that first becomes subject to this chapter prior to the last business day of October during any calendar year shall file its initial annual report of its line count as required by section 3-6-5, "Initial And Annual Reports," B.R.C. 1981, and start to pay the tax during the next calendar year. Any new provider that first becomes subject to this chapter after the last business day of October of any year shall file its initial report on the last business day of October of the next year and start to pay the tax during the calendar year immediately following that date.

3-6-4 Effective Date; Schedule Of Payment.

For each provider, the tax levied by this chapter shall commence on January 1, 2002. Except as this chapter may otherwise provide, the tax shall be due and payable in full on or before February 20 of each year.

3-6-5 Initial And Annual Reports.

On the last business day of October of each calendar year, each provider then subject to this chapter shall determine its total number of lines within the city, and file with the city manager a statement reporting its determined total number of lines. All statements shall be in such form as the city manager may require, including oaths, verifications, or acknowledgments. These reports and each provider's tax returns shall be subject to the provisions of section 3-2-20, "Preservation Of Tax Returns And Reports," B.R.C. 1981.

3-6-6 Tax Reported To Inhabitants.

Each provider may separately state on each inhabitant's bill for basic local exchange service the proportionate share of the provider's liability imposed pursuant to this chapter. If the provider's service is regulated by the Colorado Public Utility Commission, such reporting of the tax to the inhabitant shall be in accordance with an applicable tariff approved by the Commission.

3-6-7 Failure To Pay; Penalty; City Action To Collect.

If any provider subject to the provisions of this chapter fails to pay the tax imposed within the time prescribed, the penalty in the amount of fifteen percent of the amount of the tax is due and payable in addition to such tax. Interest at the rate of twelve percent annually shall be due and payable on all amounts past due plus the amount of the penalty until the date that payment of the tax, penalty, and interest is made. Absent compromise, the city attorney may commence and prosecute to final judgment an action at law to collect the debt.

3-6-8 Inspection Of Records.

To enforce this chapter, the city and its officers, agents, or representatives including, without limitation, the city manager shall have the right, at all reasonable hours and times, to examine and copy the books and records of every provider subject to this chapter. The city shall use these books and records and copies only to enforce this chapter. Except under a court order, or in connection with enforcing this chapter, the city shall not divulge these books, records or copies to any other person.

3-6-9 Tax Not On Interstate Commerce; Not A Franchise.

The tax provided in this chapter is upon occupations and businesses in the performance of local functions and is not a tax upon functions relating to interstate commerce. None of the terms of this chapter mean that the city has granted any provider a franchise.

3-6-10 Tax In Lieu Of Certain Other Consideration.

The tax levied in this chapter is in lieu of all other occupation taxes on any provider subject to this chapter. It is in addition to any otherwise applicable ad valorem taxes and other taxes and fees.

3-6-11 Violation Of Section 3-6-5, Penalty.

Upon conviction, the municipal court shall punish any officer, agent or manager of a provider to this chapter who fails, neglects or refuses to make or file the annual statement of accounts provided in section 3-6-5, "Initial And Annual Reports," B.R.C. 1981, by a fine between $25.00 and $500.00. Each day after the statement becomes delinquent during which the officer, agent, or manager so fails, neglects or refuses to make and file such statement is a separate and distinct offense.

3-6-12 Enforcement Of Tax Liability.

(a) The occupation tax imposed by this chapter is a first and prior lien on tangible personal property in which the person responsible to remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of tax lien as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The provisions of sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale Of Business Subject To Lien," 3-2-30, "Certificate Of Discharge Of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," 3-2-33, "Recovery Of Unpaid Tax By Action At Law," 3-2-34, "City May Be A Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations Of Fiduciaries And Others," and 3-2-38, "Limitations," B.R.C.

1981, providing for enforcement of collection of taxes due, govern the authority of the city manager to collect the occupation tax imposed under this chapter.

3-6-13 **Offenses And Liabilities To Continue.**

All offenses committed and all tax liabilities incurred before amendment of this chapter, under prior versions of the telephone utility preparation tax, shall be and remain unconditionally due and payable, shall constitute a debt to the city, and shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect.

TITLE 3 REVENUE AND TAXATION

Chapter 7 Occupation Tax[1]

Section:

3-7-1 Legislative Intent.

The purpose of this chapter is to impose an occupation tax upon persons engaged in the business of manufacture or sale of malt, vinous, or spirituous liquor or fermented malt beverages in the city[2].

3-7-2 Imposition And Rate Of Tax.

(a) No person licensed to manufacture or sell malt, vinous, or spirituous liquor or fermented malt beverage in the city shall fail to pay to the city manager an occupation tax upon the business of manufacturing or selling malt, vinous, or spirituous liquors or fermented malt beverages according to the following schedule:

(1) The holder of a malt, vinous, or spirituous liquor license shall pay an annual occupation tax as follows:

(A) Manufacturer's liquor license	$2,957.50
(B) Wholesaler's liquor license	2,957.50
(C) Wholesaler's beer license	2,957.50
(D) Retailer liquor store license	988.50
(E) Liquor-licensed drugstore	988.50
(F) Beer and wine license	1,085.00
(G) Hotel and restaurant license	3,253.00
(H) Brew pub license	3,253.00
(I) Tavern license	3,253.00
(J) Club license	1,284.00
(K) Arts license	1,284.00
(L) Race track license	2,957.50

(2) A fermented malt beverages licensee shall pay an annual occupation tax as follows:

(A) Consumption on the premises	$ 400.00
(B) Consumption off the premises	275.00
(C) Consumption on and off the premises	400.00

(b) The occupation tax is due and payable to the city manager for each year for which a license has been obtained on the first day of January of each year, or as soon thereafter as the license is issued. If the city manager issues a beverage license for less than a full year, the manager shall prorate the occupation tax on the number of whole months remaining in the year. If a license under this chapter is issued for any applicant who previously paid an occupation tax for the current year for the exercise of a fermented malt beverage or liquor li-

[1]Adopted by Ordinance No. 4651. Derived from Ordinance Nos. 3887, 4130.
[2]See Tom's Tavern v. City of Boulder, 526 P.2d 1328 (1974).

cense, the manager shall prorate the tax and credit it to the new occupation tax applicable to the new license after the licensee surrenders the old license.

(c) No delinquency in the payment of the occupation tax imposed by this section is a ground for suspension or revocation of a fermented malt beverage or liquor license issued by the city or state.

(d) No person shall operate any malt, vinous, or spirituous liquor or fermented malt beverage establishment in the city unless such person has paid the appropriate occupation tax. Each day of operation in violation of this subsection constitutes a separate offense.

(e) Any person obligated to pay the tax imposed by this chapter may elect to pay the occupation tax in installments, one-half of the tax on or before January 1 of the year for which the tax is due and the remaining one-half on or before July 1 of the same year.

On any new license issued after January 1 but prior to July 1, such person may also make such an election.

(f) If a person obligated to pay the tax imposed by this chapter goes out of business or otherwise intends not to make use of its city or state license and so certifies to the city manager under oath, the manager shall refund a prorated amount of the occupation tax previously paid attributable to the time that the license will be unused, at the rate of one-twelfth of the fee for each whole month remaining in the year. No person shall make a false statement on such certificate.

(g) Payment of $295.50 of the occupation tax for a license that did not possess an extended hours license as of June 30, 1997, shall be waived if the licensee submits an annual notarized statement to the city manager that malt, vinous, or spirituous liquor has not and will not be sold during the hours from 8:00 p.m. to 2:00 a.m. on Sundays and on Christmas Day.

Ordinance Nos. 5425 (1991); 5835 (1996); 5899 (1997).

3-7-3 **Enforcement Of Tax Liability.**

(a) The occupation tax imposed by this chapter is a first and prior lien on tangible personal property in which the person responsible to remit the tax has an ownership interest subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of tax lien as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The provisions of sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale Of Business Subject To Lien," 3-2-30, "Certificate Of Discharge Of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," 3-2-33, "Recovery Of Unpaid Tax By Action At Law," 3-2-34, "City May Be A Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations Of Fiduciaries And Others," and 3-2-38, "Limitations," B.R.C. 1981, providing for enforcement of collection of taxes due, govern the authority of the city manager to collect the occupation tax imposed under this chapter.

TITLE 3 REVENUE AND TAXATION

Chapter 8 Development Excise Tax[1]

Section:

3-8-1 Legislative Intent.

The purpose of this chapter is to impose a development excise tax on persons engaged in nonresidential and residential development in the city to fund the costs of future capital improvements. The tax is an amalgamation of three revenue sources: capital excise tax, transportation excise tax, and the park land acquisition and development fee. City council intends that the combined tax continues to serve the purposes originally set forth for the three revenue sources. The prior three revenue sources served the following purposes:

(a) The capital excise tax was based upon the replacement costs of the capital improvements currently existing in the city, and was intended to provide that new capital improvement needs are met as nonresidential and residential development occurs.

(b) The transportation excise tax was determined by estimating capital project needs created by new growth and assigning costs to those projects. The total cost of projects needed due to growth was divided by all projected development and redevelopment to arrive at a per-unit or per-square-foot cost. In determining growth-related needs, the level of service identified as acceptable to the existing community was used as a standard.

(c) The purpose of park land acquisition and development fee was to fund the acquisition and development of new neighborhood and community park land and recreation centers and the development of existing parks and recreation centers to serve the needs of city residents.

The development excise tax applies regardless of the value of the property developed. The development excise tax shall be imposed in addition to the water, sanitary sewer and storm water and flood management plant investment fees imposed by sections 11-1-52, "Water Plant Investment Fee," 11-2-31, "Wastewater User Charges," and 11-5-11, "Storm Water And Flood Management Utility Plant Investment Fee," B.R.C. 1981.

Ordinance Nos. 5216 (1989); 7144 (2001).

3-8-2 Development Excise Tax Imposed On Nonresidential And Residential Development And Annexation Of Developed Land.

(a) Nonresidential And Residential Development: No person engaged in nonresidential or residential development in the city shall fail to pay the development excise tax in the

[1]Adopted by Ordinance No. 5044. Amended by Ordinance No. 6039.

amounts specified in section 3-8-3, "Tax Imposed On Nonresidential And Residential Development," B.R.C. 1981, prior to the scheduling of final building inspection in addition to any other fee or charge required by this code or any other ordinance of the city.

(b) Property Annexed Into The City: No person whose property is annexed into the city shall fail to pay the development excise tax in the amounts specified in section 3-8-3, "Tax Imposed On Nonresidential And Residential Development," B.R.C. 1981, no later than ten days after the effective date of an annexation ordinance annexing such property in addition to any other fee or charge required by this code or any other ordinance of the city.

(c) Definitions: For purposes of this chapter:

"Accessory use" means a portion of developed property that is incidental to but a necessary part of the principal development, which is operated for the benefit and convenience of the occupants, employees, and customers of or visitors to the principal development and which is served by any utility for the principal development.

"Development" and "developed property" mean the construction or existence of any structure attached to real property.

"Floor area" means the total square footage of all levels included within the outside walls of a building or portion thereof, but excluding courts, garages useable exclusively for the storage of motor vehicles, and uninhabitable areas that are located above the highest inhabitable level or below the first floor level.

"Nonresidential development" means the principal use of developed property as other than a single-unit or multi-unit dwelling and includes, without limitation, motels, hotels, resorts and bed and breakfasts.

"Permanently affordable unit" means a dwelling unit that is defined as a "permanently affordable unit" in section 9-16-1, "General Definitions," B.R.C. 1981.

"Uninhabitable area" means a room that has a six-foot or less floor-to-ceiling height, or a room housing mechanical or electrical equipment that serves the building, with less than three feet of clearance in any dimension between the equipment (except supply and return air ducts and wiring) and the adjacent wall.

(d) Measurement Of Nonresidential Floor Area: No person applying for a building permit for nonresidential development shall fail to provide the city with a floor area measurement of the proposed building signed and certified by a professional engineer or architect licensed by the State of Colorado at the time of such application. If both nonresidential and residential development exist within a particular developed property, the floor area measurement shall specify the amount of floor area dedicated to nonresidential development, and the tax imposed by this chapter shall be apportioned according to such measurement. The rate of tax for each accessory use shall be the same as that for the principal development to which the accessory use is related.

Ordinance Nos. 5150 (1988); 5196 (1989); 5216 (1989); 7144 (2001).

3-8-3 Tax Imposed On Nonresidential And Residential Development.

(a) Tax Rate: No person engaged in nonresidential or residential development in the city shall fail to pay a development excise tax thereon according to the following rates:

(1) For new, annexing, or additional floor area for nonresidential development per square foot of floor area:

Police	$ 0.180
Fire	0.180
Human services	0.089
Municipal space	0.215
Transportation	1.736
Total:	$ 2.40

(2) For new and annexing detached dwelling unit:

Police	$ 249.91
Library	390.40
Fire	208.55
Human services	71.56
Municipal space	260.56
Parks	1,793.85
Recreation	448.48
Transportation	1,978.04
Total:	$5,401.35

(3) For new and annexing attached dwelling unit or mobile home:

Police	$ 166.44
Library	260.13
Fire	138.89
Human services	48.50
Municipal space	173.52
Parks	1,196.50
Recreation	299.14
Transportation	1,194.13
Total:	$3,477.25

(b) Waiver Of Tax Imposed On Annexation Of Developed Residential Land: For property annexed with existing residential development, the tax imposed by this chapter is prorated in accordance with the following formula: one twenty-sixth of the applicable tax is waived for each full year the residence existed prior to July 17, 1988. The date on which residential development existed for determination of the waiver is the date of the issuance by Boulder County of a certificate of occupancy for the structure.

Ordinance Nos. 5366 (1991); 7008 (1999); 7087 (2000); 7168 (2001); 7240 (2002); 7329 (2003); 7406 (2004); 7439 (2005); 7495 (2006).

3-8-4 **Development Excise Tax On Redevelopment.**

Whenever existing developed property in the city is redeveloped, no person shall fail to pay the development excise tax imposed by section 3-8-3, "Tax Imposed On Nonresidential And Residential Development," B.R.C. 1981, for the net increase in floor area or number of dwelling units prior to obtaining a building permit.

3-8-5 **Development Excise Tax To Be Revised.**

In 2000, and every year thereafter, the development excise tax imposed by this chapter shall be recomputed by raising or lowering it in an amount equal to the percentage of change for the preceding year in the consumer price index (all items) of the U.S. Department of Labor, Bureau of Labor and Statistics for the statistical area which includes the city[1].

3-8-6 **Development Excise Tax Revenues To Be Earmarked.**

The city council hereby delegates to the city manager the duty to reflect the historical allocation of the recodified development excise tax in each annual budget. The funds collected will be allocated according to the following:

(a) Capital Development Fund: A portion of the development excise tax imposed by this chapter shall be deposited in a capital improvements fund which shall be used exclusively for the purpose of capital improvements and collection and administration of the tax.

(b) Transportation Development Fund: A portion of the development excise tax imposed by this chapter shall be deposited in the transportation development fund which shall be exclusively for the purpose of constructing growth-related transportation capital improvements and collection and administration of the tax.

(c) Permanent Park And Recreation Fund: A portion of the development excise tax imposed by this chapter shall be deposited in the permanent park and recreation fund which shall be exclusively for the purpose of acquiring and developing new neighborhood and community park land and recreation centers and the development of existing parks and recreation centers to serve the needs of city residents and collection and administration of the tax.

3-8-7 **Development Excise Tax Credit.**

(a) Capital Improvements: The city council may grant a development excise tax credit to a taxpayer on any or all of the tax imposed by this chapter if the city council, after receiving a recommendation from the planning board, finds that the taxpayer has agreed to make and dedicate to the city any police, fire, library, human services, or municipal offices capital improvements beyond those required by any provision of this code that would benefit the public at large to the same degree as collection of the tax, and that granting the credit will not result in a substantial increase in the city's costs of providing capital improvements in the future. The amount of the credit shall be equal to the cost of such improvements to the taxpayer, as determined by the city manager, and in no event shall the credit be greater than the amount of development excise tax that would be due on the property. No certificate of occupancy, temporary or otherwise, shall be issued for the property until such improvements have been completed to the satisfaction of the city manager and dedicated to the city, or a financial guarantee in a form allowed under section 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981, and in an amount sufficient to secure the full costs, as determined by the city manager, of constructing or installing the improvements, has been provided by the developer.

(b) Park Dedications And Improvements: The city council may grant a development excise tax credit to a taxpayer on any or all of the tax imposed by this chapter and deposited in the permanent park and recreation fund if the city council, after receiving recommendations from the planning board and parks and recreation advisory board, finds that such a credit is in the public interest. In making this determination, the council shall consider whether sufficient public recreational areas or facilities acceptable to the city have been dedicated to

[1]Ordinance No. 6019, approved by the voters in 1998, authorizes this adjustment of this tax.

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the city or provided by the building permit applicant or annexee and whether the public receives perpetual use of such recreational areas in documents satisfactory to the city attorney. But public recreational areas referred to in this subsection do not include yards, setbacks, or any other areas required by city zoning and building regulations.

(c) Transportation Improvements: The city council may grant a development excise tax credit to a taxpayer on any or all of the tax imposed by this chapter and deposited in the transportation development fund if the city council, after reviewing a recommendation from the planning board, finds that such a credit is in the public interest. In making this determination, the council shall consider whether such improvements to be constructed by a developer are consistent with the ultimate configuration of the streets identified as arterials in the Transportation Master Plan for the Boulder Valley. No certificate of occupancy, temporary or otherwise, shall be issued for the property until such improvements have been completed to the satisfaction of the city manager and dedicated to the city, or a financial guarantee in a form allowed under section 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981, and in an amount sufficient to secure the full costs, as determined by the city manager, of constructing or installing the improvements, has been provided by the developer. The amount of the credit shall be based on reasonable project costs for constructing the improvement. The amount of the credit shall not exceed the total transportation excise tax owed to the city.

(d) Affordable Housing, Facilities Serving The General Public, And Urban Renewal Areas: The city council may grant a development excise tax credit to a taxpayer on any or all of the tax imposed by this chapter if the city council finds the public interest is adequately served and the waiver or reduction is intended to assist in the provision of affordable housing or facilities serving the general public or in order to promote development in an urban renewal area established under state law. Any such decision by the city council to grant a development excise tax credit is at its discretion and is legislative in nature.

(e) Waiver Of Tax For Permanently Affordable Housing: The development excise tax does not apply to those permanently affordable units that are provided on site within a single development that are in excess of the number of units required by chapter 9-13, "Inclusionary Zoning," B.R.C. 1981. In addition, for every permanently affordable unit provided on site within a single development in excess of the number required by chapter 9-13, "Inclusionary Zoning," B.R.C. 1981, the development excise tax will be waived for one of the permanently affordable dwelling units required by chapter 9-13, "Inclusionary Zoning," B.R.C. 1981. This waiver applies only if the entire inclusionary zoning requirement for the development is constructed on the site within a single development.

(f) Business Incentive Rebates: The city manager may grant rebates of development excise taxes paid by primary employers in connection with equipment acquisition, construction projects, construction equipment and construction materials when, in the judgment of the city manager, the rebate will serve the economic interests of the city by helping attract or retain a primary employer which contributes to a socially sustainable community. The city manager may promulgate interpretive guidelines to define more specifically the circumstances under which rebates may be granted and to establish application procedures or other matters necessary or desirable for implementation of this subsection. Any taxes rebated pursuant to this subsection shall be deemed payable by the city's general fund. This subsection shall be repealed and no longer in effect after December 31, 2007, unless extended by action of the city council.

Ordinance Nos. 5216 (1989); 7144 (2001); 7478 (2006).

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3-8-8 **Collection Of Unpaid Taxes.**

Unpaid development excise taxes constitute a lien on the property. Any promise to pay such tax is a covenant running with the land enforceable against the personal representatives, heirs, successors, and assigns of the property owner. In addition to other collection remedies, the city manager may certify due and unpaid development excise taxes to the Boulder County Treasurer for collection in the same manner as general property taxes are collected as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

TITLE 3 REVENUE AND TAXATION

Chapter 9 Housing Excise Tax[1]

Section:

3-9-1 Legislative Intent.

It is the purpose of this chapter to promote the development and provision of housing in the city that is affordable to low income people by establishing a housing excise tax on new development. Revenues from the tax shall be deposited in the general fund and shall therefore be available to pay for the general expenses of government. However, although the city council recognizes that it cannot bind future city councils, it nonetheless declares its intention that the revenues generated by the housing excise tax be appropriated by future city councils only for purposes of the Community Housing Assistance Plan, to be established by the city to provide housing for the "working poor," that is, households earning fifteen to sixty percent of the Area Median Income. It is also intended that the rate for nonresidential construction be adjusted annually to reflect changes in the cost of living for the previous twelve months as shown in the "all items" category of the United States Department of Labor Consumer Price Index for all Urban Consumers for the metropolitan statistical area which includes the city.

Ordinance Nos. 5425 (1991); 7335 (2004).

3-9-2 Tax Imposed On Nonresidential And Residential Development.

(a) Tax Rate: No person engaged in nonresidential or residential development in the city shall fail to pay, prior to the scheduling of final building inspection, a tax thereon according to the following rates:

New And Annexing Residential Dwelling Unit

Year In Which Building Permit Is Issued	Tax Rate Per Square Foot Of Floor Area
1995–1998	0.16
1999	0.18
2000	0.185
2001	0.19
2002	0.195
2003	0.20
2004	0.206
2005	0.21
2006	0.215
2007	0.22

[1]Adopted by Ordinance No. 5342.

New, Annexing And Expanded Nonresidential Development

Year In Which Building Permit Is Issued	Tax Rate Per Square Foot Of Floor Area
1995–1998	0.34
1999	0.39
2000	0.40
2001	0.41
2002	0.42
2003	0.43
2004	0.44
2005	0.45
2006	0.46
2007	0.47

(b) Exceptions: This tax shall not apply to the construction of an addition to, renovation, or remodeling of an existing dwelling unit, nor to the construction of a dwelling unit which replaces an existing dwelling unit, provided, however, that the replacement dwelling unit is located on the same lot as the existing dwelling unit and that the existing dwelling unit is demolished before the building permit for the replacement dwelling unit is issued.

(c) Affordable Housing Exemption: The development excise tax shall not apply to dwelling units that are permanently affordable units, as defined in section 9-16-1, "General Definitions," B.R.C. 1981.

(d) Credits: Any person holding a credit for units offered beyond requirements may surrender that credit to the city and receive therefor a credit against this housing excise tax in the amount of $3,300.00. Alternatively, any person holding a credit for units offered beyond requirements which was first acquired by that person before January 23, 1991, may surrender that credit to the city in lieu of paying the housing excise tax due on any six and two-thirds dwelling units which that person developed.

(e) Definitions: For purposes of this chapter:

"Floor area" shall have the same meaning as defined in chapter 3-8, "Development Excise Tax," B.R.C. 1981.

"Nonresidential development" shall have the same meaning as defined in chapter 3-8, "Development Excise Tax," B.R.C. 1981.

Ordinance Nos. 5363 (1991); 5425 (1991); 6039 (1998); 7008 (1999); 7087 (2000); 7168 (2001); 7240 (2002); 7329 (2003); 7406 (2004); 7439 (2005); 7495 (2006).

3-9-3 **Housing Excise Tax On Commercial Redevelopment.**

Whenever an existing commercial development in the city is redeveloped, no person shall fail to pay the housing excise tax imposed by section 3-9-2, "Tax Imposed On Nonresidential And Residential Development," B.R.C. 1981, for the net increase in floor area.

Ordinance No. 5363 (1991).

3-9-4 **Collection Of Unpaid Taxes.**

Unpaid housing excise taxes constitute a lien on the property. In addition to other collection remedies, the city manager may certify due and unpaid development taxes to the Boulder County Treasurer for collection in the same manner as general property taxes are collected as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

3-9-5 **Effective Date.**

The housing excise tax shall apply to the construction of any dwelling unit or commercial development for which an application for a building permit is submitted to the city after January 22, 1991.

Ordinance No. 5363 (1991).

3-9-6 **Housing Excise Tax.**

In 2000, and every year thereafter, the housing excise tax imposed by this chapter shall be recomputed by raising or lowering it in an amount equal to the percentage of change for the preceding year in the consumer price index (all items) of the U.S. Department of Labor, Bureau of Labor and Statistics for the statistical area which includes the city[1].

Ordinance No. 7008 (1999).

[1]Ordinance No. 6019, approved by the voters in 1998, authorizes this adjustment of this tax.

TITLE 3 REVENUE AND TAXATION

Chapter 10 Trash Tax[1]

Section:

3-10-1 Legislative Intent.

(a) The purpose of this chapter is to impose a tax upon persons engaged in the business of furnishing garbage collection services to the inhabitants and residents of the city. Additionally, the city council determines and declares that the receipt of garbage collection services within the city is the exercise of a taxable privilege. The city council further declares that the purpose of the levy of the taxes imposed by this chapter is for the raising of funds for the payment of the expenses of operating the city including, but not limited to, the funding of the city-wide recycling program; and in accordance with this purpose all of the proceeds of the tax should be placed in and become a part of the general fund of the city.

(b) A portion of the increment of the tax imposed effective January 1, 2005, is intended to support energy efficiency programs and to help develop a roadmap and long-term funding source for meeting the city's Kyoto Protocol goal of reducing local greenhouse gas emissions by seven percent below their 1990 levels by the year 2012. This portion of the increment will expire on December 31, 2006, unless this sunset provision is repealed or amended before that date. The remainder of the increment is intended to support waste reduction programs.

Ordinance No. 7406 (2004).

3-10-2 Imposition Of Occupation Tax.

(a) No person furnishing garbage collection services in the city shall fail to pay to the city manager the occupation tax, prescribed by subsection (c) of this section, upon such services. If a garbage collector provides services subject to the tax imposed by this chapter for less than the whole period for which the occupation tax is imposed, the city manager shall prorate the amount upon the basis of the period of time that the service is provided and the tax is imposed.

(b) The definitions in chapter 6-12, "Trash Hauling," B.R.C. 1981, shall apply to this chapter.

(c) For every person engaged in furnishing garbage collection services within the City of Boulder, the occupation tax rates, based on the volume of garbage collected from and after January 1, 2005, are as follows:

[1]Adopted by Ordinance No. 5343.

Categories	Tax
Per residential customer: one-can (thirty-two gallon) service	$2.20/month
Per residential customer: two-can (sixty-four gallon) service	3.40/month
Per residential customer: three-can or more (ninety-six gallon or more) service (except dumpster service)	3.50/month
Per residential customer: bag service*	0.15/bag
Per commercial customer or account (includes residential dumpsters)	0.85/cubic yard

*Residential bag service applies to residential customers who do not have regularly scheduled trash service. The cumulative tax on bag service shall not exceed $3.50 for any one residential customer of that service in any calendar month.

(d) For every person engaged in furnishing garbage collection services within the City of Boulder, the occupation tax rates, based on the volume of garbage collected from and after January 1, 2007, are as follows:

Categories	Tax
Per residential customer: one-can (thirty-two gallon) service	$1.10/month
Per residential customer: two-can (sixty-four gallon) service	2.50/month
Per residential customer: three-can or more (ninety-six gallon or more) service (except dumpster service)	3.50/month
Per residential customer: bag service*	0.15/bag
Per commercial customer or account (includes residential dumpsters)	0.74/cubic yard

*Residential bag service applies to residential customers who do not have regularly scheduled trash service. The cumulative tax on bag service shall not exceed $3.50 for any one residential customer of that service in any calendar month.

Ordinance Nos. 5683 (1994); 5940 (1997); 7406 (2004).

3-10-3 **Exemptions.**

Persons taxed under the provisions of section 3-10-2, "Imposition Of Occupation Tax," B.R.C. 1981, shall be exempt from the payment of the tax otherwise imposed on the furnishing of services:

(a) For collection of source separated recyclable materials for the expressed purpose of reuse or recycling; and

(b) To any customer having a written contract, existing on October 23, 1990, prohibiting an increase in fees or charges due to the imposition of the tax prescribed in section 3-10-2, "Imposition Of Occupation Tax," B.R.C. 1981.

3-10-4 **Voter Approval.**

As part of a ballot question placed before the voters by Ordinance No. 5649 (1994), and approved by them in the November, 1994, special municipal election, the city's trash tax was raised to a maximum of $3.50 per month for residential customers and a maximum of $0.85 per cubic yard for commercial customers.

Ordinance No. 7406 (2004).

3-10-5 **Imposition Of Excise Tax.**

Repealed.

Ordinance No. 5683 (1994).

3-10-6 **Payment Of Tax.**

Any persons subject to the occupation tax herein levied or required to remit the collected excise tax shall pay the tax at the end of each quarter of a year for each and every customer and account for whom garbage collection services are provided. The first quarterly payment is due on May 1, 1991, and thereafter quarterly payments are due on the first day of the months of February, May, August, and November of each year.

Ordinance Nos. 5349 (1990); 7406 (2004).

3-10-7 **Designation Of Tax.**

Persons taxed under the provisions of this chapter are hereby authorized to reflect this tax under the title of "Trash Tax" on the billing statements of their customers or accounts.

Ordinance Nos. 7078 (2000); 7406 (2004).

3-10-8 **Inspection Of Records.**

It shall be the duty of every person taxed under the provisions of this title to keep and preserve suitable records and other such books or accounts, as may be necessary to determine the amount of tax for the collection of which the person is liable under this chapter. The city manager and agents and representatives thereof are entitled at any reasonable time, upon adequate notice, to

examine the books and records of any person furnishing garbage collection services subject to the tax levied by this chapter and to make copies of the entries or contents thereof.

Ordinance No. 7406 (2004).

3-10-9 **Enforcement Of Tax Liability.**

(a) The occupation tax and the excise tax imposed by this chapter is a first and prior lien on tangible personal property in which the person responsible to remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of tax lien as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The provisions of sections 3-2-22, "Penalties For Failure To File Tax Return Or Pay Tax (Applies To Entire Title)," 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale Of Business Subject To Lien," 3-2-30, "Certificate Of Discharge Of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," 3-2-33, "Recovery Of Unpaid Tax By Action At Law," 3-2-34, "City May Be A Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations Of Fiduciaries And Others," and 3-2-38, "Limitations," B.R.C. 1981, providing for enforcement of collection of taxes due, govern the authority of the city manager to collect the occupation tax imposed under this chapter.

Ordinance Nos. 7012 (1999); 7406 (2004).

3-10-10 **Duties And Powers Of City Manager.**

The city manager is authorized to administer, including, but not limited to, the adoption of administrative policies and guidelines, the provisions of this chapter and has all other duties and powers prescribed by section 3-2-17, "Duties And Powers Of City Manager," B.R.C. 1981.

Ordinance No. 7406 (2004).

TITLE 3 REVENUE AND TAXATION

Chapter 11 Education Excise Tax[1]

Section:

3-11-1 Legislative Intent.

It is the purpose of this chapter to promote the development of public educational facilities and services in the city. Revenues from the tax, together with any earnings thereon, shall be deposited in a designated account of the general fund and shall therefore be available to pay for the general expenses of government. However, although the city council recognizes that it cannot bind future city councils, it nonetheless declares its intention that the revenues generated by the education excise tax be appropriated by future city councils only for education related purposes, including, without limitation, development of public educational facilities and services or tax refunds or setoffs relating thereto.

3-11-2 Tax Imposed On Residential Development.

(a) No person engaged in residential development or mobile home pad development in the city shall fail to pay, prior to the scheduling of final building inspection, a tax thereon at the rate of $1.14 per square foot of floor area or, for mobile home parks, potential floor area, up to a cap of six thousand square feet[2].

(b) This tax shall not apply to the construction of an addition to, renovation, or remodeling of an existing dwelling unit, nor to the construction of a dwelling unit which replaces an existing dwelling unit, provided, however, that the replacement dwelling unit is located on the same lot as the existing dwelling unit and that the existing dwelling unit is demolished before the building permit for the replacement dwelling unit is issued.

(c) For purposes of this chapter, "floor area" shall have the same meaning as defined in chapter 3-8, "Development Excise Tax," B.R.C. 1981. Potential floor area shall be determined by reference to standards for mobile homes as of the date of assessment of the tax.

Ordinance Nos. 7087 (2000); 7168 (2001); 7240 (2002); 7329 (2003); 7406 (2004); 7439 (2005); 7495 (2006).

3-11-3 Collection Of Unpaid Taxes.

Unpaid education excise taxes constitute a lien on the property. In addition to other collection remedies, the city manager may certify due and unpaid development taxes to the Boulder County Treasurer for collection in the same manner as general property taxes are collected as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

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[1]Adopted by Ordinance No. 5662, approved by the electorate on November 8, 1994. Codified by Ordinance No. 5689.
[2]Ordinance No. 5662, approved by the voters in 1994, authorizes the city council to impose this tax up to the rate of $3.43 per square foot.

3-11-4

3-11-4 **Effective Date.**

The education excise tax shall apply to the construction of any dwelling unit for which an application for a building permit is submitted to the city after April 4, 1995.

TITLE 3 REVENUE AND TAXATION

Chapter 12 Climate Action Plan Excise Tax[1]

Section:

3-12-1 Legislative Intent.

It is the purpose of this chapter to implement the city's Climate Action Plan, including programs to increase energy efficiency, increase renewable energy use, reduce emissions from motor vehicles, and take other steps toward the initial goal of meeting the Kyoto Protocol target of reducing local greenhouse gas emissions by seven percent below 1990 levels by the year 2012. Additionally, the city council determines and declares that the consumption of electricity within the city is the exercise of a taxable privilege. The city council further declares that the purpose of the levy of the taxes imposed by this chapter is for the raising of funds for the payment of the expenses incurred to implement the Climate Action Plan; and in accordance with this purpose, all of the proceeds of this excise tax should be placed in and become a part of a separate special revenue fund of the city.

3-12-2 Imposition Of Climate Action Plan Excise Tax.

(a) Any person consuming electricity shall pay a Climate Action Plan excise tax at the rate prescribed by subsections (c) and (d) of this section, as applicable.

(b) The Climate Action Plan excise tax shall be effective April 1, 2007, and shall expire on March 31, 2013.

(c) The Climate Action Plan excise tax rates effective April 1, 2007, shall be:

Category	Tax
Residential	$0.0022 per kWh
Commercial	0.0004 per kWh
Industrial	0.0002 per kWh

(d) Beginning January 1, 2008, the city council may increase the Climate Action Plan excise tax rates up to the maximum rates set forth below:

Category	Tax
Residential	$0.0049 per kWh
Commercial	0.0009 per kWh
Industrial	0.0003 per kWh

[1]Adopted by Ordinance No. 7509.

3-12-3 **Exemptions.**

The portion of electricity voluntarily purchased as utility provided wind power shall be exempt.

3-12-4 **Payment Of Tax.**

Any incumbent electricity provider operating within the city pursuant to a franchise or otherwise ("Provider") shall bill and collect the Climate Action Plan excise tax and shall remit said tax to the city manager in the manner required by section 3-12-5, "Payment Schedule, Reporting And Inspection Of Records," B.R.C. 1981. The first payment shall be due May 31, 2007, for electricity consumption on or after April 1, 2007. The tax may be expressly identified on any consumer bills as the "The City of Boulder Climate Action Plan Excise Tax" or as the "Climate Action Plan Tax."

3-12-5 **Payment Schedule, Reporting And Inspection Of Records.**

(a) For the Climate Action Plan excise tax amounts billed pursuant to this chapter, payment shall be made by the Provider in monthly installments not more than thirty days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this excise tax.

(b) In addition, the Provider shall also submit monthly reports to the city supporting the amount of the Climate Action Plan excise tax remitted for that month including energy use and amounts remitted by sector and Windsource electricity purchases exempted by sector. Electronic or paper reports are acceptable.

(c) It shall be the duty of the Provider to keep and preserve for a period of three years, suitable records and other such books or accounts, including, without limitation, original sales and purchase records, as may be necessary to determine the amount of the Climate Action Plan excise tax for the collection of which the Provider is liable under this chapter. The city manager and agents and representatives thereof are entitled at any reasonable time, upon adequate notice, to examine the books and records of the Provider and to make copies of the entries or contents thereof.

3-12-6 **Enforcement Of Tax Liability.**

(a) The excise tax imposed by this chapter is a first and prior lien on tangible personal property in which the Provider has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of tax lien as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The provisions of sections 3-2-22, "Penalties For Failure To File Tax Return Or Pay Tax (Applies To Entire Title)," 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale Of Business Subject To Lien," 3-2-30, "Certificate Of Discharge Of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing The Collection Of Taxes Due (Applies To Entire Title)," 3-2-33, "Recovery Of Unpaid Tax By Action At Law," 3-2-34, "City May Be A Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations Of Fiduciaries And Others," and 3-2-38, "Limitations," B.R.C. 1981, providing for enforcement of collection of taxes due, govern the authority of the city manager to collect the excise tax imposed under this chapter.

3-12-7

3-12-7 **Duties And Powers Of City Manager.**

The city manager is authorized to administer, including, but not limited to, the adoption of administrative policies and guidelines, the provisions of this chapter and has all other duties and powers prescribed by section 3-2-17, "Duties And Powers Of City Manager," B.R.C. 1981. In addition, the city manager is authorized to enter into agreements with Providers to establish procedures for tax collection, payment to the city, and the reasonable setup and collection charges that will be owed to such Provider.

TITLE 4

LICENSES AND PERMITS

TITLE 4 LICENSES AND PERMITS

Chapter 1 General Licensing Provisions[1]

Section:

4-1-1 Legislative Intent.

The purpose of the licenses and permits issued under this title is to protect the public health, safety, and welfare.

4-1-2 City Manager To Issue Licenses.

Upon granting a license and receiving the license fee, the city manager shall prepare, sign, and issue a license containing the purpose of the license, the name and address of the licensee, and the official city seal.

4-1-3 Term Of Licenses; Renewal.

(a) Unless otherwise provided by this code or an ordinance of the city, the term of each license issued under this title shall be no more than one year, expiring on December 31 of the year of its issue. Unless otherwise provided by this code or an ordinance of the city, no license fee shall be prorated.

(b) Each license issued under this title shall contain on its face its date of issue and expiration date.

(c) A licensee seeking to renew a license issued under this title shall apply for renewal no fewer than thirty days before the license expiration date.

4-1-4 Transferability Of Licenses.

No license issued under this title may be transferred or assigned, and no license is valid as to any person other than the person named thereon.

[1]Adopted by Ordinance No. 4637. See also the following portions of B.R.C. 1981: chapter 5-8, "Weapons," for weapons and target range permits; chapter 6-6, "Protection Of Trees And Plants," for tree spraying, planting, and removal permits; chapter 8-3, "Parks And Recreation," for horse concession park use permits; title 9, "Land Use Code," for land use permits; section 9-9-21, "Signs," for sign permits; chapter 10-5, "Building Code," for building permits; chapter 10-6, "Electrical Code," for electrical permits; chapter 10-8, "Fire Prevention Code," for fireworks, and hazardous materials permits; chapter 10-9, "Mechanical Code," for mechanical permits; and chapter 10-10, "Plumbing Code," for plumbing permits.

4-1-5 Posting Of Licenses.

Unless otherwise provided by this code or an ordinance of the city, each licensee licensed under this title shall post the license on the primary business premises to which the license relates prominently in public view.

4-1-6 Refund Where License Is Not Issued.

If an applicant for a license has paid the required license fee but no license is issued, the city manager shall cause the fee to be returned forthwith upon request by the applicant for a refund.

4-1-7 City Manager To Keep License Register.

The city manager shall keep a register of all licenses and permits issued under this title that includes the name and address of the licensee, the purpose of the license, the number of the license, the amount paid therefor, and the license expiration date.

4-1-8 Insurance Required.

Whenever insurance is required of a licensee under this title, such licensee shall:

(a) At all times maintain workers' compensation insurance, public liability insurance with minimum limits of $150,000.00 for any one person and $600,000.00 for any one accident, and public property damage insurance with a minimum limit of $100,000.00 for any one accident.

(b) File with the city manager a certificate signed by a qualified agent of an insurance company evidencing the existence of valid and effective policies of workers' compensation and public liability and property damage insurance naming the city and its officers and employees as an additional named insured on the liability policy at least to the limits required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, and a copy of an endorsement placed on each policy requiring ten days' notice by mail to the manager before the insurer may cancel the policy for any reason.

Ordinance Nos. 5517 (1992); 5678 (1994).

4-1-9 Authority To Deny Issuance Of Licenses.

(a) The city manager may deny an application for a license under this title upon a determination that:

(1) The applicant has failed to supply any of the information required on the application;

(2) The applicant has failed to obtain required insurance;

(3) The applicant has failed to pay the required license fee;

(4) The applicant is not qualified by experience, training, or education to engage in the activity authorized by the license; or

(5) The applicant has been finally convicted of an offense and would create danger to the public health, safety, or welfare if the applicant were to engage in such offensive conduct after the license were issued.

(b) If the city manager denies a license application under this section, the manager shall notify the applicant in writing stating the specific grounds for the denial. The applicant may thereafter appeal the denial of the application to the manager under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The hearing officer on the appeal shall not be the same individual who denied the license application.

4-1-10 **Revocation Of Licenses.**

(a) In addition to any other provisions of this code or other ordinances of the city, the city manager may suspend or revoke a license or permit issued under this title if:

(1) The licensee fails to meet the qualifications required of an applicant;

(2) The licensee violates any provision of this code or other ordinance of the city governing the activities permitted by the license;

(3) The licensee obtained the license by fraud or misrepresentation; or

(4) The licensee is finally convicted of an offense and would create a danger to the public health, safety, and welfare if the licensee were to engage in such conduct after the license was issued.

(b) If the city manager finds one of the grounds in subsection (a) of this section or any other ground for suspension or revocation in this code, the manager shall determine whether to revoke the license for the remainder of its term or suspend it for any shorter period according to severity of the disqualification, its effect on public health, safety, and welfare, and the time during which the disqualification can be remedied, if at all.

(c) Before the hearing required by subsection (d) of this section, the city manager may suspend a license for up to thirty days, if the manager determines that the suspension is in the interest of public health, safety, and welfare. The manager may include in the temporary suspension reasonable orders or conditions with which the licensee shall comply to protect any work in progress and the public health and safety. Any breach of such conditions or orders is an independent ground for suspension or revocation of the license.

(d) Except for such emergency suspension authorized by subsection (c) of this section, no such suspension or revocation is final until the licensee has been given the opportunity for a hearing to contest the suspension or revocation under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(e) If, after a hearing, the suspension or revocation is upheld, the city manager may include reasonable orders or conditions with which the person whose license has been suspended or revoked shall comply to protect any work in progress and the public health, safety, and welfare.

(f) No person whose license is revoked under this title may receive a refund of any part of the license fee paid for the license.

(g) No person who has had a license suspended or revoked under this title is entitled to obtain the same or any similar license under this code during the period of suspension or revoca-

tion, either in the person's own name or as a principal in another business that applies for a license.

4-1-11 **Revocation Not Exclusive Penalty.**

Nothing in this title shall be deemed to prohibit the city manager from imposing other penalties authorized by this code or other ordinance of the city, including filing a complaint in the municipal court for a violation of this code or other ordinance of the city.

4-1-12 **City Manager May Issue Regulations.**

The city manager may issue rules and regulations deemed necessary to administer and enforce the provisions of this title, including, without limitation, prescribing forms for license applications, information that applicants and licensees shall provide, and books and records that licensees shall keep.

TITLE 4 LICENSES AND PERMITS

Chapter 2 Beverages License[1]

Section:

4-2-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by requiring all persons to be licensed by the city to sell or offer for sale any liquor or 3.2 beer. The city council intends that the city issue local licenses for sale of such beverages, as authorized by state law, and that the city's licensing requirements be consistent with those for state licenses under state law.

4-2-2 City License To Sell Required.

(a) No person shall sell or offer for sale any malt, vinous, or spirituous liquor[2] in the city without first having obtained a city license therefor under the provisions of this chapter and laws of the State of Colorado[3], in addition to any other license required by the state.

(b) No person shall sell or offer for sale any fermented malt beverages[4] without first having obtained a city license therefor under the provisions of this chapter and the laws of the State of Colorado[5], in addition to any other license required by the state.

(c) Nothing in this code shall be deemed to require a person to obtain a separate city license in order to sell or offer for sale any malt, vinous, or spirituous liquor or fermented malt beverage pursuant to a special event permit issued by the State of Colorado[6].

Ordinance No. 5187 (1989).

4-2-3 Authority To Issue City Licenses.

(a) An applicant for a city license under this chapter shall apply therefor to the Beverage Licensing Authority established by section 2-3-3, "Beverage Licensing Authority," B.R.C. 1981, on forms provided by the authority.

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[1]Adopted by Ordinance No. 4651. Amended by Ordinance No. 4722. Derived from Ordinance Nos. 3280, 3321, 4130, 4334.
[2]Section 5-7-1, "Definitions," B.R.C. 1981.
[3]12-47-102, C.R.S.
[4]Section 5-7-1, "Definitions," B.R.C. 1981.
[5]12-46-101 et seq., C.R.S.
[6]12-48-101 et seq., C.R.S.

(b) The authority may issue the following types of city licenses:

(1) Retail liquor store;

(2) Liquor-licensed drugstore;

(3) Beer and wine;

(4) Hotel and restaurant;

(5) Tavern;

(6) Club;

(7) Arts;

(8) Racetrack;

(9) Brew pub;

(10) Fermented malt beverage on-premises;

(11) Fermented malt beverage off-premises;

(12) Fermented malt beverage on-premises and off-premises;

(13) Hotel and restaurant with optional premises; and

(14) Tastings of alcoholic beverages conducted on licensed retail liquor stores and liquor-licensed drugstore premises.

(c) In order to qualify for a city license under this chapter, an applicant must meet all conditions for the issuance of the parallel state license prescribed by the Colorado Liquor Code[1], for malt, vinous, and spirituous liquors, and the Colorado Beer Code[2], for fermented malt beverages, except that the fees for a city license are those prescribed by section 4-20-2, "Alcohol And Fermented Malt Beverage License And Application Fees," B.R.C. 1981.

Ordinance Nos. 5347 (1990); 5835 (1996); 7043 (2000); 7380 (2004).

4-2-4 **State Law Procedures Apply.**

(a) Provisions of the Colorado Liquor Code and the Colorado Beer Code governing procedures for applications, hearing, and decisions for state liquor or fermented malt beverages apply for city licenses.

(1) The principal campus of the University of Colorado is eliminated from the application of the five hundred foot distance restriction of subparagraph 12-47-313(1)(d)(I), C.R.S., for hotel-restaurant liquor licenses only. For the purposes of this section, the principal campus is defined as the area generally circumscribed by Broadway Street on the west; Baseline Road on the south; 28th Street, Colorado Avenue and Folsom Street on the east; and Boulder Creek, 17th Street and University Avenue on the north.

[1] 12-47-101 et seq., C.R.S.
[2] 12-46-101 et seq., C.R.S.

(2) The five hundred-foot distance restrictions of subparagraph 12-47-313(1)(d)(I), C.R.S. as it applies to the principal campus of Boulder High School shall be changed to four hundred feet for hotel-restaurant liquor licenses only. In addition, the distance change shall only apply to establishments with full kitchen facilities, with a seating capacity not to exceed thirty-five, and with a square footage not to exceed 1,200 square feet.

(b) The optional procedures[1] set forth in subsections 12-47-601(3) to (6), C.R.S., are accepted and adopted for application by the Beverage Licensing Authority.

Ordinance Nos. 5069 (1987); 5317 (1990); 5347 (1990); 5348 (1991); 7276 (2003).

4-2-5 Obligations Of Licensee.

No person licensed under this chapter shall fail to comply with all applicable provisions of state law and applicable requirements of this code and any ordinances of the city regulating the conduct of the licensed business.

4-2-6 Revocation And Suspension Of City License.

The authority may suspend or revoke the license of any licensee who has had its corresponding state license suspended or revoked.

4-2-7 Term And Renewal Of City Licenses.

(a) The term of the city license issued under this chapter is twelve months from the date of issuance.

(b) Applicants for renewal of city licenses shall apply to the Beverage Licensing Authority on or before the forty-fifth day prior to the date of expiration of the license.

Ordinance No. 5347 (1990).

4-2-8 Transfer Of License.

No person licensed under this chapter shall transfer the city license to another person or to another location without the prior approval of the Beverage Licensing Authority. Standards for transfer of a city license are those applicable to transfers of state licenses under state law.

Ordinance No. 5347 (1990).

4-2-9 License Fees.

The city manager shall issue all licenses granted by the authority upon receipt of the license fee prescribed by subsection 4-20-2(d), B.R.C. 1981.

4-2-10 Hotel And Restaurant Optional Premises License.

(a) The authority may allow hotel and restaurant licenses to include an optional premises authorization as part of a hotel and restaurant license in accordance with the provisions of

[1]These procedures concern discretionary acceptance by the authority of a proposal to pay a fine in lieu of license suspension.

12-47-310, C.R.S., the provisions of this section, and all other standards applicable to the issuance of licenses under the Colorado Liquor Code and this chapter.

(b) Such authorization may only be considered when the premises to be licensed is:

(1) A golf course located upon an outdoor sports and recreation facility as defined in 12-47-103(22)(a)(11) and (22)(b), C.R.S.; or

(2) Chautauqua Park.

(c) There shall be no minimum size requirement for Chautauqua Park or for the golf course facilities which may be eligible for the approval of an optional premises authorization as part of a hotel and restaurant license. However, the authority may consider the size of the particular outdoor sports and recreational facility in relation to the number of optional premises requested for the facility.

(d) There shall be no restrictions on the number of optional premises which any one hotel and restaurant license may have at Chautauqua Park or on a golf course facility. However, any applicant requesting approval of more than one optional premises shall demonstrate the need for each optional premises.

(e) When submitting an application for the approval of authorization of optional premises as part of a hotel and restaurant license, an applicant shall also submit the following information:

(1) A map or other drawing illustrating the facility boundaries and the approximate location or locations where alcoholic beverages will be sold and consumed;

(2) A description of the method which shall be used to identify the boundaries of the optional premises when in use;

(3) A description of the provisions to ensure the applicant's control over each area designated as an optional premises; and

(4) A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises.

(f) An application for a new hotel and restaurant license which includes a request for authorization of optional premises, shall be processed in the same manner as any other new license application. An application for an optional premises authorization filed in connection with an existing hotel and restaurant license shall be processed in the same manner as an application to change, alter or modify the licensed premises.

Ordinance Nos. 7043 (2000); 7276 (2003).

4-2-11 **Tastings.**

No retail liquor store or liquor-licensed drugstore licensee shall conduct alcoholic beverage tastings unless a license has been obtained in accordance with this section and pursuant to the requirements and limitations set forth in section 12-47-301(10), C.R.S. The beverage licensing authority is authorized to issue tasting licenses in accordance with the requirements and limitations of section 12-47-301(10), C.R.S. At its discretion, the authority may authorize the city clerk to issue those tasting licenses.

Ordinance No. 7380 (2004).

TITLE 4 LICENSES AND PERMITS

Chapter 3 Auctioneer License[1]

Section:

4-3-1 Legislative Intent.

The purpose of this chapter is to protect the public welfare by licensing auctioneers in order to regulate potential means of selling stolen property.

4-3-2 License Required.

(a) No person shall conduct or carry on the business of selling at public auction any merchandise without first obtaining a license therefor from the city manager under this chapter.

(b) No person shall sell any property at a public auction within the city without first obtaining a license therefor from the city manager under this chapter.

4-3-3 License Application.

An applicant may obtain an auctioneer license after:

(a) Filing an application therefor with the city manager that includes the applicant's name, address, and proposed place of business;

(b) Paying the fee prescribed in section 4-20-3, "Auctioneer License Fees," B.R.C. 1981;

(c) Posting a surety bond in the amount of no less than $1,000.00, payable annually following any auction to any person suffering a loss as the result of purchasing merchandise at such auction that is later determined to be stolen or otherwise not legally subject to sale by the auctioneer; and

(d) Showing proof to the city manager of possessing a diploma from an accredited auctioneer college or certification from the Auction Marketing Institute, a training division of the National Auctioneers Association.

Ordinance No. 6032 (1998).

4-3-4 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions in subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

[1]Adopted by Ordinance No. 4637. Derived from Ordinance Nos. 1265, 2419, 1925 Code.

(1) The applicant has had any auctioneer license under this code revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any auctioneer, secondhand dealer, or pawnbroker business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-3-5 Sales To Which Chapter Not Applicable.

Nothing in this chapter applies to sales at public auction under any legal process or proceeding ordered by any court, sales under any mortgage or deed of trust, tax sales, or sales under any provision of this code or other ordinance of the city by a city officer or employee.

4-3-6 Term Of License.

The term of a license issued under this chapter is up to one year, according to the applicant's request, the fee paid, and the amount of time remaining in the year.

4-3-7 Revocation.

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

4-4-2

TITLE 4 LICENSES AND PERMITS

Chapter 4 Building Contractor License[1]

Section:

4-4-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by assuring that the persons responsible for the construction of buildings and other structures in the city are qualified to perform such services and that they possess insurance to protect consumers from losses due to their activities. It is further the intent of the city council that owners of properties be permitted without special qualification to perform minor work on buildings that they own other than altering a load-bearing structure or performing work covered by the city's electrical, mechanical, or plumbing codes.

Ordinance No. 5177 (1989).

4-4-2 Definition Of Contractor.

(a) For purposes of this chapter, a "contractor" means any person who undertakes with or for another person within the city to build, construct, alter, repair, add to, move, inspect pursuant to chapter 10-3, "Rental Licenses," B.R.C. 1981, or wreck any building or structure, or any portion thereof.

(b) The following persons are not contractors within the meaning of this chapter:

(1) Subcontractors working for and under the supervision of a general contractor licensed under this chapter;

(2) Plumbers, electricians, mechanical and fire or other specialized tradespeople for whom another license is required by the city; and

(3) A homeowner who builds, constructs, alters, repairs, adds to, moves, or wrecks any building or structure, or any portion thereof that constitutes the owner's residence or a building or structure accessory thereto, that is intended for the owner's personal use. This exception is available only as to one such building or structure during a calendar year.

Ordinance Nos. 6015 (1998); 7023 (1999).

[1]Adopted by Ordinance No. 4637. Derived from Ordinance Nos. 3874, 3876.

4-4-3 License Required.

(a) No person shall perform any work as a contractor in the city without first obtaining a license from the city manager under this chapter.

(b) No permit shall be issued for work to be done by a person who does not have a valid, current license as required by this chapter for the type of work to be performed.

(c) No person other than a Class A or Class B licensed contractor shall perform work requiring the supervision of an architect or structural engineer.

(d) No person other than a Class A, Class B, Class C, or Class D licensed contractor shall wreck any structure.

4-4-4 Classification Of Licenses.

(a) A Class A license entitles the licensee to contract for the construction, alteration, wrecking, or repair of any type or size of building or structure permitted by the International Building Code[1]. The annual fee for a Class A license is that prescribed by section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981.

(b) A Class B license entitles the licensee to contract for the construction, alteration, wrecking, or repair of all commercial and residential buildings or structures defined as Type V, Type V-1 hour, Type IV, Type II-N, and Type III-N in the International Building Code[1]. The annual fee for a Class B license is that prescribed in section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981.

(c) A Class C license entitles the licensee to contract for:

(1) The construction, alteration, wrecking, or repair of any R-3 occupancies or of R-1 occupancies, as defined in the International Building Code, chapter 10-5, "Building Code," B.R.C. 1981, of two stories or less not involving reinforced concrete construction; and

(2) The repair of non-residential buildings not involving load-bearing structures. But this Class C license does not entitle the holder to contract for construction, alteration, or repair of public buildings or places of public assembly, nor for non-residential projects whose total value of the labor and material exceeds $5,000.00. The annual fee for a Class C license is that prescribed in section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981.

(d) A Class D license entitles the licensee to contract for labor or for labor and materials involving only one trade, these trades will be identified as listed below:

D-1. Moving and wrecking of structures
D-2. Roofing
D-3. Siding
D-4. Landscaping, irrigation and site work
D-5. Detached one-story garage and sheds accessory to single-family dwellings
D-6. Mobile home installer
D-7. Elevator and escalator installer
D-8. Class not identified above but requiring a building permit and inspection
D-9. Rental housing inspector

[1]Chapter 10-5, "Building Code," B.R.C. 1981.

A Class D licensee may be licensed to perform more than one such trade. The annual fee for Class D license is that prescribed in section 4-20-4, "Building Contractor License and Building Permit Fees," B.R.C. 1981.

(e) A Class E license entitles the licensee to contract for the building or construction of:

(1) All fences of any size or value, and

(2) Minor structures, including, without limitation, sheds of two hundred square feet or less, or for the alteration or repair of other buildings or other structures, if total value of the labor and materials for each such project does not exceed $2,000.00, the total square footage of each such project does not exceed two hundred square feet, and such work does not involve any load-bearing structure of the building. The annual fee for a Class E license is that prescribed in section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981.

(f) A Class F license entitles the licensee to construct, alter, or repair the licensee's own building or structure, if the total value of the labor and material for each such project does not exceed $500.00 and if the project does not involve alteration of a load-bearing structure or work governed by the city's electrical, mechanical, or plumbing codes[1].

Ordinance Nos. 5177 (1989); 6015 (1998); 7023 (1999).

4-4-5 License Application And Qualifications.

(a) An applicant for an initial building contractor license shall:

(1) Apply on forms furnished by the city manager, provide such information relating to the applicant's competence, education, training, and experience as the manager may require; and pay the fee prescribed in section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981;

(2) If applying for a license on or after January 1, 1983, successfully pass an examination designed by the manager to test the applicant's qualification for the category of license requested; and

(3) Provide evidence of insurance coverage required by section 4-1-8, "Insurance Required," B.R.C. 1981.

(b) An applicant for a Class F license need not comply with paragraphs (a)(2) and (a)(3) of this section. An applicant for a Class D-9 license need not comply with paragraph (a)(3) of this section, and the city manager may substitute attendance at a seminar on rental housing inspection given by the city for the examination required by paragraph (a)(2) of this section of D-9 licensees.

(c) An applicant for a Class D-9 license shall show proof of current American Society of Home Inspectors, Inc., certification or tested candidate status after passing the ASHI test, current certification as a building inspector by the International Conference of Building Officials or the International Code Council, possession of a current, valid Class A, B, or C general contractor's license, or licensure by the state as an architect or mechanical or structural engineer[2].

[1]Chapters 10-6, "Electrical Code," 10-9, "Mechanical Code," and 10-10, "Plumbing Code," B.R.C. 1981.

[2]When a baseline inspection is required as part of the rental housing licensing program specified in chapter 10-3, "Rental Licenses," B.R.C. 1981, that portion of the inspection which covers subsections (c), (d), and (e) of section 10-2-9, "Electrical Service Standards," B.R.C. 1981, shall be done by a licensed rental housing inspector who is also an ASHI certified rental housing inspector, an ICBO or ICC certified building inspector, or an electrical contractor licensed by the city.

Ordinance Nos. 7023 (1999); 7189 (2002).

4-4-6 **Renewal Of License.**

A licensee under this chapter, who, after January 1, 1983, has passed an examination designed by the city manager to test the qualifications for the category of license requested, may renew the license by completing an application on forms furnished by the manager, filing the certificate of insurance prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981, and paying the fee prescribed by section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981.

4-4-7 **Authority To Deny Issuance Of License.**

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions in subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor license revoked or suspended;

(2) The applicant has failed to pass an examination designed to test the applicant's qualification for the license requested or is otherwise not qualified by education, training, or experience to perform the work authorized by the license; or

(3) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any contracting business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-4-8 **Contractor Responsibilities.**

(a) A contractor licensed under this chapter is responsible for all work performed under each contract executed pursuant to such license, whether the contractor, an employee, or a subcontractor performs the work.

(b) If weather forecasts predict high winds, the contractor shall take reasonable steps to control flying debris, dust or missiles at a construction site.

(c) A contractor licensed under this chapter is responsible for making, or causing to be made, a construction specific asbestos inspection to identify possible asbestos contaminants before beginning work on any existing building.

(d) No Class D-9 contractor shall inspect any rental housing in which the inspector, or any relative by blood, marriage, or adoption through the second degree of consanguinity has a financial interest.

Ordinance Nos. 5493 (1992); 6015 (1998); 7023 (1999).

4-4-9 **Revocation And Suspension Of License.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation of Licenses," B.R.C. 1981. Grounds for suspension or revocation include, without limitation, failure to maintain required insurance.

4-4-10

4-4-10 **Term Of License.**

The term of the license issued under this chapter is twelve months from the date of issuance.

TITLE 4 LICENSES AND PERMITS

Chapter 5 Circus, Carnival, And Menagerie License[1]

Section:

4-5-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by regulating the conduct of circuses, carnivals, and menageries in the city and assuring that they comply with fire and other health codes, meet police and safety standards, provide for the protection of the animals, and carry sufficient insurance to compensate the public for injuries from these activities.

4-5-2 License Required.

No person shall operate or exhibit or cause to be operated or exhibited any circus, carnival, menagerie, or similar business without first obtaining a license therefor from the city manager as prescribed by this chapter.

4-5-3 License Application.

(a) At least thirty days before the opening of such exhibition, each applicant for a license under this chapter shall pay the fee prescribed by section 4-20-5, "Circus, Carnival, And Menagerie License Fees," B.R.C. 1981, and shall complete a license application, on forms furnished by the city manager, which includes, without limitation, the location of the area to be used for the exhibition; the applicant's name and residence address; and the name, age, and residence address of each employee who will be selling merchandise or performing services in the city during the period of operation of the license.

(b) The applicant shall provide evidence of insurance coverage required by section 4-1-8, "Insurance Required," B.R.C. 1981.

(c) The applicant shall obtain a city admissions tax license and, if applicable, a city sales and use tax license and shall deposit with the city manager $150.00 to be applied against anticipated sales, use, and admissions taxes due to the city and the cost of police protection required by paragraph 4-5-4(a)(2), B.R.C. 1981, if any. The licensee shall account to the director for such taxes and costs within forty-five days after closing the exhibition. If a licensee fails so to account, the licensee forfeits the $150.00 deposit.

4-5-4 Conditions Of License.

(a) The applicant shall meet the following conditions before the city manager may issue the license:

[1]Adopted by Ordinance No. 4637. Amended by Ordinance No. 7062. Derived from Ordinance No. 3221.

(1) An inspection by the city fire department and city building inspection division of the premises and all equipment involved in the business to assure that:

(A) All electrical equipment is properly installed according to the city's electrical code and is in good working order;

(B) Adequate fire access is provided; and

(C) Fire extinguishers are available as required by the city fire prevention code[1] and are in good working order.

(2) An inspection by the city police department to determine if more police protection than is generally required for the area or premises will be necessary; if the police department determines that the business requires additional police protection, the applicant shall be liable therefor and agree to reimburse the city for the cost of such additional protection; and

(3) An inspection by the Boulder County Health Department, if food is served, to assure compliance with applicable laws.

(4) An inspection by the city manager, if animals are part of the business, to assure compliance with applicable city and state laws.

(b) If mechanical rides or attractions are part of the business, the applicant shall certify that no operator thereof shall be under the age of eighteen years.

(c) If animals are part of the business, the applicant shall provide a list of all of the animals to be exhibited with the application. The list shall contain the age, species, and conditions of confinement of the animals, and details of any anticipated out-of-confinement time in the city.

4-5-5 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any circus, carnival, or menagerie license revoked or suspended within three years prior to the date of the application;

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any circus, carnival, or menagerie business licensed by this code;

(3) The applicant has failed to comply with the laws, ordinances, or regulations relating to conducting any circus, carnival, or menagerie business or relating to cruelty to animals or their proper care of any other jurisdiction having requirements similar to those of this city. Without limitation, the manager may deny a license if the applicant has had two or more non-compliant items documented during a United States Department of Agriculture inspection associated with animal health, injury, veterinary care, protection from the elements, housing, feeding, transportation, or animal handling; or

(4) The applicant intends to use or display any animal prohibited from display under chapter 6-1, "Animals," B.R.C. 1981, as part of the circus, carnival, or menagerie. The manager shall deny any license to which this paragraph applies, but this paragraph does not

[1]Chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

apply to applicants which are corporations not for profit and display without charge for educational purposes exotic animals lawfully in their custody.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

Ordinance No. 7133 (2001).

4-5-6 **Term Of License.**

A license issued under this chapter is valid for the number of days stated thereon, determined by the license fee paid by the applicant.

4-5-7 **Revocation Of License.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981. Notice of the proposed suspension or revocation shall be hand delivered to the licensee, and the hearing may be held within twenty-four hours of the service of the notice.

TITLE 4 LICENSES AND PERMITS

Chapter 6 Contractor In The Public Right-Of-Way License[1]

Section:

4-6-1 Legislative Intent.

The purpose of this chapter is to require that all contractors and subcontractors working on public property, rights-of-way, or grounds and any city-owned or city-contracted utility system be licensed in order to assure that the work meets city standards and that the public health, safety, and welfare are protected from injury due to these activities.

4-6-2 License Required.

No developer, contractor, or subcontractor shall perform any work affecting public property, rights-of-way, grounds, any city-owned utility system, or any other utility system or in the street right-of-way or utility easement, whether or not the work is performed for the city, without first obtaining a license from the city manager as prescribed by this chapter before commencing any such work.

4-6-3 License Application.

(a) An applicant for a license under this chapter shall apply therefor on forms furnished by the city manager and pay the fee prescribed in section 4-20-6, "Public Right-Of-Way Permit And Contractor License Fees," B.R.C. 1981.

(b) The applicant shall provide evidence of insurance coverage required by section 4-1-8, "Insurance Required," B.R.C. 1981, and shall name the city as an insured party under the required policies of public liability insurance.

(c) The applicant shall provide a bond:

(1) To secure performance of the work authorized by the license: a) in accordance with the standards and specifications of the city, b) in a safe manner that protects employees and members of the public, and c) within the time required for completion;

(2) To provide necessary repairs to existing improvements damaged during the licensee's work; and

(3) To maintain the work during the two years after it is accepted by the city.

[1]Adopted by Ordinance No. 4637. Derived from Ordinance Nos. 3423, 3520.

4-6-4 Insurance Required.

(a) Every contractor licensed under this chapter shall maintain at all times the insurance prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981.

(b) If work undertaken by the licensee may require blasting, explosive conditions, or underground operations, the comprehensive general liability insurance shall cover blasting, collapse of buildings, and damage to adjacent property.

(c) The licensee shall maintain the required insurance throughout the period of the contract work and maintenance responsibility.

(d) In addition to the insurance required in this section, the city manager may require, before or after the license is issued, insurance protection for a hazard peculiar to the particular project.

4-6-5 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor license revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any contracting business licensed under this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-6-6 Contractor Responsibilities.

(a) A contractor licensed under this chapter is responsible for all work performed under its contract, whether or not the contractor, an employee, or a subcontractor performs the work.

(b) A contractor licensed under this chapter shall comply with all standards for construction in the public rights-of-way prescribed by the City of Boulder *Design And Construction Standards*.

Ordinance No. 5986 (1998).

4-6-7 Suspension Or Revocation Of License.

The city manager may suspend or revoke the license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981. Grounds for suspension or revocation include, without limitation, failure to maintain required insurance.

4-6-8 Term Of License.

The term of the license issued under this chapter is twelve months from the date of issuance.

4-6-9

4-6-9 **Permit For Excavation In The Public Right-Of-Way.**

Repealed.

Ordinance Nos. 4866 (1984); 5919 (1997).

TITLE 4 LICENSES AND PERMITS

Chapter 7 Dog License[1]

Section:

4-7-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by requiring that all dogs residing in the city be inoculated against rabies at the earliest age medically appropriate, that all dogs whose owners and keepers live in the city more than thirty days be licensed to identify them and the fact of their inoculation, that all dogs whose owners and keepers live elsewhere have their dogs licensed and inoculated in accordance with the laws of the jurisdiction of their residence and to raise revenue to offset the costs of dog control programs.

4-7-2 License Required.

(a) The owner or keeper of any dog kept within the city shall secure from the city manager and at all times maintain a current license for such dog. It is a specific defense to a charge of violating this section that:

(1) The owner or keeper of the dog had not yet lived in the city for thirty days; or

(2) The dog was four months of age or less.

(b) If ownership or possession of a dog licensed under this chapter changes, the new owner or keeper shall, before taking possession of the dog, obtain a new license upon presenting the old license, demonstrating compliance with the inoculation requirement, and paying the fee prescribed by subsection 4-20-7(b), B.R.C. 1981.

(c) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of $500.00. For a third and each subsequent conviction, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

4-7-3 License Application.

(a) The applicant for a license under this chapter shall apply on forms furnished by the city manager and pay the fee prescribed by subsection 4-20-7(a), B.R.C. 1981.

(b) The applicant shall provide satisfactory evidence that the dog has been inoculated against rabies as required by section 4-7-5, "Rabies Inoculation Required," B.R.C. 1981. This shall include, at a minimum, a letter or other document from the veterinarian who gave the inoculation stating the veterinarian's name, vaccine manufacturer, vaccine lot number,

[1]Adopted by Ordinance No. 4637. Amended by Ordinance No. 7062. Derived from Ordinance Nos. 2208, 2642, 4019.

vaccine expiration date, vaccination date, description of the dog, and name of the dog's owner.

(c) The applicant shall apply for a renewal dog license no later than April 1 of the year immediately succeeding the year in which the license expired.

Ordinance Nos. 7087 (2000); 7326 (2003).

4-7-4 Term Of License.

The license issued under this chapter is for a term of one or three calendar years and expires on December 31, as indicated on the license, but a license issued during one year is valid until April 1 of the immediately succeeding year if a one year license, and until April 1 of the third succeeding year if a three year license.

Ordinance Nos. 7087 (2000); 7326 (2003).

4-7-5 Rabies Inoculation Required.

(a) No owner or keeper of every dog over four months of age shall fail to have such dog inoculated against rabies when the dog becomes four months of age and again when the dog becomes fifteen months of age. Thereafter, no such person shall fail to have the dog inoculated every year, unless inoculated with a two or three year vaccine, in which case, no person shall fail to have the dog reinoculated before the expiration date for the vaccine used has passed.

(b) The inoculation required in this section shall be made by a veterinarian licensed by the State of Colorado using a vaccine licensed by the United States Department of Agriculture.

4-7-6 Dog Tags.

(a) No person who owns or keeps a dog that is found within the jurisdiction of the city shall fail to ensure that such dog at all times wears a collar or harness made of a durable material to which is attached at all times the appropriate dog tag or identification tag required by this section.

(b) Every dog required by section 4-7-2, "License Required," B.R.C. 1981, to be licensed shall bear a current City of Boulder dog tag that is issued by the city manager to each person who complies with the requirements of this chapter; that contains a serial number, the year of its issuance, and the words "City of Boulder"; and the color of which changes each year.

(1) No person who does not own or keep a dog fully licensed and inoculated under the provisions of this chapter shall possess a dog tag issued by the city manager.

(2) No person shall attach a dog tag issued by the city manager to the collar or harness of any dog except the dog tag issued to that dog at the time of issuance of the license to which the dog tag relates.

(3) If a dog tag is lost or destroyed, the license holder may obtain a duplicate tag from the city manager upon paying the fee prescribed by subsection 4-20-7(c), B.R.C. 1981.

(c) Every dog whose age is such that it is not required by this chapter to be licensed shall bear an identification tag setting forth the name and address of its owner or keeper.

(d) Every dog, the residency of whose owner or keeper is such that it is not required by this chapter to be licensed, shall bear an identification tag at any time that it is physically present in the city:

(1) If the dog's owner or keeper resides in a jurisdiction that requires a dog tag, the dog shall bear a current tag from such jurisdiction.

(2) If the dog's owner or keeper resides in a jurisdiction that does not require a dog tag, the dog shall bear a tag setting forth the name and address of its owner or keeper and a current rabies inoculation tag.

(e) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of $500.00. For a third and each subsequent conviction, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

Ordinance No. 4879 (1985).

4-7-7 **Official Records.**

The city manager shall maintain official records of all dog licenses and dog tags issued and may also designate a place at which duplicate originals of these records shall be maintained.

TITLE 4 LICENSES AND PERMITS

Chapter 8 Electrical Contractor Registration[1]

Section:

4-8-1 Legislative Intent.

The purpose of this chapter is to require registration of all master and journeymen electrical contractors licensed by the State of Colorado performing work in the city for the information and protection of the residents of the city[2].

4-8-2 Registration Required.

(a) No person required by section 12-23-105, C.R.S. to be licensed shall perform any services covered by such license in the city or any building outside the city that is served by city sewer or water utility service or subject to city building inspection without registering with the city manager on forms provided thereby and filing the evidence of insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981.

(b) To register under this chapter, a person must have a valid State of Colorado Electrical Contractor's Card and be a master electrician licensed by the State of Colorado or have in charge, and responsible for all electrical work, a supervisor who is a master electrician currently licensed by the State of Colorado.

Ordinance Nos. 4984 (1986); 5493 (1992).

4-8-3 Term Of Registration.

Each electrical contractor's registration is for a term of one calendar year.

4-8-4 Revocation Of Registration.

The city manager may suspend or revoke the registration under this chapter if the Colorado State Electrical Board revokes or suspends the licensee's state journeyman, master, or electrical contractor license, under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

[1]Adopted by Ordinance No. 4637. Derived from Ordinance No. 4528.
[2]12-23-101 et seq., C.R.S.; Century Electric Service and Repair, Inc. v. Stone, 193 Colo. 181, 564 P.2d 953 (1977).

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TITLE 4 LICENSES AND PERMITS

Chapter 9 Food Service Establishment And Food Vending Machine License[1]

[1]Adopted by Ordinance No. 4637. Derived from Ordinance Nos. 2187, 2607, 3241, 3286, 3466, 3615, 1925 Code. Repealed by Ordinance No. 7061.

TITLE 4 LICENSES AND PERMITS

Chapter 10 Itinerant Merchant License[1]

Section:

4-10-1 Legislative Intent.

The purpose of this chapter is to protect the safety and welfare of the public by licensing persons who go door-to-door to sell goods or services and by prohibiting persons from going door-to-door to sell or solicit orders for the sale of goods or services for future delivery when the persons require a prepayment from the purchaser. Prohibiting such door-to-door solicitations is necessary to protect the residents of the city from fraud and misrepresentation. Licensure of all other persons going door-to-door to sell goods or services is also necessary to provide information about such sales persons to residents of the city and law enforcement officers. Nonprofit organizations with exemptions from federal income tax under 26 U.S.C. 501(c)(3) must obtain licenses, but will be exempt from any license fee and be granted perpetual licenses if they retain their federal tax exemptions and if they register the names of the people responsible for their sales personnel with the city manager at the beginning of each solicitation drive. Persons distributing information in the exercise of their first amendment rights and businesses such as newspaper and milk deliveries, trash collection, and linen services that are engaged in selling and delivering goods or services by vehicle over a fixed route from previous orders or on a regular schedule are exempt from the license requirement.

4-10-2 Certain Sales Prohibited.

No person in the city other than a nonprofit organization exempt from federal income tax under 26 U.S.C. 501(c)(3) shall go to any private residence to sell goods or services or solicit orders for the sale of goods or services for delivery at any subsequent time when such person requires a prepayment from the purchaser, without having been requested or invited to do so by the owner or occupant of the private residence.

4-10-3 License Required.

(a) No person shall sell merchandise or services or solicit orders for the sale and future delivery of merchandise or services on a door-to-door basis in the city without first obtaining a license from the city manager under this chapter.

(b) Nothing in this chapter shall be deemed to apply to any person engaged in the business of selling and delivering goods or services directly to residents of the city who usually employs a vehicle for such deliveries over a regularly defined route and ordinarily sells from orders previously placed with such residents or regularly delivered on a schedule.

[1]Adopted by Ordinance No. 4637. Derived from Ordinance Nos. 2899, 3466.

(c) Nothing in this chapter shall be deemed to apply to any person engaged in distribution of information in the exercise of such person's First Amendment rights under the United States Constitution.

4-10-4 License Application.

(a) An applicant for a license under this chapter shall apply on forms furnished by the city manager that include the name, age, and address of the applicant; the names and addresses of all partners, if a partnership, or officers and directors and shareholders of more than ten percent of the stock, if a corporation, and all solicitors and sales personnel of the applicant; the types of goods or services sold or for which orders are taken; and the name and address of the supplier of goods or services to be delivered or furnished.

(b) Any applicant that does not have an exemption from federal income tax under 26 U.S.C. 501(c)(3) shall pay the fee prescribed by section 4-20-10, "Itinerant Merchant License Fee," B.R.C. 1981.

4-10-5 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had an itinerant merchant license revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any itinerant merchant business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-10-6 License To Be Issued And Displayed.

(a) When the applicant has complied with the requirements of this chapter, the city manager shall issue a license to the applicant and to each salesperson or solicitor named in the application that states the type of sale or solicitation; the individual solicitor's or salesperson's name; the license expiration date; and the fact that the person is licensed by the city to solicit orders or sell goods but that the city does not endorse the activity or goods sold in any way; and, if the licensee is exempt from the fee required by subsection 4-10-4(b), B.R.C. 1981, that the licensee is nonprofit.

(b) Each licensee under this chapter shall display the license at all times that the person is engaged in selling goods or soliciting orders in the city.

4-10-7 Term Of License.

The license term is twelve months or such shorter term as the licensee requests and as is set forth on the face of the license.

4-10-8

4-10-8 **Revocation And Suspension Of License.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

TITLE 4 LICENSES AND PERMITS

Chapter 11 Mall Permits And Leases[1]

Section:

4-11-1 Legislative Intent.

The purpose of this chapter is to promote the public interest by enhancing the attractiveness of the mall environment; providing opportunities for creative, colorful, pedestrian-focused commercial activities on a day/night, year-round and seasonal basis; encouraging commercial activity and entertainment that adds charm, vitality, diversity, and good design to the mall area; encouraging the upgrading of storefronts and the development of compatible and well-designed improvements; providing revenue to offset in part the cost of maintaining the mall area; providing reasonable time, place, and manner restrictions on constitutionally protected activities so that they may flourish without detracting from the purpose of the mall as a commercial forum and a means of access to businesses on the mall; and limiting private development on the mall to those proposals of the highest quality that advance these purposes.

Ordinance No. 5563 (1993).

4-11-2 Definitions.

The following terms used in this chapter have the following meanings, unless the context clearly indicates otherwise:

[1]Adopted by Ordinance No. 5453. Derived from Ordinance Nos. 4609, 4660, 4949, 5039, 5085, 5204.

"Advocacy adjunct" means lightweight tables, chairs, and signs capable of being moved easily in case of emergency which are entirely within an advocacy area and do not exceed six feet in height.

"Advocacy area" means those designated areas of the mall where tables, chairs, and signs otherwise prohibited may be employed pursuant to the provisions of this chapter as an adjunct to political advocacy, noncommercial fundraising, and petitioning the government.

"Ambulatory vendor" means a portrait artist or landscape artist, or any person who engages in the business of selling balloons, flowers, or shoe shines while moving about the mall.

"Building extension" means any structure that is an extension of an existing building front or basement adjacent to the mall and that encroaches upon the mall.

"Building ornament" means any awning, sign, planter box, or other ornament on a building adjacent to the mall that encroaches upon the air space above the mall.

"DMC" means the Downtown Management Commission established by section 2-3-5, "Downtown Management Commission," B.R.C. 1981.

"Educational activity" means all noncommercial activity of any person or group directed at informing or persuading the public which is consistent with the provisions of this code and the laws of the state and the United States, and specifically includes the passage of petitions and the advocacy of candidates and issues in any election.

"Entertainment" means a performance or show designed to entertain the public but excludes services provided on a one to one basis.

"Entertainment vending" means the sale of a recorded performance of an entertainer by that entertainer while that entertainer is performing.

"Festive activity" means a cultural event of community-wide interest, including, without limitation, events involving sales, the primary purpose of which is not for profit, which is consistent with the legislative intent of this chapter, and which is scheduled by the DMC and approved by the city manager.

"Kiosk" means a freestanding structure erected by the city within a pedestrian circulation area and used for the posting of notices or advertisements. It also means a small building located in Mall Zone 3 and operated under lease for the sale of food, flowers, newspapers, or other goods approved by the DMC.

"Mall" means the Boulder downtown pedestrian mall established by Ordinance No. 4022, adopted February 18, 1975[1].

"Noncommercial" means that which does not involve the sale of real or personal property or a service.

"Nonprofit group" means an entity which has received a tax status determination by the United States Internal Revenue Service as a section 501 tax exempt organization, or which is incorporated as a nonprofit corporation under the laws of the State of Colorado, or which is incorporated as a nonprofit corporation under the laws of another state and has been issued a certificate of authority by the secretary of state for Colorado to conduct affairs in Colorado.

[1]Ordinance No. 4022 generally describes the mall as Pearl Street from the east curb line of 11th Street to the west curb line of 15th Street, less the area between the curb lines of Broadway, 13th, and 14th Streets. The provisions of this chapter do not cover the courthouse lawn except for that portion which is now within the right-of-way. Please note that the definition of the mall in title 5, "General Offenses," B.R.C. 1981, is different. Title 5 prohibits various acts, including rollerskating and skateboarding, throwing things, and possession of alcohol during Halloween, on the mall, and these prohibitions extend to the county courthouse lawn and adjacent sidewalks up to the south face of the courthouse.

"Personal services vendor" means any person providing personal services on a one on one basis which does not involve the sale of goods.

"Sale" or "sell" means the exchange of goods or services for money or other consideration, and includes the offering of goods or services for a donation except when a writing is offered for a donation to express bona fide religious, social, political, or other ideological views, and the writing is carried by the person offering it and not set on the ground or any structure.

"Special activity" means an educational or festive activity, or an activity not involving sales and sponsored by a nonprofit group, that involves the use of a booth, blanket, table, structure, cart, or other equipment on the mall. It also means sales conducted as a fundraising activity by a nonprofit group if:

(a) The group has volunteer members actively engaged in carrying out the objects of the entity;

(b) The sales on the mall are made only by the group's volunteer members;

(c) Such volunteer members receive no remuneration, direct or indirect, from the sales or sales activities; and

(d) Any goods sold either bear conspicuously on their exterior the name of the group or its registered trademark, or such goods are unique to the group and are not readily available through retail stores in the city.

"Special entertainment" means any activity which involves the juggling, casting, throwing or propelling of a knife or burning projectile on the mall, or involves the use of equipment on the mall which is more than six feet above the surface of the mall when at rest or when bearing a load while being used in the act.

Ordinance Nos. 5563 (1993); 7001 (1999).

4-11-3 **Designation Of Mall Zones.**

(a) In order to carry out the provisions of this chapter, the mall is divided into the following zones:

(1) Zone 1 consists of the ten feet of mall property directly adjacent to the north and south mall property lines.

(2) Zone 2 consists of the areas of mall property that have been designated for pedestrian traffic, emergency and service vehicles, and street furniture.

(3) Zone 3 consists of the areas of mall property that have been designated as suitable for private kiosks.

(4) Zone 4 consists of all landscaped areas of the mall.

(5) Zone 5 consists of those areas where the city manager may install a temporary or permanent structure which is managed to answer visitor questions about activities and services on the mall and within the city generally.

(b) The boundaries of these zones are established as illustrated on maps entitled "Mall Diagrams 1 through 4," at the end of this chapter, which are incorporated by reference into this chapter.

(c) Where issuance of a permit depends on the applicant obtaining the written consent of the tenant occupying the building in front of which the applicant desires to locate, such consent need not be obtained if the permit is to be used in Zone 1 only when the tenant is not open for business. The city manager shall list this restriction on any permit to which it applies.

Ordinance No. 7283 (2003).

4-11-4 Uses Prohibited Without Permit.

(a) (1) No person shall sell, display for sale, or advertise for sale any goods or services to the public on the mall without a valid permit or lease therefor issued under this chapter. This subsection does not apply to a sign, including, without limitation, a sandwich board, carried by a person and not set on or affixed to the ground.

(2) This subsection does not apply to free distribution of information, flyers, pamphlets, or brochures.

(3) This subsection does not apply to a sign used in conformity with section 4-11-4.5, "Advocacy Area Permit," B.R.C. 1981.

(b) (1) No person shall conduct any activity or enterprise that involves placement of a cart, unrolled blanket, booth, table, stage or other structure, or equipment on the mall without a valid permit or lease therefor issued under this chapter.

(2) This subsection does not apply to equipment that is intrinsic to an entertainment act, provided the equipment:

(A) Can be carried or wheeled by the entertainer; and

(B) Is not over six feet in height when:

(i) At rest; or

(ii) Bearing a load while being used in the act; and

(C) Covers a rectangular area no larger than five feet by six feet.

(3) This subsection does not apply to advocacy adjuncts used in conformity with section 4-11-4.5, "Advocacy Area Permit," B.R.C. 1981.

(c) No person shall install or construct a building extension, building ornament, or kiosk on the mall without a valid permit or lease therefor issued under this chapter.

(d) No person shall use amplified sound on the mall without obtaining an amplified sound permit issued under this chapter.

(e) No person shall juggle, cast, throw, or propel a knife or burning projectile on the mall, or use equipment which is more than six feet above the surface of the mall when at rest or when bearing a load while being used in the act, without a valid special entertainment permit issued under this chapter.

(f) No person issued a permit under this chapter shall violate any term or condition of that permit.

Ordinance No. 5563 (1993).

4-11-4.5 **Advocacy Area Permit.**

(a) The city manager shall designate four areas per block within Zones 3 or 4 in the 1100, 1200, and 1400 blocks, and ten areas within the 1300 block as advocacy areas. Each area shall be five feet by six feet.

(b) Any person eligible for an advocacy area permit may place and use advocacy adjuncts within an advocacy area consistent with the requirements of this section at any time without a permit, but shall immediately remove the advocacy adjuncts from any particular area upon the arrival of a person who has a permit for that area and time presents it.

(c) An advocacy area permit is valid only for the period, not to exceed one week, for which it is issued and for the location specified in the permit. No applicant may be issued more than one permit for a day. No fee will be charged for issuance of an advocacy area permit.

(d) The manager shall receive applications for advocacy area permits no more than one week in advance of the first day of the permit. Permits shall be issued on a first come, first served basis. If applications for the same space are received simultaneously, the manager shall determine priority by lot. Applications received at the DMC office by mail or any other means other than in person shall be deemed received at 5:00 p.m. on the day received unless received later than that time, in which case they shall be deemed received at 5:00 p.m. on the next business day. When a lot is used, and when the desired location is taken for some, but not all, of the period requested, the manager shall give as much weight to the preferences of the various applicants as may reasonably be given.

(e) If a special activity permit is issued for an arts related event and covering every block of the mall, the manager shall designate and provide alternative locations within the same block if feasible, or elsewhere on the mall if feasible, and otherwise as close to the mall as practicable to all applicants, not exceeding twenty-two, who qualify for advocacy area permits. The manager may so displace users of advocacy areas for only one such special activity permit in any calendar year.

(f) The applicant or an agent of the applicant shall be present at all times in the advocacy area when advocacy adjuncts are present.

(g) No person shall use an advocacy adjunct for any purpose other than a noncommercial purpose.

(h) Sales of goods or services for any purpose are permitted under an advocacy area permit only if the permittee also has a special activity permit, but a permittee may solicit donations so long as no portion of the donation goes to the financial benefit of any natural person who is soliciting the donation. If the permittee is soliciting donations and is also giving out goods or services related to the advocacy, such goods or services must not be given on condition that a donation is made, and must be available free to anyone requesting such goods or services, although the permittee may limit the number any one person may receive so long as such limit is not conditioned upon the donation.

(i) A permittee may place within the advocacy area and not rising above six feet one sign no larger than eighteen inches by eighteen inches advertising the permittee's cause. The permittee may also hang from the table such signs as do not rise more than three feet above the ground, and may lay on the table such signs as do not rise more than six inches above the table.

Ordinance No. 5563 (1993).

4-11-5 **Ambulatory Vending Permit.**

(a) Ambulatory vending is permitted only in Zones 1, 2, and 3. An applicant for an ambulatory vending permit, any of which is to be used in Zone 1, shall first obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) An ambulatory vendor's permit is valid for a one-month period, as specified in the permit, upon payment of the fee prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981.

4-11-6 **Amplified Sound Permit.**

(a) Amplified sound permits may be issued for all zones. An applicant for an amplified sound permit which is to include any part of Zone 1 shall obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) The city manager may permit the use of amplified sound only if the amplified sound is essential to the exercise of a use allowed under this chapter and will benefit the public or enhance the ambiance of the mall. Every use of amplified sound shall comply with section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," B.R.C. 1981. The manager may attach such other reasonable conditions on the use of an amplified sound permit as may reduce friction among competing uses of the mall or serve the purposes of this subsection.

(c) An amplified sound permit is valid only for the period and location specified in the permit. No applicant may be issued more than one permit for a day. No fee will be charged for issuance of an amplified sound permit.

4-11-7 **Building Extension Permit Or Lease.**

(a) Building extensions are permitted only in Zone 1.

(b) A person who wishes to construct a permanent building extension on mall property shall obtain a lease from the city in accordance with section 2-2-8, "Conveyance Of City Real Property Interests," B.R.C. 1981. The lease may be renewed and shall contain provisions for the eventual acquisition of title to the permanent building extension by the city or for the removal of such construction at the owner's expense along with restoration of the mall to its original condition at the termination or expiration of the lease.

(c) Every lease also shall provide that if the city requires the use of the leased property before expiration of the lease period, it may terminate the lease upon reasonable notice to the owner and reasonable compensation for the expenses of removing the building extension.

(d) Each application for a lease shall be reviewed by the DMC, which shall recommend to the city manager approval, approval with conditions to be incorporated in the lease agreement, or denial of the application. The manager then will decide whether to grant the lease application and prescribe the lease terms.

(e) The city will not issue a lease for a basement-level building extension, except those approved prior to September 15, 1981.

(f) A permanent building extension shall remain open to the public during the minimum number of retail business hours specified in the lease agreement.

(g) A building extension permit or lease may be issued only if:

(1) The existing building front conforms, or is improved so as to conform, to the City of Boulder *Downtown Boulder Private Development Guidelines for Architecture and Signs*, June 1976; and

(2) The proposed building extension will benefit the public or enhance the ambiance of the mall.

(h) The construction of a building extension shall be completed within the time period established in the permit or lease, which shall in no event exceed one year, or the permit or lease will automatically expire.

(i) All building extensions, including, without limitation, basement stairwells, shall be illuminated as necessary to ensure public safety during hours of operation and non-operation from dusk until 3:00 a.m.

(j) A building extension permit is valid for the period of May 1 to April 30 of the following year, upon payment of the fee prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981. For the first year of the permit, this fee will be prorated for the balance of the permit period. A building extension permit is renewable automatically every year upon payment of the applicable fee, unless terminated or revoked in accordance with section 4-11-22, "Termination Of Permits," B.R.C. 1981.

(k) The holder of a building extension permit or lease shall indemnify and hold harmless the city, its officers, employees, and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the permit or lease comprehensive general public liability and property damage insurance, as prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981, naming the city, its officers, employees, and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the city will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the city.

Ordinance No. 5919 (1997).

4-11-8 **Building Ornament Permit.**

(a) Building ornaments are permitted only in Zone 1.

(b) A building ornament permit may be issued only if:

(1) The existing building front conforms, or is improved so as to conform, to the City of Boulder *Downtown Boulder Private Development Guidelines for Architecture and Signs*, June 1976; and

(2) The proposed building ornament will benefit the public or enhance the ambiance of the mall.

(c) No fee will be charged for the issuance of a building ornament permit, whose term is perpetual.

4-11-9 **Entertainment Vending Permit.**

(a) Entertainment vending permits may be issued for all zones. An applicant for an entertainment vending permit which is to include any part of Zone 1 shall obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) Recordings may only be stored or displayed in the case used by the entertainer to transport the instrument played, in or on other equipment intrinsic to the act, or in a single case no larger than two feet by two feet by one foot, which may be located on a stand or table with a surface no larger than four square feet.

(c) The permittee may display one sign with one sign face advertising the sale of the recordings, if it is:

(1) No larger than one foot by one foot;

(2) Attached to the case used by the entertainer to contain the instrument played, to the case containing the recordings, or to other equipment intrinsic to the act; and

(3) Located within the five foot by six foot rectangular area allowed for equipment intrinsic to the act under the exception to the prohibition on equipment on the mall at subsection 4-11-4(b), B.R.C. 1981.

(d) A musical entertainment vending permit is valid for three continuous days or one month upon payment of the fee prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981.

Ordinance Nos. 5599 (1993); 5676[1] (1994).

4-11-10 **Kiosk Lease.**

(a) Kiosks are leased only in Zone 3.

(b) A person who wishes to construct a kiosk on mall property shall obtain a lease from the city in accordance with section 2-2-8, "Conveyance Of City Real Property Interests," B.R.C. 1981. The lease may be renewed and shall contain provisions for the eventual acquisition of title to the kiosk by the city or for the removal of such construction at the owner's expense along with restoration of the mall to its original condition at the termination or expiration of the lease.

(c) Every lease shall also provide that if the city requires the use of the leased property before expiration of the lease period, it may terminate the lease upon reasonable notice to the owner and reasonable compensation for the expenses of removing the kiosk.

(d) Each application for a lease shall be reviewed by the DMC, which shall recommend to the city manager approval, approval with conditions to be incorporated in the lease agreement, or denial of the application. The manager shall then decide whether to grant the lease application and prescribe the lease terms.

(e) The city will not issue leases for more than two private kiosks on the mall, which leases are limited to the locations shown in the mall diagrams that follow this title.

(f) A kiosk shall remain open to the public during the minimum number of retail business hours specified in the lease agreement.

[1]Ordinance No. 5676, effective January 1, 1995.

(g) A kiosk shall not exceed the size specified for the permitted location, as shown in the mall diagrams that follow this chapter.

(h) A kiosk lease shall be issued only if the proposed kiosk will benefit the public or enhance the ambiance of the mall.

(i) The construction of a kiosk shall be completed within the time period established in the lease, which shall in no event exceed one year, or the lease will automatically expire.

(j) All kiosks shall be illuminated as necessary to ensure public safety during hours of operation and non-operation from dusk until 3:00 a.m.

(k) The holder of a kiosk lease shall indemnify and hold harmless the city, its officers, employees, and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the lease comprehensive general public liability and property damage insurance, as prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981, naming the city, its officers, employees, and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the city will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the city.

4-11-11 **Rental Of Advertising Space On Informational Kiosks.**

(a) Advertising space at the top of the seven informational kiosks may be rented as available on an annual basis. An applicant may rent quarter-circle segments of advertising space for an annual charge prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981.

(b) The city manager shall approve or disapprove a request for rental of advertising space after receiving a design review recommendation by the DMC. The manager may not consider the content of the proposed advertising when determining whether to approve or disapprove such rental requests.

4-11-12 **Mobile Vending Cart Permit.**

(a) Mobile vending carts are allowed only in Zones 1, 2, and 3. An applicant for a mobile vending cart permit which is to include any part of Zone 1 shall obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) The city manager may issue as many mobile vending cart permits as the manager deems appropriate, but the manager shall not permit the operation of more than fourteen mobile vending carts on the mall at the same time.

(c) A mobile vending cart shall remain in operation during the minimum number of retail business hours specified in the permit. This shall not be less than five days per week and four hours per day during the months of May, June, July, August, and September, and for such additional hours, which requirement shall not exceed the summer requirement, as the city manager may specify in the permit.

(d) A mobile vending cart shall not exceed a size of four feet in width by ten feet in length, excluding roof overhangs and wheels, by eight feet in height.

(e) A mobile vending cart permit may be issued only if the proposed vending cart will benefit the public or enhance the ambiance of the mall. The city manager may issue regulations establishing a merit system of review of mobile vending cart applications, which may in-

clude, without limitation, design quality of the cart, addition of diversity to products available on the mall, compatibility with mall activities, experience of the applicant, financial feasibility, cost and quality of product, and the length of the season during which the product can be marketed.

(f) No operator of a mobile vending cart shall conduct the operator's primary trade at locations other than those authorized in the permit. But the operator may sell goods in transit upon request. If an authorized location conflicts with a special activity, the city manager may temporarily relocate the vendor. The city manager may also approve permanent changes of location as other locations become available, if two permittees agree in writing to exchange locations or temporarily on a month to month basis during September through May if the city manager has reason to believe that the regular vendor will not be using the location.

(g) A mobile vending cart shall be in operation as required in subsection (c) of this section or the permit will automatically expire.

(h) A permittee is responsible for maintaining the area within and in proximity to the permittee's cart in a neat, clean, and hazard-free condition, including, without limitation:

(1) Disposing of all trash off-site; and

(2) Storing all mobile vending carts off the mall when not in operation.

(i) A mobile vending cart permit is valid for a one year period, beginning April 1 and ending March 31, with two options to renew for additional one year periods, upon timely payment of the fee prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981. A mobile vending cart permit is not automatically renewable thereafter. A permittee who wishes to continue operating after the expiration of the permit shall follow the application procedures required of a new applicant.

(j) The holder of a mobile vending cart permit shall indemnify and hold harmless the city, its officers, employees, and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the permit comprehensive general public liability and property damage insurance, as prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981, naming the city, its officers, employees, and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the city will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the city.

(k) Each cart shall display a sign at least one foot by one foot visible to the public which contains the required dates and hours of operation, the items for sale, and the prices of the items. The sign shall be presented to the city manager for approval before it is used. All items and their prices must be approved by the city manager as part of the application process. The city manager may approve item changes or substitutions upon receiving written application for such change.

Ordinance Nos. 5599 (1993); 7001 (1999).

4-11-13 **Newspaper Vending Machines.**

(a) Permitted Zones: Newspaper vending machines are permitted only in Zone 2.

(b) Installation And Use: The city has installed newspaper vending machines at various locations on the mall. These machines are available for use by permit as provided in this

section. No person shall install or use any other newspaper vending machine or similar device on the mall.

(c) Permit Availability: A newspaper vending machine permit is available to any publication that is eligible for the periodicals mailing privileges of the United States Postal Service. A newspaper vending machine permit is available for any particular publication for only one machine in each of the banks of machines installed on the mall.

(d) Permittee Responsibilities: A newspaper vending machine permittee shall maintain the news box face, its interior, and all mechanical workings of its individual box, including, without limitation, the window and face plate; the coin mechanism, coin tray, and lock, if any; and the inside shelves. The newspaper vending machine permittee shall supply and affix to its permitted machine whatever logo or identifying wording it desires to use to let the public know which periodical is inside the machine. Such identifying device shall be no larger than two inches high by fourteen inches wide, with white text on a black background. It shall use a self-stick backing of a type approved by the city manager for its balance of adhesiveness and ease of removal, and be affixed in the location on the box specified by the city manager for all boxes.

(e) Terms Of Permit: A newspaper vending machine permit is valid for one year from date of issuance. The fee for a newspaper vending machine permit is that specified in section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981. In addition to other causes specified in this title for permit denial, revocation, or suspension, a newspaper vending machine permit expires when the machine is not in use for a period of thirty days, or if the permittee has failed to maintain the news box over such a period, although the city manager shall take no final action based on such an expiration without notice to the permittee and an opportunity for a hearing. Upon denial of renewal of a permit, or suspension, revocation, expiration for failure to use or maintain, or expiration for failure to renew, the city manager may remove the contents of any machine, change the locks, hold any contents and money as abandoned property, and issue a new permit to someone else.

(f) Non-Periodical Newspaper Vending Machine Boxes:

(1) The city manager shall designate one newspaper vending machine box in each bank for use by purveyors of printed material which is not eligible for the periodicals mailing privileges of the United States Postal Service. Such non-periodical newspaper vending machine boxes shall contain only materials available free to the public, and only one shelf of one box in each bank of boxes shall be available for use for any one such publication or other printed material. If these boxes are configured to hold more than one publication, then the manager shall determine the maximum number of shelves there may be in such boxes, and shall issue such permits on a per shelf basis. The fee for permits to use such boxes shall be that set for periodicals newspaper vending machine boxes, except that the manager shall prorate the fee based on the number of shelves covered by the particular permit.

(2) In the event that there are unused periodicals news boxes in any bank, the city manager may make the space available as temporary non-periodical newspaper vending machine boxes, except that temporary permits issued on this basis shall be revocable at any time that a new applicant for a regular news box receives approval of the application. If it is necessary to choose which temporary permit box is to be used by the new periodicals permittee, the city manager shall determine the matter by lot. In the case of such a revocation based on this priority, the permittee displaced shall be entitled to a refund based on the number of full three-month periods paid but not used.

(g) Eligibility: Mall news box permits are available on a first-come, first-served basis. But for the purposes of transition to the 1999 revised permit system, permittees in good standing as of November 4, 1999 (the effective date of this ordinance) shall be eligible to renew their old

permits under the new system. Should the first-come, first-served system not resolve allocation questions, the city manager shall select publications by lot.

Ordinance No. 7002 (1999).

4-11-14 **Personal Services Vending Permit.**

(a) Personal services vending is permitted only in Zones 1, 2, and 3. An applicant for a personal services vending permit, any of which is to be used in Zone 1, shall first obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) A personal services vending permit is valid for one calendar month, as specified in the permit, upon payment of the fee prescribed in section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981.

(c) Only eight monthly permits may be issued at any one time, two per block, at locations specified by the city manager. No permittee shall vend at any location other than that for which the permit has been issued.

(d) The permittee may place one table or one blanket, one advertising sign, and other equipment intrinsic to the service, so long as all such equipment is hand carried in one trip onto and off the mall, and occupies a rectangular area of the mall no larger than five feet by six feet. The advertising sign shall be no larger than eighteen inches by eighteen inches. The applicant shall indicate on the application what equipment is to be used as intrinsic to the service and who will be performing the service, and the city manager shall list on the permit the equipment which is approved as intrinsic to the service and the persons authorized as vendors.

4-11-15 **Sidewalk Sales Permits.**

(a) The city manager may, after receiving the advice of the DMC, issue a mall sidewalk sale permit to any nonprofit organization whose principal purpose is the advancement of the cultural or economic interests of the downtown area of the city and which has a demonstrated history of at least three years of substantial, active efforts advancing those goals.

(b) The city manager may issue no more than three such permits in any calendar year. Each permit shall be valid for such days, not to exceed three consecutive days, as specified by the applicant and approved by the manager. Such a permit, in the form of a sub-permit as specified in subsection (c) of this section, constitutes a permit pursuant to section 4-18-2, "Sidewalk Sale Permit Required," B.R.C. 1981, for that day for each owner or lessee in possession of property abutting the mall, but only for that portion of Zone 1 which abuts the owner's mall property. The city manager may further impose any condition which may be imposed under section 4-18-2, "Sidewalk Sale Permit Required," B.R.C. 1981, may exclude from the permit any portion of mall Zone 1 which is unsuitable for sidewalk sales because of special pedestrian access, delivery vehicle, or emergency vehicle problems peculiar to such portion, and may further limit the hours of sale, the methods of storage and display of the goods, the allocation of space among multiple owners of property abutting the mall, or for any other purpose reasonably calculated to enhance mall sidewalk sale days as a vehicle for promoting commercial use of the mall in an efficient, coordinated, synergistic manner.

(c) The applicant shall supply the city manager with the names and addresses of each person who is eligible to exercise the privileges of a mall sidewalk sale permit. The manager shall provide the applicant, after approval of the permit, with sub-permits for each such person. It

shall be the duty of the applicant to distribute such individual sub-permits so that they may be displayed by the users pursuant to the requirements of this chapter.

(d) The applicant may condition individual sub-permit eligibility only on the assent of individual owners to the sharing of the reasonable promotional costs of the applicant for the sale event on a flat rate, per participant basis, not to exceed $50.00 for each day per sub-permit, and the payment of such amount to the applicant. The applicant shall specify such amount on the application, and the city manager shall issue the permit only if the amount is reasonable.

4-11-16 **Special Activity Permit.**

(a) Special activity permits may be issued for all zones. An applicant for a special activity permit which is to include any part of Zone 1 shall obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) A special activity permit is valid for one to six days per year upon payment of the fee prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981. No more than six days total may be permitted to the same person during a calendar year.

(c) A special activity permit issued to a government is valid for one to ten days per year without a fee.

(d) The city manager may, by contract, provide for one or more series of artistic performances for the entertainment of the mall public, which series shall involve regularly scheduled performances over four weeks, with a minimum number of performances of once per week, with each performance lasting a minimum of one hour and a maximum of four hours. Such a contract shall serve as a special activity permit, allowing the use of a stage or other equipment, and amplified sound, as specified in the contract.

Ordinance No. 7283 (2003).

4-11-17 **Special Entertainment Permit.**

(a) Special entertainment permits may be issued only for Zones 1, 2, and 4. An applicant for a special entertainment permit which is to include any part of Zone 1 shall obtain the written consent of the tenant occupying the building in front of which the applicant desires to locate.

(b) The holder of a special entertainment permit shall indemnify and hold harmless the city, its officers, employees, and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the permit comprehensive general public liability and property damage insurance, as prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981, naming the city, its officers, employees, and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the city will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the city. The city manager may waive all or any part of this insurance requirement if the special entertainment permit requirement is based solely on the height of the equipment used, if the applicant demonstrates to the manager's satisfaction a history of safety with respect to the use of such equipment, and if the manager concludes that the nature of the equipment and its use is such that harm to other mall users or to property other than that of the applicant is unlikely to occur.

(c) A special entertainment permit is valid for the period and the hours specified in the permit, which shall be for reasonable hours and a reasonable period no greater than three months

per permit; no fee will be charged for its issuance. Such a permit is not an exclusive license for use of the area of the mall designated therein. The manager may attach such other reasonable conditions on the use of a special entertainment permit as may reduce friction among competing uses of the mall or serve the purposes of this subsection.

(d) If a special entertainment permit has been granted which involves the use of equipment more than six feet above the mall when at rest, the city manager may authorize the permittee to attach or secure objects to mall property, and to climb on mall property if needed to do so[1], if the manager is persuaded that the safety and convenience of mall users, including, without limitation, other entertainers, public safety, and the service life of mall property is not adversely affected thereby.

4-11-18 General Permit And Lease Requirements.

(a) The city manager shall not approve a permit or lease application pursuant to this chapter unless it complies with the following general design requirements:

(1) The proposed design conforms with every applicable city code; and

(2) The proposed design conforms with the applicable design criteria in the City of Boulder *Downtown Boulder Private Development Guidelines for Architecture and Signs*, June, 1976.

(b) A lessee or permittee is responsible for maintaining the area within and in proximity to the location of the leased premises or permitted location in a neat, clean, and hazard-free condition, including, without limitation, disposing of all trash off-site.

(c) The city manager may deny a permit, except for a newspaper vending machine permit, if the proposed use would constitute a physical hazard to the public health, safety, or welfare, or would violate any law.

4-11-19 Application Procedures.

(a) The DMC shall review each application for a permit or lease in accordance with the purposes and requirements of this chapter and recommend to the city manager approval, approval with conditions, or denial of the application. This subsection does not apply to newspaper vending machine permit applications or applications for daily permits other than special activity permits, or applications for advocacy area permits, or to any class of permit which the DMC has, by resolution, determined not to review.

(b) The city manager, after receiving a recommendation from the DMC as provided in subsection (a) of this section, shall determine whether each application for a permit or lease meets the purposes and requirements of this chapter and approve or disapprove the application.

(c) The city manager may require reasonable proof of authority from any person purporting to sign an application for the use of any person or entity other than the signator.

(d) The city manager may adopt rules and regulations establishing the process for accepting, reviewing, and approving all permit and lease applications submitted pursuant to this chapter, including the contents of such applications and the specific criteria that will be considered in the review process. Each applicant shall comply with such requirements.

[1]See section 5-4-5, "Trespass On Public Buildings," B.R.C. 1981, for prohibition against these acts without the manager's prior authorization.

(e) Each applicant for a permit or lease shall obtain all required building, health, sales tax, or other permits or licenses from all applicable government departments.

(f) The permittee shall prominently display the permit.

(g) Whenever any permittee desires to change the use or the location of the activity authorized by the permit, the permittee shall follow the review and approval process required of a new applicant.

(h) Applications for mobile vending cart permits shall be submitted to the city manager no later than the fifteenth of December in the year preceding the permit year. Applications for permits issued on a monthly basis shall be submitted to the city manager between the first and the twenty-fifth day of the preceding month. Applications for daily permits shall be submitted no more than seven days in advance of the day for which they are to be exercised. No person shall be issued more than three permits of the same type in any seven day period. The provisions of this subsection do not apply to advocacy area permits.

(i) Permit applications shall be made on the form provided by the city manager for the permit sought, and shall contain all the information required by the form, including any required attachments or exhibits. The manager may reject incomplete applications.

Ordinance No. 5599 (1993).

4-11-20 **Transfers Of Permits And Leases.**

A permit or lease issued under the provisions of this chapter is not automatically transferable or assignable. The DMC shall review a request to transfer or assign a permit or lease as a new application, and recommend approval, approval with conditions, or denial of the request to the city manager.

4-11-21 **Utilities.**

A permittee or lessee using water, electrical, or sewer service shall pay the costs of such services.

4-11-22 **Termination Of Permits.**

(a) Any permit issued hereunder may be revoked by the city manager under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981, for a violation of this chapter, or a breach of a condition in the permit.

(b) Upon revocation or expiration of any permit, the permittee shall remove all structures or improvements from the permit area and restore the area to its condition existing prior to issuance of the permit.

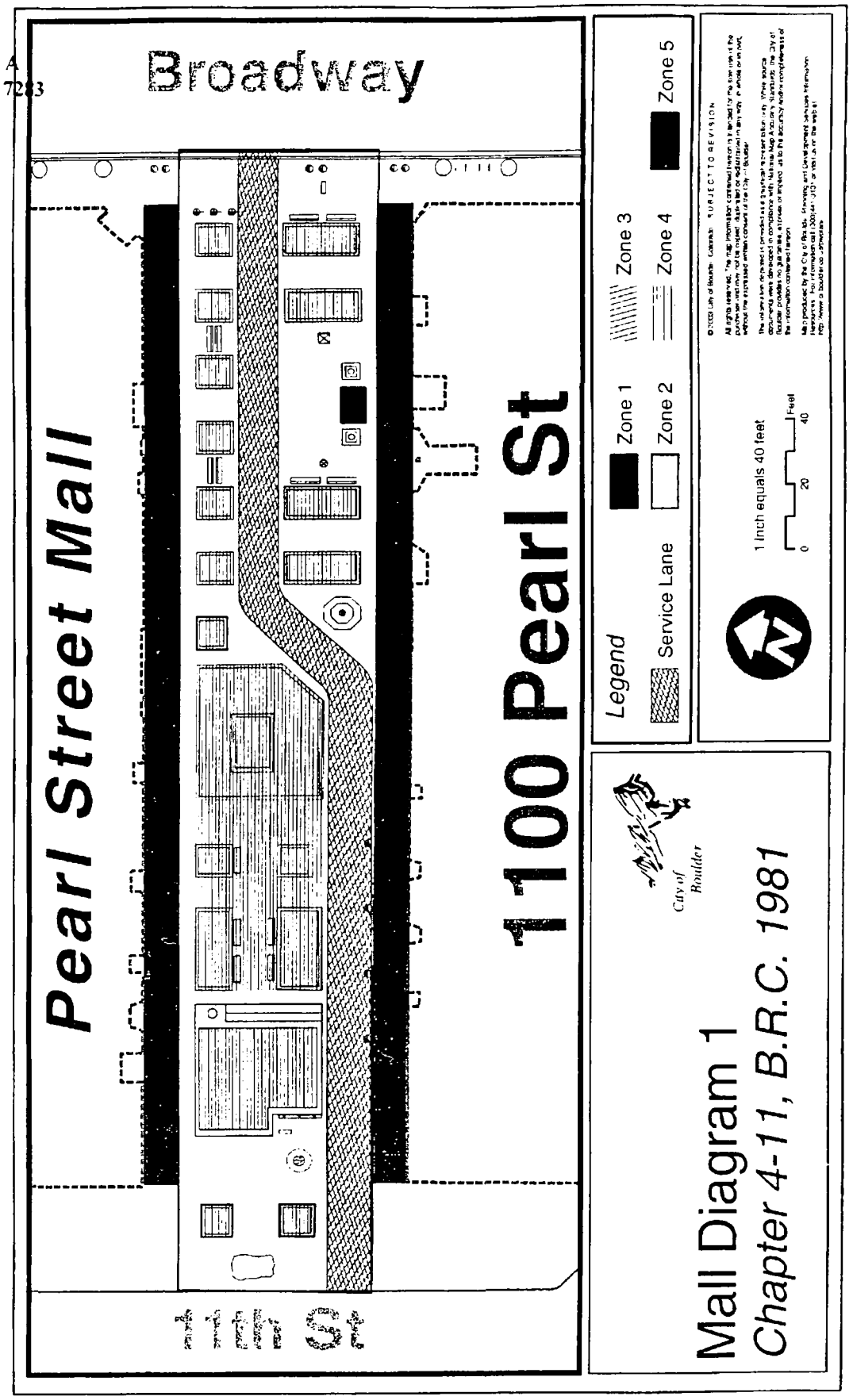
(c) If a permit is revoked, the permittee may not apply for the same type of permit for one year after the effective date of the revocation.

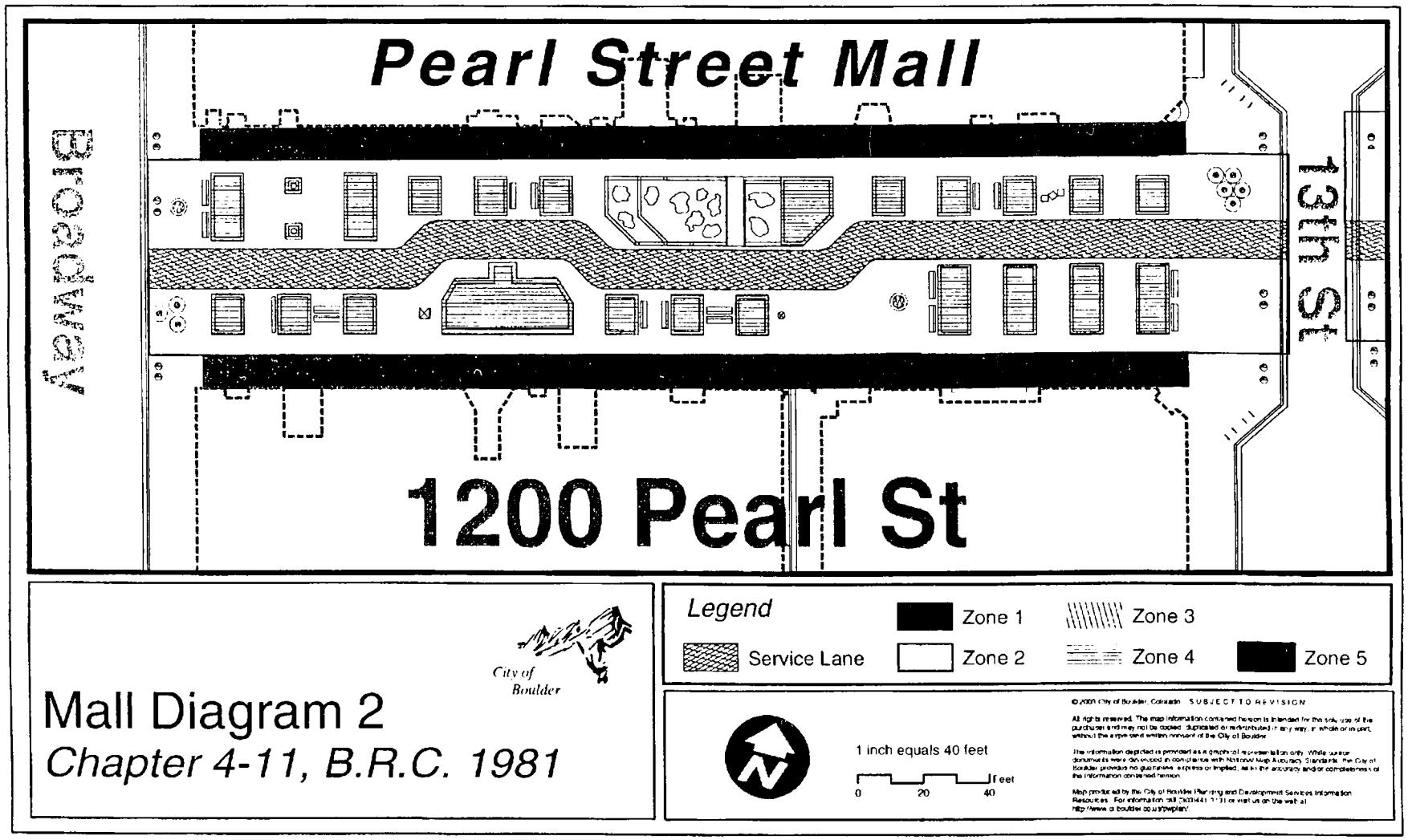
4-11-23 **Amendments.**

The DMC may recommend amendments to this chapter to the city council.

4-11

APPENDIX A
Ordinance No. 7283




Pearl Street Mall
13th St
Broadway
1200 Pearl St
City of Boulder
Mall Diagram 2
Chapter 4-11, B.R.C. 1981
Legend
Zone 1
Zone 2
Zone 3
Zone 4
Zone 5
Service Lane
1 inch equals 40 feet
feet
0
20
40
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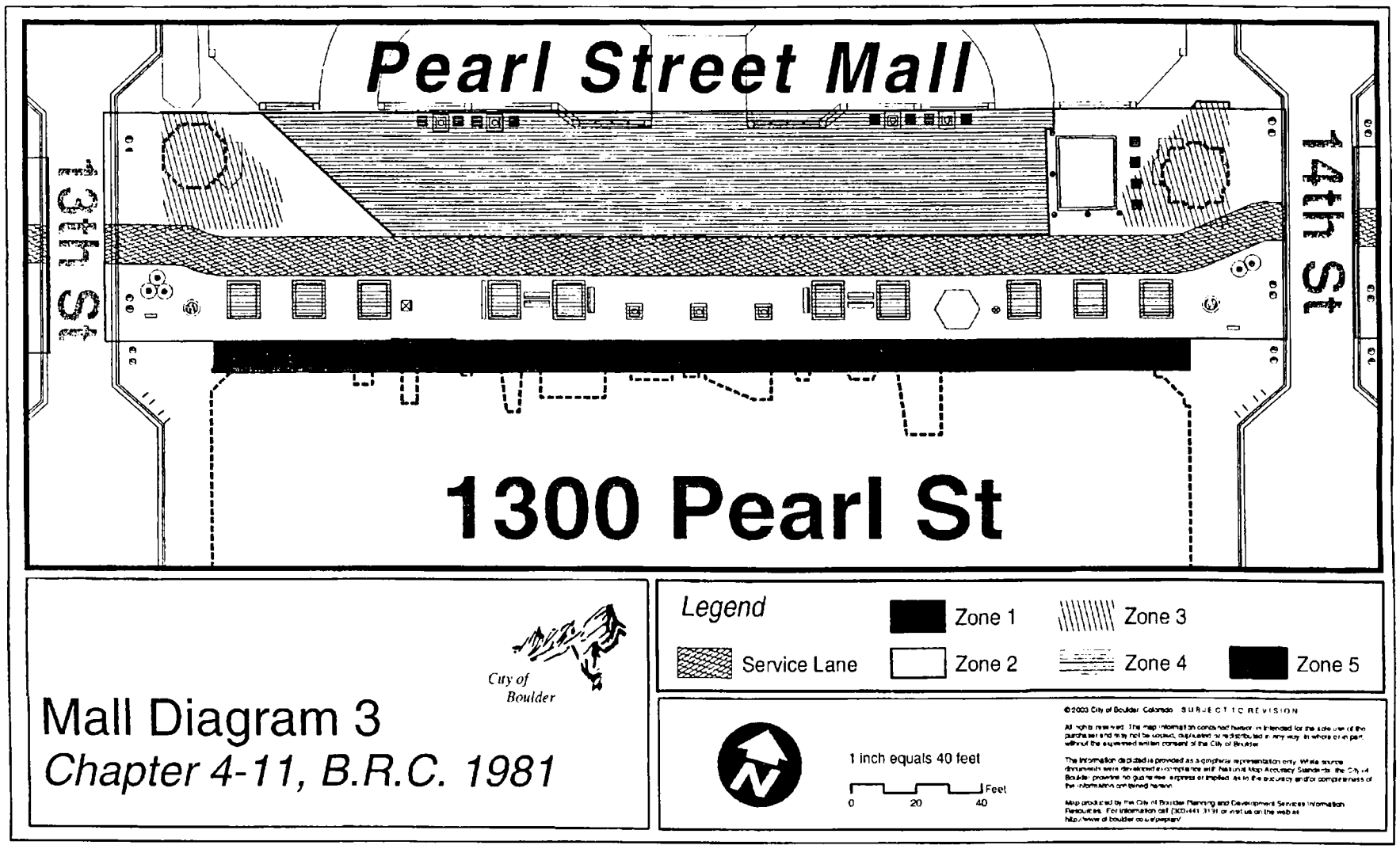

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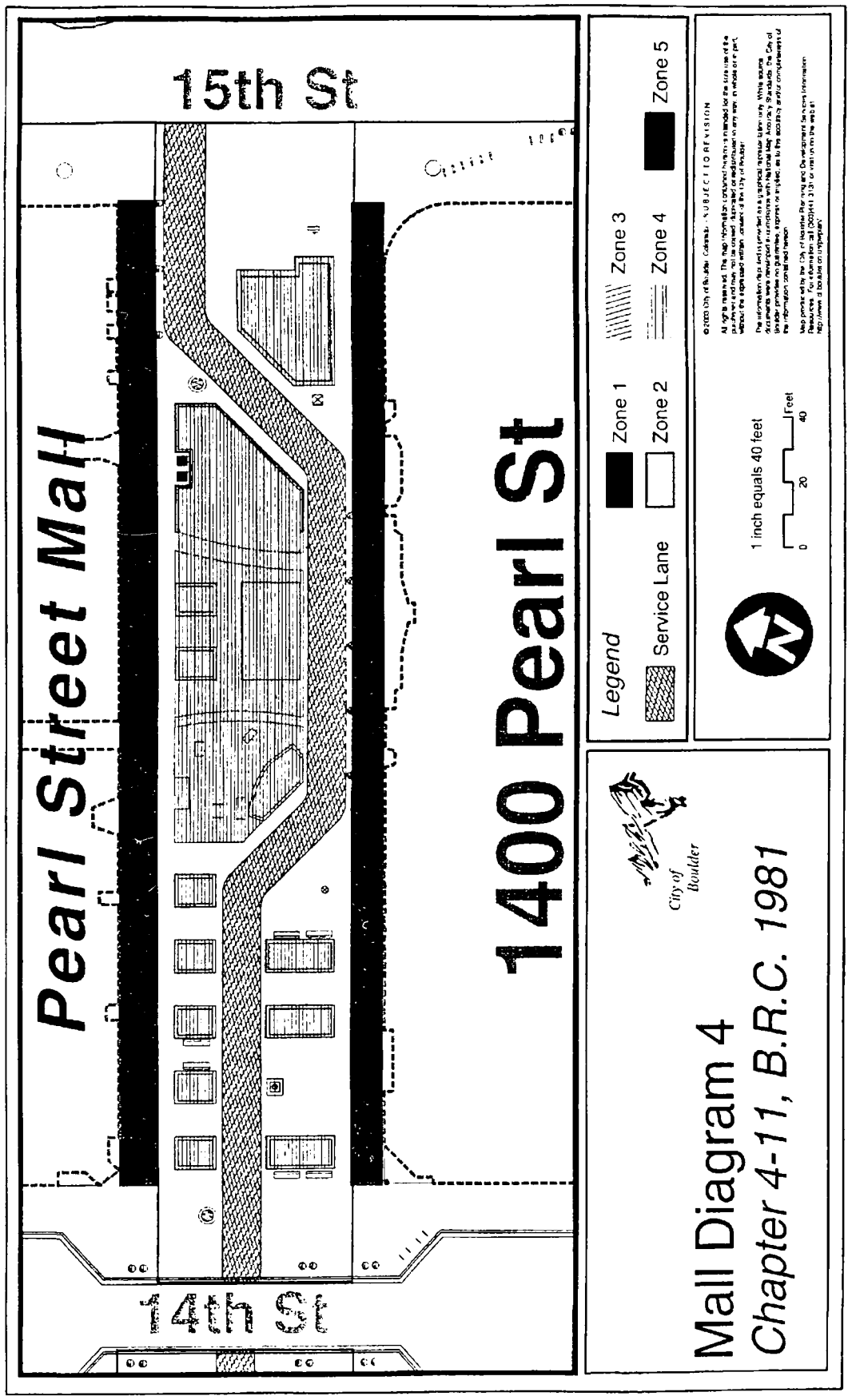

Ordinance No. 7283 (2003).

4-12

TITLE 4 LICENSES AND PERMITS

Chapter 12[1]

[1]Repealed by Ordinance No. 5347.

TITLE 4 LICENSES AND PERMITS

Chapter 13 Mechanical Contractor License[1]

Section:

4-13-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by assuring that the persons responsible for performing work covered by the city's mechanical code[2] are qualified to do so and that they possess insurance to protect consumers from losses due to their services.

4-13-2 Definition Of Mechanical Contractor.

As used in this chapter "mechanical contractor" means a person that undertakes or performs, with or for another, any mechanical installation, alteration, repair or other work in the city for which a mechanical permit from the city is required under this code. But this term does not include subcontractors working for and under the supervision of a mechanical contractor licensed under this chapter or a homeowner performing work upon the owner's residence, or a building or structure accessory thereto, that is intended for the owner's personal use.

4-13-3 License Required; Exception.

(a) Except as provided in subsection (c) of this section, no person shall perform any work as a mechanical contractor in the city without first obtaining a license from the city manager under this chapter.

(b) No mechanical permit shall be issued for work to be done by a person who does not have a valid, current license as required by this chapter that covers the type of work to be performed.

(c) Any person holding a valid plumbing contractor's license under chapter 4-15, "Plumbing Contractor And Apprentice Plumber License," B.R.C. 1981, may perform work covered under chapter 13 of the city mechanical code without first obtaining a mechanical contractor license.

Ordinance Nos. 5493 (1992); 6015 (1998).

[1]Adopted by Ordinance No. 4637. Derived from Ordinance No. 4327.
[2]Chapter 10-9, "Mechanical Code," B.R.C. 1981.

4-13-4 Classifications Of Licenses.

(a) A Class A license entitles the licensee to undertake or perform any work covered by the city mechanical code. The annual fee for a Class A license is that prescribed by section 4-20-13, "Mechanical Contractor License And Mechanical Permit Fees," B.R.C. 1981.

(b) A Class B license entitles the licensee to undertake or perform work covered by the mechanical code for commercial and dwelling units except for work associated with sections 507 and 508, and the following occupancies "H" and "I" as defined in the city mechanical code. The annual fee for a Class B license is that prescribed by section 4-20-13, "Mechanical Contractor License And Mechanical Permit Fees," B.R.C. 1981.

(c) A Class C license entitles the licensee to undertake or perform work covered through the city mechanical code for one- and two-family dwellings. The annual fee for a Class C license is that prescribed by section 4-20-13, "Mechanical Contractor License And Mechanical Permit Fees," B.R.C. 1981.

(d) A Class D license entitles the licensee to undertake or perform work covered by sections 507 and 508 of the city mechanical code. The annual fee for a Class D license is that prescribed by section 4-20-13, "Mechanical Contractor License And Mechanical Permit Fees," B.R.C. 1981.

(e) A Class E license entitles the licensee to undertake or perform boiler, water heaters and hydronics covered in chapters 10 and 12 of the city mechanical code. The annual fee for a Class E license is that prescribed by Section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.

Ordinance Nos. 5493 (1992); 6015 (1998).

4-13-5 License Application.

An applicant for a mechanical contractor license shall:

(a) Apply on forms furnished by the city manager, provide such information relating to the applicant's competence, education, training, and experience as the city manager may require, and pay the fee prescribed in section 4-20-13, "Mechanical Contractor License And Mechanical Permit Fees," B.R.C. 1981;

(b) File the evidence of insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981; and

(c) If applying for a license on or after January 1, 1998, successfully pass an examination designed by the city manager to test the applicant's qualification for the category of license requested.

Ordinance No. 6015 (1998).

4-13-6 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor license revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any contracting business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-13-7 **Contractor Responsibilities.**

A contractor licensed under this title is responsible for all work performed under the contract, whether the contractor, an employee, or a subcontractor performs the work.

Ordinance No. 5377 (1991).

4-13-8 **Revocation And Suspension Of License.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981. Grounds for suspension or revocation include, without limitation, the failure to maintain required insurance.

4-13-9 **Term Of License.**

The term of the license issued under this chapter is twelve months from its date of issuance.

4-13-10 **Fire Protection Contractors.**

Repealed.

Ordinance Nos. 5029 (1987); 5271 (1990); 6015 (1998).

TITLE 4 LICENSES AND PERMITS

Chapter 14 Mobile Home Park Permit And Mobile Home Installer's License[1]

Section:

4-14-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating the location, construction, and alteration of mobile home parks in the city by requiring mobile home park permits. It is also the purpose of this chapter to protect the public health and safety by licensing mobile home installers.

4-14-2 Licenses Required.

(a) No person shall construct, alter, or extend any mobile home park in the city without first obtaining a permit therefor from the city manager under this chapter.

(b) No person shall engage in the business of installing mobile homes or work at the job of installing a mobile home without first obtaining a mobile home installer's license under this chapter from the city manager. The owner of a mobile home who is the occupant of such mobile home may install and locate the mobile home and attach to required utilities without obtaining a license under this chapter, but such person shall obtain all other permits required by this code or any ordinance of the city to install and attach such mobile home.

(c) No person shall construct, alter, or repair any building or utility in a mobile home park unless such person complies with all applicable city and state codes including, without limitation, building, electrical, mechanical, and plumbing codes.

(d) No person shall install an individual mobile home in a mobile home park, tie down a previously installed mobile home, or construct any accessory structure on an individual mobile home space without first obtaining a building permit from the city manager.

4-14-3 Mobile Home Park Permit.

(a) No person may apply for a mobile home park permit until such person has:

(1) Received approval, if required, for such construction, alteration, or extension of a mobile home park under the use provisions of section 9-2-15, "Use Review," B.R.C. 1981; and

(2) Complied with all conditions of such approval or agreed to comply with such conditions in a written agreement signed by the person and approved by the city attorney.

(b) An applicant for a mobile home park permit shall apply in writing on forms furnished by the city manager that contain the following information:

[1]Adopted by Ordinance No. 4637. Derived from Ordinance No. 3914.

(1) The name and address of the owner in fee of the tract. If the fee is vested in a person other than the applicant, the applicant shall furnish with the application a statement verified by the owner of the tract that the applicant is authorized to construct and maintain a mobile home park and apply for a mobile home park permit to construct, alter, or extend such park;

(2) A legal description of the premises upon which the mobile home park is or will be located;

(3) One sepia and nine prints of a mobile home park plan drawn to a scale of not less than one inch equals one hundred feet showing the following:

(A) The area to be used for mobile home park purposes;

(B) The number, location, and size of all mobile home spaces and any areas to be reserved for any temporary occupancy by travel trailers, campers, and mobile homes;

(C) The location and width of all public streets adjacent to the mobile home park and all roadways, driveways, and sidewalks within the park;

(D) The location and number of sanitary conveniences, including toilets, washrooms, laundry, and utility rooms to be used by occupants of the mobile home park;

(E) The location and size of automobile parking areas and recreation areas;

(F) The location of service buildings and any other existing or proposed structures;

(G) A general landscape plan, showing types of plant materials to be used and their locations and any proposed fencing;

(H) Location of fire hydrants as approved by the city fire department; and

(I) Location of mailboxes;

(4) Typical plot plans for individual mobile home spaces at a scale of one inch equals ten feet;

(5) Typical street and walk sections;

(6) Water and sewer utility plans;

(7) Methods to be used for garbage and trash disposal;

(8) The location and details of lighting and electrical systems;

(9) A drainage plan prepared in accordance with the urban storm drainage manual of the Denver Regional Council of Governments;

(10) Plans and specifications of all buildings and other improvements constructed or to be constructed within the mobile home park; and

(11) Such other further information as may be reasonably required by the city manager to determine whether the proposed mobile home park will comply with legal requirements.

(c) At the time of application for a mobile home park permit, the applicant shall pay all inspection and permit fees required by applicable city codes. Before the city grants service

from any city utilities, except utilities for construction services, the applicant shall pay all other fees that the city may require, including, without limitation, plant investment fees and park development and improvement fees.

(d) If the city manager determines that the proposed mobile home park plan meets the requirements of chapter 10-12, "Mobile Homes," B.R.C. 1981, the manager shall issue a mobile home park permit.

(e) The city manager may deny an application for a permit under this section upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any mobile home park permit revoked or suspended within one year prior to the date of the application; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to construction, alteration, or extension of mobile home parks in the city.

(f) Any person whose application for a mobile home park permit under this chapter has been denied may request a hearing on the denial of the permit application from the board of zoning adjustment, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after paying the fee for filing such appeal prescribed by section 4-20-14, "Mobile Home Park Permit And Mobile Home Installer License Fee," B.R.C. 1981.

(g) The city manager may suspend or revoke a mobile home park permit issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

Ordinance Nos. 4803 (1984); 7396 (2004).

4-14-4 Mobile Home Installer's License.

(a) An applicant for a mobile home installer's license shall:

(1) Apply on forms furnished by the city manager;

(2) Pay the fee prescribed in section 4-20-14, "Mobile Home Park Permit And Mobile Home Installer License Fee," B.R.C. 1981; and

(3) File evidence of insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981.

(b) A mobile home installer licensee may perform the following services:

(1) Connecting to existing electrical outlets and gas meters;

(2) Connecting to water and sewer utility outlets, if the outlets are located on the site of the mobile home; and

(3) Moving a mobile home onto a mobile home space and installing blocking and tie-down systems.

(c) No mobile home installer licensed under this chapter shall fail to install and connect mobile homes in compliance with the provisions of this code and other ordinances of the city.

(d) The license issued under this chapter shall be for a term of twelve months.

4-14-4

(e) The city manager may deny an application for license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor license revoked or suspended; or

(2) The applicant has previously failed to comply with this code or any ordinance of the city relating to conducting any contracting business licensed by this code.

If the city manager denies a license application under this subsection, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

(f) The city manager may suspend or revoke a license issued under this section for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

TITLE 4 LICENSES AND PERMITS

Chapter 15 Plumbing Contractor And Apprentice Plumber License[1]

Section:

4-15-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by assuring that the persons responsible for performing plumbing services in the city are qualified to do so.

4-15-2 Definition Of Plumbing Contractor.

As used in this chapter "plumbing contractor" means any person that undertakes or performs, with or for another, any plumbing installation, alteration, repair, or other work in the city for which a plumbing permit is required from the city or fuel gas piping as described in the mechanical code. But this term does not include subcontractors working for and under the supervision of a plumbing contractor licensed under this chapter or a homeowner performing work upon the owner's residence or a building or structure accessory thereto intended for the owner's personal use.

Ordinance No. 6015 (1998).

4-15-3 License Required.

(a) No person shall conduct the business of a plumbing contractor in the city without first obtaining a license under this chapter from the city manager.

(b) No person required by section 12-58-105, C.R.S., to be licensed shall perform any work as a master, journeyman, or residential plumber in the city unless such person holds a valid state license to perform such work.

Ordinance No. 4984 (1986).

4-15-4 License Application.

(a) An applicant for a plumbing contractor license shall apply on forms furnished by the city manager, provide the name of the master plumber of record for the business, as prescribed in

[1]Adopted by Ordinance No. 4637. Amended by Ordinance No. 4737. Derived from Ordinance No. 4326.

subsection 4-15-5(a), B.R.C. 1981, and pay the fee prescribed by section 4-20-15, "Plumber, Plumbing Contractor, And Plumbing Permit Fees," B.R.C. 1981.

(b) An applicant for a plumbing contractor license under this chapter shall file evidence of insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981.

Ordinance No. 4984 (1986).

4-15-5 **Qualifications For License.**

(a) An applicant for a plumbing contractor license shall be a master plumber currently licensed by the Colorado State Plumbing Examiner's Board or shall have in charge and responsible for all plumbing work a master plumber so licensed.

(b) If the supervising master plumber leaves the employment of the licensee or no longer holds a valid state plumbing license, the licensee shall immediately notify the city manager, who shall suspend the license until a qualified master plumber is employed to supervise the business of the plumbing contractor licensee. If such suspended license is thereafter reinstated during the calendar year, no further license fees shall be due to the city for such year.

(c) No master plumber of record may be designated as supervisor for more than one plumbing contractor licensee.

Ordinance No. 4984 (1986).

4-15-6 **Contractor Responsibilities.**

A plumbing contractor licensed under this title is responsible for all work performed under the contract, whether the contractor, an employee, or a subcontractor performs the work.

4-15-7 **Authority To Deny Issuance Of License.**

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor license revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any contracting business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-15-8 **Supervision Ratio.**

(a) On all work requiring a plumbing permit in the city, no person shall permit a ratio of more than two licensed apprentices to one licensed journeyman or master plumber on each jobsite.

(b) For purposes of this section, "jobsite" means:

(1) For commercial properties, the scope of work included on one plumbing permit;

(2) For residential properties, the scope of work included on one plumbing permit and the work on up to one platted lot on either side of the lot for which one permit is issued.

4-15-9 **Revocation Or Suspension Of License.**

(a) The city manager may suspend or revoke the license of a plumbing contractor or an apprentice plumber for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981. Grounds for suspension or revocation include, without limitation, failure to maintain required insurance.

(b) No person engaged in the plumbing contractor business shall employ or continue to employ for work in the city covered by the city plumbing code an apprentice who is not licensed under this chapter or a person required to be licensed under section 12-58-105, C.R.S., who is not so licensed.

4-15-10 **Term Of License.**

The term of an apprentice plumber's license under this chapter is twelve months from its date of issuance.

TITLE 4 LICENSES AND PERMITS

Chapter 16 Police Alarm Systems[1]

Section:

4-16-1 Legislative Intent.

The purpose of this chapter is to reduce the frequency of false alarms and to provide the police department with alarm company contact information by establishing standards and controls for various types of alarm devices.

4-16-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Alarm" means any activation of a police alarm device.

"Alarm business" or "burglar alarm business" means a person in the business of installing, servicing, or monitoring police alarm devices at remote alarm sites owned by other persons.

"Audible alarm" means any police alarm device designed to produce an audible signal at the property where it is installed.

"Police alarm device" means any device that is designed or used to signal the occurrence of a burglary, robbery, or other criminal offense. This term does not include an alarm affixed to an automobile.

4-16-3 Alarm Business Registration Required.

(a) No person shall conduct an alarm business within the city without first registering the business with the city manager on forms provided by the manager. These forms may require the name and address of the alarm business, together with the telephone numbers which the manager may use to contact the business to notify it of an alarm malfunction, and to contact responsible parties if response to the location of the alarm is required.

(b) No fee shall be charged for a registration issued under this chapter.

4-16-4 Length Of Audible Signal.

Every audible alarm shall incorporate a mechanism that will cause the audible signal to terminate automatically within ten minutes of the time it is activated.

[1]Adopted by Ordinance No. 4760. Amended by Ordinance No. 7312.

4-16-5 **Intentional False Alarms Unlawful.**

No person shall intentionally cause the transmission or report the activation of an alarm such person knows to be false.

4-16-6 **Responsibilities Of A Police Alarm Owner.**

No police alarm owner or user shall fail to:

(a) Inspect, maintain, and repair a police alarm device to insure its proper operation.

(b) Educate and train all employees and other persons who may in the course of their activities be in a position to accidentally activate a police alarm device.

(c) Assure that a responsible person responds to every activation of a police alarm device within twenty minutes of being requested to respond by the city's police communications center.

4-16-7 **Right Of Inspection.**

The city manager may inspect any police alarm device at any time to determine whether it is being used in conformity with the provisions of this chapter.

TITLE 4 LICENSES AND PERMITS

Chapter 17 Secondhand Dealer And Pawnbroker License[1]

Section:

4-17-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by regulating the conduct of persons selling secondhand goods, whether such sellers have title to the goods or sell them on consignment, and the conduct of persons engaged in pawnbroking who make loans based on a pledge of personal property or who purchase personal property under an agreement to sell it back at a certain price. The record-keeping and other regulatory requirements of this chapter are necessary to protect the public against the sale and traffic of stolen goods and to enhance the ability of law enforcement personnel to discover and identify stolen goods. It is the council's intent that the provisions of this chapter licensing pawnbrokers augment, but not conflict with, state law regulating pawnbrokers, 12-56-101 et seq., C.R.S.[2]

4-17-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Non-precious scrap metal" means scrap metal other than copper, gold, and silver.

"Pawnbroker" means any person who loans money on the deposit or pledge of personal property, and may include a person who also engages in the sale of new or used merchandise through ordinary channels of trade or who purchases secondhand personal property for resale under the terms of this chapter by acquiring by transfer to such pawnbroker any pawn ticket that such pawnbroker has issued.

"Pawnbroking" means the business of a pawnbroker.

[1]Adopted by Ordinance No. 4637. Derived from Ordinance Nos. 1734, 1985, 2612, 4113.
[2]Provident Loan Soc. v. City and County of Denver, 64 Colo. 400, 172 P. 10 (1918); Solomon v. City of Denver, 12 Colo. App. 179, 55 P. 199 (1898).

"Pledge" means any article deposited with a pawnbroker as security for a loan in the course of the pawnbroker's business.

Pledgor" means the person who delivers a pledge into the possession of a pawnbroker; if such person discloses that the person is or was acting for another, "pledgor" means the disclosed principal.

"Secondhand goods" means the following goods other than those sold new at retail:

(a) Cameras, camera lenses, slide or movie projectors, projector screens, flash guns, enlargers, tripods, binoculars, telescopes, microscopes;

(b) Televisions, phonographs, tape recorders, video recorders, radios, tuners, speakers, turntables, amplifiers, record changers, citizens' band broadcasting units and receivers;

(c) Skis, ski poles, ski boots, ski bindings, golf clubs;

(e) Typewriters, adding machines, calculators, computers, portable air conditioners, cash registers, copying machines, dictating machines, automatic telephone answering machines;

(e) Bicycles, bicycle frames, bicycle derailleur assemblies, bicycle hand brake assemblies, other bicycle components; and

(f) Any item of tangible personal property marked with a serial or identification number or whose price to the secondhand dealer as a secondhand article is $50.00 or more, except motor vehicles, ranges, stoves, dishwashers, refrigerators, garbage disposals, boats, airplanes, guns, clothes washers, clothes driers, freezers, mobile homes, sewing machines and non-precious scrap metal.

4-17-3 License Required.

(a) No person shall operate a secondhand store or a place for buying and selling, including, without limitation, selling on consignment, secondhand goods without first obtaining a license therefor from the city manager under this chapter.

(b) No person shall engage in the business of pawnbroking without first obtaining a license therefor from the city manager under this chapter.

(c) Nothing in this chapter shall be deemed to apply to a garage sale or rummage sale, unless it is held at the same address more than twice per year.

4-17-4 License Application.

(a) An applicant for a license under this chapter shall apply on forms furnished by the city manager, including, without limitation, the full name of the applicant and the address of the location at which such business is to be conducted and any other information required by the city manager to establish the fitness, financial responsibility, and character required to obtain a license, and shall pay the fee prescribed in section 4-20-17, "Secondhand Dealer And Pawnbroker License Fee," B.R.C. 1981.

(b) An applicant for a pawnbroker license shall also:

(1) Furnish to the city a bond from a surety approved by the city manager in the amount of $5,000.00 to be forfeited if the applicant fails to comply with the requirements of this chapter or if the applicant fails to keep safely or return of all articles pledged to the applicant; and

(2) Provide to the city manager fire and property damage insurance policies upon the property the applicant holds as pledge in the minimum amount of one-half its pledged value in case of fire.

4-17-5 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any secondhand dealer or pawnbroker license revoked or suspended; or

(2) The applicant has previously failed to comply with this code or any ordinance of the city relating to conducting any secondhand dealer or pawnbroker business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-17-6 Change Of Address.

No person licensed under this chapter shall move its place of storing pledged, secondhand, or consigned articles without first having notified the city manager, who shall note the change of address upon the license.

4-17-7 Record Of Goods Purchased, Consigned, Or Pledged.

(a) Each licensee under this chapter shall keep a bound book in which is written legibly in ink: the time and date of each purchase, consignment, or pledge; an accurate description in English of the article or pledge, including all serial and identification numbers; the time and date of receiving such article or pledge; the name, address, and physical description of each person, including date of birth, as shown on a driver's license or similar identification belonging to the person offering the article or pledge to the licensee; and a declaration of ownership signed by the seller or the pledgor. In the case of a pledge to a pawnbroker, the book shall also contain the amount of the loan, the rate of interest on the loan, the number of the loan, the date it is due, the length of the loan, a notation if the pledge is redeemed, the date notice is sent and published, the date the pledge is sold, the amount of the sale, and the name and address of the purchaser.

(b) Each licensee shall make available the book required in subsection (a) of this section and the articles purchased or pledged for inspection at all reasonable times by any city police officer.

(c) Each licensee shall complete and deliver to the city chief of police before the hour of 12:00 noon each Monday a correct copy on forms furnished by the police department from the book required in this section that describes all secondhand goods purchased or consigned during the preceding calendar week and provides all other information required to be recorded in the book by subsection (a) of this section. For purposes of this section, a calendar week ends at midnight Sunday.

(d) Each licensee shall maintain the records required by this chapter for at least two years.

(e) Any dealer in valuable articles, as defined by section 18-16-102(7), C.R.S., required to report to local law enforcement agencies by section 18-16-107, C.R.S., shall keep such records and make such reports to the city chief of police as required in this section.

4-17-8 Inspection Of Goods Purchased, Consigned, Or Pledged.

Any city police officer may examine any article purchased by or consigned or pledged to any licensee under this chapter and may demand that such article be exhibited to such officer.

4-17-9 Transactions With Certain Persons Prohibited.

No licensee shall purchase, accept under consignment, or accept as a pledge secondhand articles or tangible personal property from the following persons:

(a) Any person under eighteen year of age; or

(b) Any person who the licensee knows or has reason to believe has been convicted of burglary, robbery, felony theft, or theft by receiving; or

(c) Any person who appears to be under the influence of alcohol or any controlled substance, as defined in state law[1].

4-17-10 Holding Period For Secondhand Goods.

No holder of a secondhand dealer license under this chapter shall alter, sell, or remove from the licensee's place of business any secondhand articles purchased or accepted under consignment until they have been in the licensee's possession at least ninety-six hours after filing the report required by subsection 4-17-7(c), B.R.C. 1981.

4-17-11 Information On Pawn Stub And Pawn Ticket.

At the time of receiving a pledge and upon the subsequent renewal of any loan, a pawnbroker licensed under this chapter shall deliver to the pledgor or the pledgor's agent a pawn ticket from a book containing stubs, which book, stubs, and tickets are correspondingly serially numbered. The stub shall contain the substance of the information required to be kept in the book prescribed by subsection 4-17-7(a), B.R.C. 1981.

4-17-12 Maximum Charges By Pawnbrokers; Commissions Void.

(a) No pawnbroker shall request or receive any greater rate of interest, commission, or compensation than the total rate of three percent per month computed upon the amount of money actually advanced. No pawnbroker may impose or collect any other charge upon the renewal of any loan or at any other time.

(b) All contracts for the payment of a commission by the borrowers for procuring a loan on personal property are void; a borrower who has paid such a commission may recover in an action at law twice the amount paid plus reasonable attorney fees.

[1] 12-22-303(7), C.R.S.

4-17-13 **Pledge Holding Period.**

Each pawnbroker licensed under this chapter shall retain the pledge in the pawnbroker's possession on the licensed premises at least six months after the maturity of the loan.

4-17-14 **Notice To Pledgor Of Failure To Redeem And Sale.**

(a) If the pledgor fails to redeem a pledge for six months after the maturity of the corresponding loan by repayment of the principal and all accrued interest charges, the pawnbroker may at any time thereafter mail a notice to the pledgor at the address noted on the pawn stub. The notice shall provide the number of the pawn ticket, a description of the property pledged, and notice that if the property is not redeemed within ten days from the date of the notice, it will be sold at auction.

(b) If the pledgor fails to redeem the pledge within ten days of the date of the notice prescribed in subsection (a) of this section, the pawnbroker may sell the pledge at public auction, no fewer than ten days after publishing a notice of sale in a newspaper of general circulation in the city providing the time and place of the auction, a description of the articles to be sold, and the name of the auctioneer to conduct the auction.

(c) If a sale held under this section produces money exceeding the amount of the loan, the interest due, and the expenses to advertise and conduct the sale, the pawnbroker shall pay such surplus to the person entitled to redeem the pledge. For purposes of this subsection, expenses of the sale, excluding advertising, that are credited against the proceeds of the sale may not exceed five percent of the amount obtained in the sale.

4-17-15 **Hold Orders By Police.**

Any city police officer may order a pawnbroker to hold any article deposited with the pawnbroker for a reasonable period of time if the police officer has a reasonable belief that the article is stolen. A pawnbroker who receives such a hold order may not sell or dispose of the article or allow it to be redeemed as long as the hold order remains in effect. The pawnbroker may appeal to the city manager under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, to release any article subject to a hold order. The manager shall release the article if the pawnbroker shows good cause.

4-17-16 **Revocation Of License.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

TITLE 4 LICENSES AND PERMITS

Chapter 18 Street, Sidewalk, And Public Property Use Permits[1]

Section:

4-18-1 Legislative Intent.

The purpose of this chapter is to regulate activities, such as sale and display of merchandise, on public property, such as streets, sidewalks, and parks, to assure public access to and safe use of the property.

Ordinance No. 5919 (1997).

4-18-2 Sidewalk Sale Permit Required.

(a) No person shall place for sale or for solicitation of orders any merchandise or other things upon any street, alley, sidewalk, or other public property or suspended from any building or structure over the street, sidewalk, or public property without first obtaining a permit from the city manager under this section.

(b) Nothing in this section shall be deemed to waive or supersede the requirement to obtain a license or permit to sell or display goods or merchandise on the Downtown Boulder Mall or University Hill, as required by chapter 4-11, "Mall Permits And Leases," or by section 4-18-4, "University Hill Mobile Vending Cart Permit," B.R.C. 1981.

(c) Before issuing a permit under this section the city manager shall consult with the city fire and police departments and transportation division to determine whether the permit meets all requirements of this code and other ordinances of the city. The manager shall issue such permit upon a finding that, in view of the location or area proposed to be used and the type of business to be carried on, the sales business complies with all other ordinances of the city and would not constitute an obstruction of public property or a health or safety hazard. The city manager may impose reasonable conditions in the permit to assure the use of public property and right-of-way and protect the public health, safety, and welfare. The permittee shall meet all applicable requirements of chapter 3-2, "Sales And Use Tax," B.R.C. 1981.

Ordinance No. 7003 (1999).

[1]Adopted by Ordinance No. 4637. Amended by Ordinance Nos. 4704, 4709. Derived from Ordinance Nos. 2948, 2977, 3615, 4129, 4233, 4335, 1925 Code.

4-18-3 Sidewalk Banner Or Awning Permit Required[1].

(a) No person shall place or cause to be placed any flying flag, banner, sign, fixed awning, canopy, or marquee that projects into any street or sidewalk in the city without first obtaining a permit from the city manager under this section.

(b) Before issuing a permit under this section, the city manager shall consult with the fire and police departments and the zoning, building, and transportation divisions to determine whether the permit meets all requirements of this code and other ordinances of the city. The manager shall issue such permit upon a finding that the placement of the flag, banner, sign, awning, canopy, or marquee complies with all other ordinances of the city and would not constitute a safety hazard or obstruct the use of public property. The city manager may impose reasonable conditions in the permit to assure the use of public property and protect public health, safety, and welfare.

(c) An applicant for a permit under this section shall file evidence of insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981, and shall name the city as an insured party under the required policies of public liability insurance.

4-18-4 University Hill Mobile Vending Cart Permit.

(a) The purpose of this section is to establish special rules for mobile vending carts in the University Hill commercial area of the city so that such carts may be used and be compatible with the special circumstances of the Hill. This section, and not section 4-18-2, "Sidewalk Sale Permit Required," B.R.C. 1981, shall apply to this use.

(b) For the purposes of this section, "Hill" means the area bounded by the south side of University Avenue, the west side of Broadway, the south side of College Avenue, and the alley between 12th Street and 13th Street, and includes the pedestrian underpass at College Avenue.

(c) The city manager may issue as many mobile vending cart permits under this section as the manager deems appropriate, but the manager shall not permit the operation of more than four mobile vending carts on the Hill at the same time. The manager shall select locations which will not interfere with pedestrian or other uses of the Hill sidewalks and will not interfere with access to adjacent private property, and shall specify the location for each cart on its permit.

(d) A mobile vending cart shall remain in operation during the minimum number of retail business hours specified in the permit, as the city manager may specify.

(e) A mobile vending cart shall not exceed a size of four feet in width by ten feet in length, excluding roof overhangs and wheels, by eight feet in height.

(f) A mobile vending cart permit may be issued only if the proposed vending cart will benefit the public or enhance the ambiance of the Hill. The city manager may issue regulations establishing the process for accepting, reviewing, and approving permit and lease applications; the contents of such applications; the specific criteria that will be considered in the review process; and establishing a merit system of review of the applications, which may include, without limitation, design quality of the cart, addition of diversity to products available on the Hill, compatibility with Hill activities, experience of the applicant, financial feasibility, cost and quality of product, and the length of the season during which the product

[1]See also section 9-9-21, "Signs," B.R.C. 1981.

can be marketed. Each applicant shall comply with such requirements. The manager may deny a permit if the proposed use would constitute a physical hazard to the public health, safety, or welfare, or would violate any law. Specific application procedures include:

(1) The city manager shall submit each application for a permit to the advisory board of the University Hill General Improvement District for its recommendation of approval, approval with conditions, or denial of the application.

(2) The city manager, after receiving a recommendation from the advisory board provided in paragraph (f)(1) of this section, shall determine whether each application for a permit meets the purposes and requirements of this section and approve or deny the application.

(3) The city manager may require reasonable proof of authority from any person purporting to sign an application for the use of any person or entity other than the signator.

(4) Each applicant for a permit shall obtain all required building, health, sales tax, or other permits or licenses from all applicable government departments.

(5) The permittee shall prominently display the permit on the cart.

(6) Whenever any permittee desires to change the use or the location of the cart, the permittee shall follow the review and approval process required of a new applicant.

(7) Applications shall be submitted to the city manager no later than June 1 in the year preceding the permit year.

(8) Permit applications shall be made on the form provided by the city manager for the permit sought, and shall contain all the information required by the form, including any required attachments or exhibits. The manager may reject incomplete applications.

(g) No operator of a mobile vending cart shall conduct the operator's primary trade at locations other than those authorized in the permit. But the operator may sell goods in transit upon request. If an authorized location conflicts with a special activity, the city manager may temporarily relocate the vendor. The city manager may also approve permanent changes of location as other locations become available, if two permittees agree in writing to exchange locations, or temporarily on a month-to-month basis during September through May if the city manager has reason to believe that the regular vendor will not be using the location.

(h) A mobile vending cart shall be in operation as required in subsection (c) of this section or the permit will automatically expire.

(i) A permittee is responsible for maintaining the area within and in proximity to the permitted location in a neat, clean, and hazard-free condition, including, without limitation:

(1) Disposing of all trash off-site; and

(2) Storing all mobile vending carts on private property when not in operation.

(j) A mobile vending cart permit is valid for a one-year period, beginning August 1 and ending July 31, with two options to renew for additional one-year periods, upon timely payment of the fee prescribed for mobile vending carts on the mall in section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981. A mobile vending cart permit is not automatically renewable thereafter. A permittee who wishes to continue operating after the expiration of the permit shall follow the application procedures required of a new applicant.

(k) The holder of a mobile vending cart permit shall indemnify and hold harmless the city, its officers, employees, and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the permit comprehensive general public liability and property damage insurance, as prescribed by section 4-1-8, "Insurance Required," B.R.C. 1981, naming the city, its officers, employees, and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the city will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the city.

(l) Each cart shall display a sign at least one foot by one foot visible to the public which contains the required dates and hours of operation, the items for sale, and the prices of the items. The sign shall be presented to the city manager for approval before it is used. All items and their prices must be approved by the city manager as part of the application process. The city manager may approve item changes or substitutions upon receiving written application for such change.

(m) A permit issued under the provisions of this section is not automatically transferable or assignable. The city manager shall review a request to transfer or assign a permit or lease as a new application.

(n) Any permit issued hereunder may be revoked by the city manager under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981, for a violation of this section, or a breach of a condition in the permit. If a permit is revoked, the permittee may not apply for the same type of permit for one year after the effective date of the revocation.

Ordinance No. 7003 (1999).

4-18-5 **Revocable Right-Of-Way Permit Required.**

Repealed.

Ordinance Nos. 5678 (1994); 5919 (1997); 7003 (1999).

4-18-6 **Revocation Or Suspension Of Permits.**

(a) The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

(b) Whenever the city manager revokes a permit under this chapter and whenever any encroachment or obstruction is made or located contrary to the provisions of this section, the manager shall notify the person who made or located such encroachment or obstruction, or caused or permitted it to be done, or who owns or controls the premises with which such encroachment or obstruction is connected, to remove such encroachment or obstruction within such time that the city manager determines is reasonable under the circumstances.

(c) If the person notified under subsection (b) of this section fails to comply with the order to remove the encroachment or obstruction, the city manager may cause the encroachment or obstruction to be removed and charge the costs thereof plus up to fifteen percent of such costs for administration to the person so notified. If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due any unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, under the procedures

prescribed by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance No. 7003 (1999).

4-18-7 **Animal-Drawn Vehicle Permits.**

(a) No person shall operate an animal-drawn vehicle for commercial purposes on any street or for any purpose on a street within the area bounded by and including Mapleton, 30th Street, Arapahoe, and 6th Street except in accordance with the terms of a permit issued in accordance with the provisions of this section.

(b) Upon application, the city manager shall issue an animal-drawn vehicle permit if the manager finds that:

(1) The proposed animals, vehicles, routes, hours, frequency, and other aspects of use of the streets will not unreasonably interfere with the efficient movement of other traffic;

(2) The applicant presents a workable plan for sanitation;

(3) The commercial use applicant presents a workable plan for feeding, sheltering, quartering and stabling, and transporting the animals used that is in compliance with this code and all other applicable law;

(4) The commercial use applicant provides an insurance certificate meeting the requirements of section 4-1-8, "Insurance Required," B.R.C. 1981;

(5) The applicant has paid the permit fee prescribed by section 4-20-36, "Animal-Drawn Vehicle Permit Fees," B.R.C. 1981; and

(6) None of the grounds for denial of a license under section 4-1-9, "Authority To Deny Issuance Of Licenses," B.R.C. 1981, exists.

(c) The city manager shall prescribe the form of the application and may require such information as is reasonably necessary to make the required findings. The manager shall place in the permit such restrictions on time, place, and manner as the manager finds are reasonably necessary to meet the requirements of this section. Permittees are in any case restricted to operating within the terms of their own application.

(d) The term of a permit is three months.

(e) After notice and hearing as provided in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, the city manager may revoke any permit and thereafter for a period of one year refuse to reissue a permit if the manager finds that the permittee has violated any provision of this section, the application, or the permit, or that any ground for revocation under section 4-1-10, "Revocation Of Licenses," B.R.C. 1981, exists.

(f) A permittee shall pay, and by its acceptance of a permit specifically agrees to pay, any and all damages or penalties that the city may be legally required to pay as a result of the permittee's operation or maintenance of an animal-drawn vehicle under this section, whether or not the acts or omissions complained of are authorized, allowed, or prohibited by the city.

(g) A permittee shall also pay all expenses incurred by the city in defending itself with regard to any and all damages and penalties mentioned in subsection (f) of this section. These

expenses include all out-of-pocket expenses, including reasonable attorneys' fees and the reasonable value of services rendered by any employee of the city.

(h) A permittee shall comply with all applicable health and sanitation laws and regulations of the city, county, and state, and further shall meet at least the following specific sanitation conditions:

(1) All horses, mules, and other animals are equipped with adequate devices to prevent manure and other excrement from falling upon a street. The permittee immediately removes any excrement that falls upon the city streets at the permittee's expense.

(2) All animal waste for disposal is promptly transported to sites or facilities legally empowered to accept it for treatment or disposal.

(i) The penalty for violation of any provision of this section is a fine of not less than $50.00 nor more than $300.00.

Ordinance No. 7003 (1999).

4-18-8 **Parking Meter Hood And Sign Permits.**

(a) The city manager may issue revocable permits for the use of meter hoods or meter signs to persons upon application under this section and prepayment of the fees and deposits prescribed by section 4-20-35, "Parking Meter Hood Permit Fees And Deposit," B.R.C. 1981. Meter hoods or meter sign permits may be issued for:

(1) Construction-related activities of any person who in the ordinary course of trade or business is engaged in the servicing, maintenance, construction, reconstruction, remodeling, or repair of buildings and other structures;

(2) Special activities, which are defined as specific tasks within the course of trade, business, or activity which cannot be accomplished without a reserved parking space. Permitted uses include but are not limited to bus loading, mobile medical facilities, funeral vehicles, special events, or wedding vehicles; or

(3) Television, radio, musical, or other media-related events.

(b) A permittee may cover with a hood or attach a sign to a meter only:

(1) Construction meter hoods or meter signs:

(A) For parking a vehicle that is to be used in carrying on the construction-related activities for which the hood was issued;

(B) During such periods of time in which such person is actually and actively engaged in the construction-related activity; and

(C) Within reasonable proximity to the place of service and away from such person's usual place of trade or business.

(2) Special activity meter hoods or meter signs:

(A) For parking a vehicle specified on the permit that is to be used for the special activity;

(B) During such periods of time in which such person is actually and actively engaged in the activity but for no more than nine hours within any twenty-four-hour period; and

(C) Within reasonable proximity to the event location.

(3) Media event meter hoods or meter signs:

(A) For parking a vehicle that is to be used as an ancillary facility for the production of an event that requires cables for sound or video connected directly from the stage, building, or event location to the vehicle; and

(B) During such periods of time in which such person is actually and actively engaged in the event but for no more than nine hours within any twenty-four-hour period.

(c) Permits under this section are valid for the period of time for which they are purchased and expire on the date indicated on the permit. Media event permits are valid for no more than nine hours in any twenty-four-hour period. No more than two media event permits may be issued to any one person in any thirty-day period.

(d) The city manager may place such additional restrictions on eligibility for meter hood and meter sign permits, and may place such additional conditions on the use of such permits, as will, in the manager's opinion, best preserve the balance between keeping metered parking on public streets available to the general public and serve the needs of persons who have no practical alternative in carrying out activities without the capacity to reserve a particular parking space or spaces, and which are reasonable and in the public interest. Such additional restrictions shall be applied evenly to all persons similarly situated.

(e) The city manager may revoke a permit issued under this section for:

(1) Abusing a meter hood or meter sign;

(2) Any use that violates any provision of this section;

(3) Authorizing or acquiescing in the use of a meter hood or meter sign by another person who is not permitted to use a parking meter hood or meter sign;

(4) The use of a meter hood or meter sign without payment of the required fee and deposit; or

(5) Violation of any condition, limitation, or restriction placed on the use of the meter hood by the city manager at the time it is issued.

(f) Before revoking a permit under this section, the city manager shall follow the procedure prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

(g) If the city manager revokes a permit under this section, the manager may impound the meter hood or meter sign.

Ordinance Nos. 5920 (1997); 7003 (1999).

4-18-9 **Right-Of-Way Leases[1].**

Repealed.

Ordinance Nos. 5919 (1997); 7003 (1999).

[1]See section 2-2-8, "Conveyance Of City Real Property Interests," B.R.C. 1981.

4-19

TITLE 4 LICENSES AND PERMITS

Chapter 19 Taxi Driver License[1]

[1]Adopted by Ordinance No. 4637. Amended by Ordinance No. 6062. Derived from Ordinance Nos. 1165, 1243, 2613, 3319, 3466, 1925 Code. Repealed by Ordinance No. 7008.

TITLE 4 LICENSES AND PERMITS

Chapter 20 Fees[1]

Section:

[1]Adopted by Ordinance Nos. 4637, 4651. Amended by Ordinance Nos. 4647, 4713, 5341, 5940, 6032, 7008, 7087, 7168, 7240, 7319, 7406. Derived from Ordinance Nos. 3887, 3913, 4130, 4334.

4-20-1 **Airport Fees.**

(a) Airport hangar fees are $200.00 per month.

(b) Airport tie-down fees are $39.00 per month for asphalt.

Ordinance Nos. 4789 (1983); 4865 (1984); 4945 (1985); 5012 (1986); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5835 (1996).

4-20-2 **Alcohol And Fermented Malt Beverage License And Application Fees.**

(a) The applicant for a malt, vinous, or spirituous liquor license shall pay the appropriate application fee, as follows:

(1) New license	$ 500.00
(2) Transfer of location or ownership of license	500.00
(3) License renewal	50.00
(4) Late applications fee for expired license	500.00
(5) Special event	25.00
(6) Temporary permit for transfer of ownership	100.00
(7) Bed and breakfast permit	25.00
(8) Duplicate license	50.00
(9) Trade name/corporation name change	50.00
(10) Temporary modification of premises	50.00
(11) Permanent modification of premises	100.00

(12) Five hundred foot measurement for liquor license application ..... $ 50.00

(13) Tasting permit 50.00

(b) Each applicant for a hotel and restaurant license shall pay a manager registration fee of $75.00 to the city.

(c) Each applicant for a fermented malt beverage license shall pay the appropriate application fee, as follows:

(1) New license ..... $ 500.00

(2) Transfer of location or ownership of license 500.00

(3) License renewal 50.00

(4) Late applications fee for expired license 500.00

(5) Special event 25.00

(6) Temporary permit for transfer of ownership 100.00

(d) Each licensee licensed under chapter 4-2, "Beverages License," B.R.C. 1981, shall pay the following applicable annual license fee at the time of applying for the license, which is refundable if the license is denied:

(1) Retail liquor store ..... $ 22.50

(2) Liquor-licensed drugstore 22.50

(3) Beer and wine 48.75

(4) Hotel and restaurant 75.00

(5) Tavern 75.00

(6) Club 41.25

(7) Arts 41.25

(8) Racetrack 75.00

(9) Brew pub 75.00

(10) Fermented malt beverage:

(A) On-premises 3.75

(B) Off-premises 3.75

(C) On- and off-premises 3.75

(e) Statutory administrative fee per person for background checks caused by changes in structure of entity 100.00

(f) Special event - liquor 25.00/day

(g) Special event - beer . . . . . $ 10.00/day

Ordinance Nos. 4838 (1984); 5081 (1987); 5150 (1988); 5347 (1990); 5425 (1991); 5599 (1993); 5676 (1994); 5835 (1996); 5899 (1997); 7380 (2004).

4-20-3 **Auctioneer License Fees.**

An applicant for an auctioneer license shall pay an annual fee of $61.65.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-4 **Building Contractor License And Building Permit Fees.**

(a) An applicant for a building contractor license shall pay the following annual fee according to the type of license requested:

(1) Class A $448.00

(2) Class B 299.00

(3) Class C 192.00

(4) Class D-1 through D-8 . . . . . 149.00

(5) Class D-9 . . . . . 15.00

(6) Class E 73.00

(b) The fees herein prescribed shall not be prorated.

(c) Building permit fees are as follows:

(1)	$ 500.00 or less		$ 26.50
(2)	500.01 through	$ 2,000.00	26.50 for the first $500.00 plus $3.45 for each additional $100.00 or fraction thereof, to and including $2,000.00.
(3)	2,000.01 through	25,000.00	77.50 for the first $2,000.00 plus $15.70 for each additional $1,000.00 or fraction thereof, to and including $25,000.00.
(4)	25,000.01 through	50,000.00	438.30 for the first $25,000.00 plus $11.30 for each additional $1,000.00 or fraction thereof, to and including $50,000.00.
(5)	50,000.01 through	100,000.00	720.30 for the first $50,000.00 plus $7.85 for each additional $1,000.00 or fraction thereof, to and including $100,000.00.
(6)	100,000.01 through	500,000.00	1,111.90 for the first $100,000.00 plus $6.25 for each additional $1,000.00 or fraction thereof, to and including $500,000.00.

(7)	$ 500,000.01 through $1,000,000.00	$ 3,618.40 for the first $500,000.00 plus $5.30 for each additional $1,000.00 or fraction thereof, to and including $1,000,000.00.
(8)	1,000,000.01 and up	6,275.70 for the first $1,000,000.00 plus $4.05 for each additional $1,000.00 or fraction thereof.

(d) Other fees are as follows:

(1)	Demolition Permit	
	(A) Interior/non-load-bearing	23.20
	(B) All other	163.90
(2)	Fence Permit and Retaining Wall Permit	3.85 for each $100.00 (No maximum)
(3)	Reinspection Fee	89.00 per occurrence (Payable before any further inspections can be done.)
(4)	Change of Use Fee	76.50 (Can be credited to building permit fee if permit applied for and paid within ninety days.)
(5)	After Hours Inspection	116.00 per hour -- two-hour minimum
(6)	Plan Check Fee (due at time of permit application):	
	(A) Residential, single-family	Twenty-five percent of building permit fee
	(B) Residential, multi-family	Sixty-five percent of building permit fee
	(C) Nonresidential	Sixty-five percent of building permit fee
(7)	Plan Check Fee for revised plans (due at time of plan resubmittal):	
	(A) Revision to plan:	Fifty percent of plan check fee
	(B) Minor revision to plan:	Twenty-five percent of plan check fee
(8)	Energy Code Calculation Fee:	
	Heat Loss Calculation Check Fee:	
	(A) Residential	$ 79.20
	(B) Commercial	98.20

Corrections that necessitate resubmission will be charged an extra twenty-five percent of original fee.

(9)	Reinstatement of Permit	Fifty percent of Building Permit Fee (Energy Fee will not be charged if no further review is required.)

(10) Temporary Certificate of Occupancy $163.90

(11) Replacement of Lost Plans/New Red-lines:

(A) Residential/tenant finish $110.00 plus cost of reproduction

(B) Commercial - New 328.00 plus cost of reproduction

(12) Gasoline Tank Installations 65.55

(13) House Moving Permit 55.15

(14) Grading Fees:

(A) Grading Plan Review Fees:

(i) Fifty cubic yards or less ..... No fee

(ii) Fifty-one through one hundred cubic yards ..... $ 17.60

(iii) One hundred one through one thousand cubic yards 26.45

(iv) One thousand one through ten thousand cubic yards 35.20

(v) Ten thousand one through one hundred thousand cubic yards--$35.10 for the first ten thousand cubic yards, plus $17.60 for each additional ten thousand yards or fraction thereof.

(vi) One hundred thousand one through two hundred thousand cubic yards--$194.00 for the first one hundred thousand cubic yards, plus $10.50 for each additional ten thousand cubic yards or fraction thereof.

(vii) Two hundred thousand one cubic yards or more--$299.50 for the first two hundred thousand cubic yards, plus $5.25 for each additional ten thousand cubic yards or fraction thereof.

(viii) Additional plan review required by changes, additions, or revisions to approved plans--$48.00 per hour (minimum charge--one-half hour).

(B) Grading Permit Fees:

(i) Fifty cubic yards or less ..... $ 17.60

Fifty-one through one hundred cubic yards 26.45

(ii) One hundred one through one thousand cubic yards--$26.45 for the first one hundred cubic yards plus $11.90 for each additional one hundred cubic yards or fraction thereof.

(iii) One thousand one through ten thousand cubic yards--$137.40 for the first one thousand cubic yards, plus $10.50 for each additional one thousand cubic yards or fraction thereof.

(iv) Ten thousand one through one hundred thousand cubic yards--$232.55 for the first ten thousand cubic yards, plus $47.50 for each additional ten thousand cubic yards or fraction thereof.

(v) One hundred thousand one cubic yards or more--$660.75 for the first one hundred thousand cubic yards, plus $26.45 for each additional ten thousand yards or fraction thereof.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5177 (1989); 5341 (1990); 5525 (1992); 5599 (1993); 5676 (1994); 5835 (1996); 7439 (2005); 7453 (2006).

4-20-5 Circus, Carnival, And Menagerie License Fees.

An applicant for a circus, carnival, and menagerie license shall pay $325.60 per day of operation.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-6 Public Right-Of-Way Permit And Contractor License Fees.

(a) An applicant for a contractor in the public right-of-way license shall pay $196.00 per year.

(b) An applicant for a permit for construction in the public right-of-way, for improvements which are, or will become, through construction acceptance, owned and operated by the city, shall pay the following fees:

(1) An applicant shall pay permit fees for all other construction work, including excavation, as follows: a base permit fee of $80.00, and:

(A) $77.00 for one linear foot through fifty feet plus $0.92 for each linear foot over fifty linear feet of existing or new sidewalks, trails, curbwalks, and curb and gutter to be constructed and inspected, repaired, or replaced;

(B) $77.00 for one linear foot through one hundred feet plus $0.71 per linear foot over one hundred feet of trench excavated or bored and inspected;

(C) $77.00 for one linear foot through one hundred feet plus $0.71 per linear foot over one hundred feet of pipeline to be installed and inspected;

(D) $115.50 for one square yard through three hundred square yards plus $0.33 per square yard over three hundred square yards of concrete or asphalt to be constructed and inspected for new or overlaid street, parking, or alley sections;

(E) $115.50 for one square foot through three hundred square feet plus $0.33 per square foot over three hundred square feet of concrete or asphalt to be constructed and inspected for the patching (repair) of street, parking, or alley sections;

(F) $19.25 per cubic yard, with a minimum fee of $192.50 of structural concrete, masonry, or stonework to be installed and inspected for retaining walls, box culverts, wing walls, drop structures, and other activities not covered by the fees above; and

(G) The following fees for each appurtenance to be installed and inspected:

Appurtenance	Fee
Maintenance hole	$115.50
Fire hydrant	77.00
Valve box and valve	77.00

Appurtenance	Fee
Fitting (bend, tee, cross, etc.)	$ 38.50
Inlet	115.50
Service line stub	77.00
Kick block	38.50
Meter pit	
$^3/_4$" - 1"	38.50
$1^1/_2$" - 2"	57.75
3" and larger	77.00

(2) An applicant for a permit for placement in the right-of-way of temporary construction equipment or materials, including, but not limited to, construction dumpsters, construction fencing, heavy equipment or cranes, scaffolding, or covered walkways, for a single project on adjacent private property, not in association with the construction of public improvements within the right-of-way, shall pay the base permit fee plus $77.00. Such a permit shall be approved only when the applicant can demonstrate that placement of the temporary construction equipment or materials outside of the right-of-way is not feasible, and shall be effective for a time period not to exceed the more restrictive of: a) the authorized time frame in the permit conditions, or b) thirty days. After the authorized time frame or thirty days have expired, the applicant shall either remove the temporary construction equipment or materials or obtain a new permit to allow the temporary construction equipment or materials to remain in the right-of-way for the duration of the new permit, which shall not exceed thirty days.

(c) An applicant for a permit for construction in the public right-of-way of improvements to utilities which are not owned or operated by the city shall pay the following fees:

(1) An applicant shall pay permit fees for all construction work, including excavation, as follows: a base permit fee of $130.00 plus any of the following that apply:

(A) $77.00 for one foot through fifty feet plus $0.92 for each linear foot of existing or new sidewalks, trails, curbwalks, and curb and gutter over fifty linear feet to be constructed and inspected, repaired, or replaced;

(B) $77.00 for one foot through one hundred feet plus $0.71 per linear foot over one hundred feet of trench excavated or bored and inspected;

(C) $77.00 for one foot through one hundred feet plus $0.71 per linear foot over one hundred feet of pipeline to be installed and inspected;

(D) $115.50 for one square yard through three hundred square yards plus $0.33 per square yard over three hundred square yards of concrete/asphalt to be constructed and inspected for new or overlaid street, parking or alley sections;

(E) $115.50 for one square foot through three hundred square feet plus $0.33 per square foot over three hundred square feet of concrete to be constructed and inspected for patching (repair) of street, parking, or alley sections;

(F) $19.25 per cubic yard, with a minimum fee of $192.50, of structural concrete, masonry, or stonework to be installed and inspected for retaining walls, box culverts, wing walls, drop structures, and other activities not covered by the above fees; and

(G) $38.50 plus $11.15 for each appurtenance over three appurtenances to be installed and inspected.

(2) For the purposes of this subsection, "appurtenance" means any part of a utility system other than pipe, conduit, cable, or wire.

(d) An applicant for a utility permit shall pay the following additional fee:

Permit	Fee
Utility construction	$64.00

(e) The fees herein prescribed shall not be prorated.

(f) The reinspection fee is $89.00 per hour with a one-hour minimum.

(g) The after hours inspection fee is $116.00 per hour, with a two-hour minimum.

(h) The fee for any permit issued after construction has begun in the public right-of-way shall be twice the amount of each fee listed above.

(i) An applicant for a permit to excavate an area in the pavement of any public street or alley with surface paving less than three years old as set forth in section 8-5-13, "Construction And Restoration Standards For Newly Constructed Or Overlayed Streets," B.R.C. 1981, shall pay an impact fee for loss of useful pavement life of $3.65 per square foot of paved surface area removed during excavation.

(j) An applicant for a permit to work in the public right-of-way that includes closure or alteration of a transportation facility for more than twenty-four hours and for which a traffic control plan is required pursuant to section 8-5-10, "Traffic Control," B.R.C. 1981, shall pay a traffic control inspection fee as follows:

(1) $160.00 for a duration of one week or less.

(2) $320.00 per month for a duration greater than one week.

(k) An applicant for any permit that includes disturbance of greater than one acre of land (and thus is required by subsection 11-5-6(c), B.R.C. 1981, to install erosion controls) shall pay an erosion control/storm water management site inspection fee of $320.00 per month until such time as the land has been stabilized in accordance with the *Design And Construction Standards.*

(l) An applicant for a permit to construct a storm water detention or storm water quality facility required by paragraph 11-5-6(b)(4), B.R.C. 1981, shall pay a fee of $480.00 per facility.

(m) An applicant for a permit to connect to the storm water utility system in accordance with section 11-5-4, "Connections To The Storm Water Utility System," B.R.C. 1981, shall pay:

(1) A permit fee of $120.00 per connection.

(2) An inspection fee (first two inspections inclusive) of $160.00. Each subsequent inspection is $89.00.

Ordinance Nos. 4866 (1984); 4946 (1985); 5012 (1986); 5599 (1993); 5676 (1994); 5835 (1996); 5919 (1997); 7439 (2005).

4-20-7 **Dog License Fee.**

(a) An applicant for a dog license shall pay the following fees per year:

(1) For dogs less than one year old or for altered dogs upon presentation of a veterinary certificate showing alteration:

(A) One-year license: $14.00.

(B) Three-year license: $36.00.

(2) For unaltered dogs one year or more old:

(A) One-year license: $28.00.

(B) Three-year license: $78.00.

(3) Additional fee for licenses renewed later than April 1 of the calendar year in which renewal is due: $5.00.

(b) An applicant to transfer a dog license shall pay the fees specified for a new license, subject to the proration provisions of this section.

(c) The holder of a dog license shall pay $2.00 for a replacement dog tag.

(d) The fees prescribed in subsections (a) and (b) of this section shall be prorated on a monthly basis for all licenses except renewals.

Ordinance Nos. 5081 (1987); 5150 (1988); 5425 (1991); 5676 (1994); 5835 (1996); 7349 (2004).

4-20-8 **Electrical Contractor Registration And Electrical Permit Fees.**

(a) For each electrical permit, the following fees shall be paid in addition to the fees established for building permits under section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981:

(1) (A) Residential (one- and two-unit dwellings, condominiums, and townhouses, new construction, extensive remodeling, and additions [based on enclosed living area]):

Less than 500 square feet	$34.60
500 through 999 square feet	48.00
1,000 through 1,499 square feet	65.70
1,500 through 1,999 square feet	85.25
2,000 square feet or more	85.25 plus $5.55 per 100 square feet over 2,000 square feet
(B) Residential Service Change	34.60

(2) All other fees (including, without limitation, commercial construction and apartment buildings) based on the total cost of the electrical installations, including labor and electrical materials and items except as provided in paragraphs (3) and (4) below:

$ 300.00 or less	$40.40
300.01 through $3,000.00	48.00
3,000.01 and up	18.50 per $1,000.00 of total valuation or fraction thereof
(3) Mobile Home Spaces	40.40 per space
(4) Temporary Construction Power Permit	34.35

(b) The reinspection fee is $89.00 per occurrence.

(c) The after hours inspection fee is $116.00 per hour, with a two-hour minimum.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005).

4-20-9 **Food Service And Vending Machine Operator License Fees.**

Repealed.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5024 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7061 (2000).

4-20-10 **Itinerant Merchant License Fee.**

An applicant for an itinerant merchant license shall pay $43.30 per year.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-11 **Mall License And Permit Fees.**

The following fees shall be paid before issuance of a mall building extension, kiosk, mobile vending cart, ambulatory vendor, entertainment vending, personal services vending, animal, or special activity permit and rental of advertising space on informational kiosks:

(a) For building extension permits, an annual fee of $13.75 per square foot of occupied space;

(b) For kiosk permits, an annual fee to be negotiated by contract with the city manager;

(c) For mobile vending carts, $1,710.00 per year, payable in two equal payments by April 1 and August 1, or, for substitution or other permits which begin later in the year and are prorated, within thirty days of permit approval;

(d) For ambulatory vendor permits, $86.00 per month from May through September and $43.00 per month from October through April;

(e) For any permits requiring use of utilities to be provided by the city, up to a maximum of $13.50 per day;

(f) For rental of advertising space on informational kiosks, $1,696.00 per quarter section per year;

(g) For animal permits, $0.00 per permit;

(h) For entertainment vending permits, $11.00 per month;

(i) For personal services vending permits, $86.00 per month from May through September and $43.00 from October through April; and

(j) For a newspaper vending machine permit, $55.00 per year.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5081 (1987); 5150 (1988); 5240 (1989); 5313 (1990); 5425 (1991); 5453 (1992); 5599 (1993); 5676 (1994); 5695 (1995); 5835 (1996); 7002 (1999); 7439 (2005).

4-20-12 **Local Improvement District Fees.**

The fee for a special assessment certificate under chapter 8-1, "Local Improvements," B.R.C. 1981, is $25.00.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5187 (1989); 5240 (1989); 5347 (1990); 5525 (1992); 5676 (1994); 5835 (1996).

4-20-13 **Mechanical Contractor License And Mechanical Permit Fees.**

(a) An applicant for a mechanical contractor license shall pay the following annual fee according to the license requested:

(1) Class A $247.00

(2) Class B 124.00

(3) Class C 124.00

(4) Class D 124.00

(5) Class E 62.00

(b) The fees herein prescribed shall not be prorated.

(c) An applicant for a permit required by this code shall pay the following fees, computed on the dollar value of the completed mechanical installation, including materials and labor:

TABLE OF PERMIT FEES

Dollar Value	Fee
$100.00 or less	$12.85
100.01 through $400.00	15.85
400.01 through 800.00	18.80
800.01 and above	18.80 for the first $800.00 plus $3.55 for each additional $100.00 or fraction thereof

(d) The reinspection fee is $89.00 per occurrence.

(e) The after hours inspection fee is $116.00 per hour, with a two-hour minimum.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 6015 (1998); 7439 (2005).

4-20-14 **Mobile Home Park Permit And Mobile Home Installer License Fee.**

(a) An applicant for a mobile home installer license shall pay $149.00 per year.

(b) An applicant for a mobile home permit for tie-down, blocking, or other structural installation shall pay a fee of $54.85.

Ordinance Nos. 4789 (1983); 4866 (1984); 4879 (1985); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005).

4-20-15 **Plumber, Plumbing Contractor, And Plumbing Permit Fees.**

(a) An applicant for a plumbing contractor license shall pay $271.90 per year.

(b) An applicant for a plumbing permit shall pay the following fees:

SCHEDULE OF FEES

New Construction-Residential

1-dwelling-unit structures ($1^1/_2$ baths or less)	$ 64.95
1-dwelling-unit structures (2 - $3^1/_2$ baths)	88.70
1-dwelling-unit structures (4 or more baths)	112.45
2-dwelling-unit structures	105.45
3- to 15-dwelling-unit structures	39.90 per unit
16- to 30-dwelling-unit structures	36.70 per unit
Structures containing more than 30 dwelling units	32.30 per unit

For purposes of this section, a roughed-in bathroom constitutes a bathroom.

Commercial, Industrial, and Miscellaneous

Remodel or add fixtures to one-dwelling-unit structures	$ 33.30

All other fees shall be computed on the dollar value of the complete plumbing installation including fixtures and all installation costs, as follows:

$100.00 or less	$ 12.85
100.01 - $400.00	15.85
400.01 - 800.00	18.80
800.01 and over	18.80 for the first $800.00 plus $3.55 for each additional $100.00 or fraction thereof

(c) The reinspection fee is $89.00 per occurrence.

(d) The after hours inspection fee is $116.00 per hour with a two-hour minimum.

(e) The fees herein prescribed shall not be prorated.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005).

4-20-16 **Police Alarm Response Fees.**

Repealed.

Ordinance Nos. 4760 (1983); 5676 (1994); 5835 (1996); 7312 (2003).

4-20-17 **Secondhand Dealer And Pawnbroker License Fee.**

(a) An applicant for a secondhand dealer license shall pay $85.10 per year.

(b) An applicant for a pawnbroker license shall pay $1,648.75 per year.

(c) The fees for a new license prescribed in subsections (a) and (b) of this section shall be prorated on a monthly basis.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-18 **Rental License Fee.**

The following fees shall be paid before the city manager may issue a rental license or a renewed rental license:

(a)	Dwelling and Rooming Units:	$ 45.00 per building
(b)	Accessory Dwelling Unit:	45.00 per unit

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5425 (1991); 5525 (1992); 5494 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7023 (1999).

4-20-19 **Taxi Driver License Fee.**

Repealed.

Ordinance Nos. 4866 (1984); 4946 (1985); 5150 (1988); 5240 (1989); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 6062 (1999); 7008 (1999).

4-20-20 **Revocable Right-Of-Way Permit/Lease Application Fee.**

(a) An applicant for a revocable right-of-way permit/lease application shall pay $300.00.

Resubmittal of revocable right-of-way permit/lease application within four weeks of initial application shall pay $150.00.

Permit renewal fee: $150.00.

(b) An applicant for an encroachment investigation shall pay the following fees:

Residential encroachment:	$ 685.00
Commercial encroachment:	1,370.00

(c) An applicant for an encroachment off the Pearl Street Mall shall pay an annual fee of $9.65 per square foot of leased area.

(d) An applicant for a monitoring well encroachment shall pay $500.00 per well per year.

(e) Applications for any other encroachments not covered by this section will be reviewed and assessed a fee on a case-by-case basis.

Ordinance Nos. 4866 (1984); 5150 (1988); 5341 (1990); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-21 **Sign Contractor License Fees And Sign Permit Fees.**

(a) An applicant for a sign contractor license shall pay the following fee:

Type of Contractor	Required Annual Fee
Class A contractor (manufacturer or installer of signs and related structures)	$ 324.45
Class B contractor (creator of painted signs)	159.65

(b) An applicant for a sign permit shall pay the following fee:

Sign Valuation	Required Fee
Signs not requiring plan check or electrical review and inspections	$ 84.00
Signs not requiring plan check but include electrical review and inspection	163.00
Signs requiring plan check but not including electrical review and inspection	231.00
Signs requiring plan check and electrical review and inspection	315.00

Ordinance Nos. 4866 (1984); 4879 (1985); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005).

4-20-22 **Air Carrier Landing Fee.**

The landing fee prescribed by paragraph 11-4-6(a)(1), B.R.C. 1981, is $0.30 per one thousand pounds of maximum gross landing weight, or $1.00, whichever is greater.

Ordinance Nos. 4807 (1984); 4877 (1985); 5012 (1986); 5676 (1994); 5835 (1996).

4-20-23 **Water Permit Fees.**

An applicant for a water permit under section 11-1-14, "Permit To Make Water Main Connections," 11-1-15, "Out-Of-City Water Service," or 11-1-16, "Permit To Sell Water," B.R.C. 1981, or for water meter installation under section 11-1-36, "Location And Installation Of Meters; Maintenance Of Access To Meters," B.R.C. 1981, or for testing or inspection of backflow prevention assemblies under section 11-1-25, "Duty To Maintain Service Lines And Fixtures," B.R.C. 1981, and for inspection for cross-connections under section 11-1-25, "Duty To Maintain Service Lines And Fixtures," B.R.C. 1981, shall pay the following fees:

(a) Permit fee (stub, connection, enlargement, renewal, abandonment):

(1) Water residential	$ 120.00
(2) Water nonresidential	160.00
(3) Water private property repair	40.00
(4) Irrigation residential	120.00
(5) Irrigation nonresidential	160.00
(6) Fire line residential	120.00
(7) Fire line nonresidential	160.00
(8) Main extension	308.00

(b) Inspection fee (stub, connection, enlargement, renewal, abandonment):

(1) Water residential (first two inspections inclusive)	160.00
(2) Water nonresidential (first two inspections inclusive)	200.00
(3) Irrigation residential (first two inspections inclusive)	160.00
(4) Irrigation nonresidential (first two inspections inclusive)	200.00
(5) Fire line residential (first two inspections inclusive)	160.00
(6) Fire line nonresidential (first two inspections inclusive)	200.00
(7) Each inspection after the first two inspections	89.00
(8) Clear water testing fee	230.00

(c) Annual water resale permit 50.00

(d) Water meter installation fee:

(1) $^3/_4$" meter	471.00
(2) 1" meter	629.00
(3) $1^1/_2$" meter (domestic)	1,761.00

(4) $1^1/_2$" meter (sprinkler) $2,067.00

(5) 2" meter (domestic) 2,116.00

(6) 2" meter (sprinkler) 2,291.00

(7) 3" meter 2,667.00

(8) Install $^3/_4$" meter transponder 186.00

(9) Install 1" meter transponder 218.00

(10) Install $1^1/_2$" meter transponder 264.00

(11) Install 2" meter transponder (domestic) 289.00

(12) 3" to 8" meter transponder (domestic) 689.00

(13) 2" to 8" meter transponder (sprinkler) 689.00

(14) Call back for $^3/_4$" and 1" 39.00

(15) Call back for $1^1/_2$" and 2" 69.00

(16) Transponder wire replacement 65.00

Sales tax is due on materials portion of installation.

(e) Tap fee:

(1) $^3/_4$" in DIP or CIP 80.00

(2) $^3/_4$" in AC or PVC 147.00

(3) 1" in DIP or CIP 84.00

(4) 1" in AC or PVC 147.00

(5) $1^1/_2$" 264.00

(6) 2" 340.00

(7) 4" 354.00

(8) 6" 413.00

(9) 8" 498.00

(10) 12" 660.00

(11) Call back for installing a water tap 101.00

Sales tax is due on materials portion of installation.

(f) The emergency water conservation special permit fee is $75.00.

(g) Tests and inspections for backflow prevention assemblies:

(1)	To test or inspect first backflow prevention assembly	$ 113.00
(2)	Each additional assembly at same location	75.00
(3)	For cross-connection inspection first hour	113.00
(4)	For each additional hour at same location	75.00

Ordinance Nos. 4866 (1984); 4946 (1985); 5012 (1986); 5068 (1987); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 5875 (1997); 7439 (2005).

4-20-24 **Charges For Terminating And Resuming Water Service.**

A person shall pay the following charges for terminating and resuming water services:

(a)	To terminate water service	$ 23.00
(b)	To deliver water service termination notice	10.00
(c)	To remove water meter	43.00
(d)	To reset water meter	38.00
(e)	To resume water service	22.00
(f)	To resume water service after 3:00 p.m. weekends or holidays	45.00
(g)	Special meter read	28.00
(h)	To test meter and meter tests accurate	50.00

Ordinance Nos. 4946 (1985); 5068 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-25 **Monthly Water User Charges.**

(a) Treated water monthly service charges:

Meter Size	Inside City	Outside City
3/4"	$ 8.22	$ 12.32
1"	14.06	21.09
1 1/4"	21.56	32.33
1 1/2"	30.70	46.05
2"	54.04	81.05
3"	120.63	180.94
4"	213.85	320.78
6"	480.34	720.51
8"	853.39	1,280.09

(b) Treated water quantity charges:

	Block Rates (per thousand gallons of water)	Additional Surcharge per Drought Stage (added to Block Rates)			
	Inside and Outside City	Drought Alert Stage I	Drought Alert Stage II	Drought Alert Stage III	Drought Alert Stage IV
Block 1:	$1.85	$0.00	$0.00	$0.00	$0.00
Block 2:	3.60	0.00	1.00	2.00	4.00
Block 3:	5.95	0.00	2.00	4.00	8.00

The surcharge corresponding to the appropriate Drought Alert Stage shall be added to the block rate whenever the city manager determines that a particular Drought Alert Stage exists.

(c) "Block 1" means all consumption greater than zero but less than or equal to an account's AWC. "Block 2" means all consumption greater than an account's AWC but less than or equal to three hundred fifty percent of an account's AWC. "Block 3" means all consumption greater than three hundred fifty percent of an account's AWC.

(d) "Average winter consumption" (AWC) means the average number of thousand gallons of water use per month reflected on an account's water bill for the most recent consecutive months of December, January, February, and March. For accounts registering no water use in one or more monthly billing periods, an average shall be established based on those months in which there was usage, historical records, or other available relevant data. Under no circumstances shall the AWC for detached residential accounts or attached single unit metered residential accounts exceed eight thousand gallons. The average for billing purposes will be redetermined in April of each year. Notwithstanding the foregoing, if a residential account's AWC is lower than the average AWC of the $^3/_4$" detached residential customer classification, the average AWC of all $^3/_4$" detached residential customers will be used to determine water quantity charges. For irrigation and pool accounts, all consumption will be billed at the Block 2 rate except for that amount in excess of three hundred fifty percent of the average AWC for all non-irrigation accounts having the same meter size as the irrigation or pool account, which will be billed at the Block 3 rate.

(e) The Drought Alert Stages set forth in subsection (b) above are timing mechanisms for specific drought responses. In the determination of the appropriate Drought Alert Stage, the manager shall make a finding that in order to ensure an adequate amount of water supply for that particular water year, plus a reasonable amount of water reserved for future years, it is necessary to declare the appropriate Drought Alert Stage. These drought stages shall be defined by rules and guidelines issued by the city manager and shall include, at a minimum, the following factors:

(1) Boulder's projected mountain storage during the ensuing May through June period based on snowpack measurements and the projected resulting streamflows during the spring runoff period;

(2) Boulder's portion of water projected to be available in Colorado Big Thompson Storage Reservoirs during the ensuing May through June period;

(3) Boulder's unrestrained water demand; and

(4) Other appropriate data and operating experience.

(f) Bulk water and metered hydrant rate: $7.00 per thousand gallons of water used. (Service charges do not apply.)

(g) Irrigation water leased on an annual basis: Colorado Big Thompson $26.00 per acre foot; all other based on cost of assessment plus ten percent administrative fee or $26.00 per acre foot, whichever is greater.

Ordinance Nos. 5068 (1987); 5106 (1988); 5158 (1988); 5240 (1989); 5377 (1991); 5426 (1991); 5526 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7270 (2003); 7359 (2004); 7439 (2005).

4-20-26 **Water Plant Investment Fees.**

(a) Water utility customers shall pay the following plant investment fees:

Customer Description	PIF Amount
(1) Detached residential:	
Small size residence	$ 7,625.00
Mobile home	7,625.00
Average size residence	9,530.00
Large size residence (if 24 gpm or less)	11,435.00
Large size residence (if more than 24 gpm)	Base 9,530.00 (+ $530.00 per each gpm of the customer's instantaneous peak water demand in excess of 18 gpm)
(2) Attached residential:	
Rooming house unit	$ 2,860.00
Small size unit	5,720.00
Average size unit	7,625.00
Large size unit (if 18 gpm or less)	9,530.00
Large size unit (if more than 18 gpm)	Base 7,625.00 (+ $530.00 per each gpm of the customer's instantaneous peak water demand in excess of 15 gpm)
(3) Non-residential:	
Base amount	$ 9,530.00
Additional fee for each gpm over 18 gpm, provided that the water use does not exceed the water use demand described in subsection 11-1-52(l), B.R.C. 1981.	530.00/gpm
(4) Irrigation service:	
Detached residential and attached residential	0.00
Nonresidential	635.00/gpm through 180 gpm

(5) The PIF for a customer whose total water demand exceeds the water use demand described in subsection 11-1-52(l), B.R.C. 1981, is as follows:

(A) Raw Water

(AYWA/34,480 acre feet) x $420,000,000.00 plus

(B) Water Delivery Infrastructure

(PDWD/50,000,000 gallons per day) x $310,000,000.00 = Total PIF

Where: AYWA = customer's average year water demand in acre feet

34,480 acre feet = city's usable water rights capacity

$420,000,000.00 = value of city's raw water

PDWD = customer's peak day water demand in million gallons per day

50,000,000 gallons per day = city's current treated water delivery capacity

$310,000,000.00 = value of city's water delivery infrastructure

Ordinance Nos. 5012 (1986); 5075 (1987); 5526 (1992); 5599 (1993); 5676 (1994); 5769 (1996); 5835 (1996); 6054 (1999); 7439 (2005).

4-20-27 **Wastewater Permit Fees.**

An applicant for a wastewater tap or permit under section 11-2-8, "When Connections With Sanitary Sewer Mains Required," or 11-2-9, "Permit To Make Sanitary Sewer Connection," B.R.C. 1981, shall pay the following fees:

(a) Permit fee (stub, connection, enlargement, renewal, abandonment):

(1) Wastewater residential	$120.00
(2) Wastewater nonresidential	160.00
(3) Wastewater private property repair	40.00
(4) Sewer main extension permit	308.00

(b) Inspection fee (stub, connection, enlargement, abandonment):

(1) Wastewater residential (first two inspections inclusive)	160.00
(2) Wastewater nonresidential (first two inspections inclusive)	200.00
(3) Each inspection after the first two inspections	89.00

(c) Sewer tap fee:

(1) 4" PVC and VCP	$106.00
(2) 4" RCP	161.00
(3) 6" PVC and VCP	130.00
(4) 6" RCP	182.00
(5) Manhole tap	479.00
(6) Call back for installing a sewer tap	66.00

Sales tax is due on materials portion of installation.

Ordinance Nos. 4946 (1985); 5012 (1986); 5068 (1987); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-28 **Monthly Wastewater User Charges.**

(a) Monthly service charge:

Meter Size	Inside City	Outside City
$^3/_4$"	$ 0.63	$ 0.94
1"	1.12	1.67
$1^1/_4$"	1.74	2.61
$1^1/_2$"	2.51	3.76
2"	4.46	6.69
3"	10.03	15.04
4"	17.82	26.73
6"	40.10	60.16
8"	71.30	106.95

(b) Quantity charge:

(1) Average strength sewage (up to and including two hundred twenty mg/l TSS, twenty-five mg/l NH_3-N, or two hundred thirty mg/l BOD):

	Inside City	Outside City
per one thousand gallons of billable usage	$ 3.30	$ 4.95

(2) Consumers with sewage strengths exceeding two hundred twenty mg/l TSS, or twenty-five mg/l NH_3-N, or two hundred thirty mg/l BOD, shall pay the quantity charge for average strength sewage and, additionally, $435.00 per one thousand pounds of sewage which exceeds such sewage strengths for TSS, $560.00 per one thousand pounds of sewage which exceeds such sewage strengths for NH_3-N, and $415.00 per one thousand pounds of sewage which exceeds such sewage strengths for BOD.

(3) The quantity charge for all residential accounts with average strength sewage will be based on each property's "AWC," as defined in section 4-20-25, "Monthly Water User Charges," B.R.C. 1981, from the last AWC computation period or the number of thousand

gallons of water actually consumed during the month, whichever is lower, except during the AWC computation period, during which charges will be based on actual water consumption. For accounts registering no water use in one or more monthly billing periods, an average will be established based on those months in which there was usage, historical records, or other available relevant data. The average for billing purposes will be redetermined in April of each year. The quantity charge for all non-residential accounts with average strength sewage will be based on the actual number of thousand gallons of water consumed during each month. Notwithstanding the foregoing, the quantity charge for all commercial and industrial accounts with a separate irrigation meter will be based on the actual number of thousand gallons of water consumed as determined at the non-irrigation meter.

(4) For any new user connecting to the utility, or for a user making a change in the use of the premises or making a substantial expansion of the premises, the city manager will make an estimate of water consumed during an average winter month based upon a count of plumbing fixtures, consumption of similar users, or such other information that under all the circumstances is relevant in making such a determination. Such estimate when made will be used in charging for sewer service for a detached residence until the first month of the AWC computation period, at which time actual water use will be used to determine sewer quantity charges.

(5) The city manager may require any user of the wastewater utility to meter water used from wells or sources other than the water utility of the city. The manager may use any reasonable method to establish the wastewater service charges to such user.

Ordinance Nos. 4874 (1985); 4969 (1986); 5012 (1986); 5068 (1987); 5158 (1988); 5243 (1989); 5426 (1991); 5526 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-29 **Wastewater Plant Investment Fees.**

(a) Sanitary sewer utility customers shall pay the following plant investment fees:

Customer Description	PIF Amount
(1) Detached residential:	
Small size residence	$1,455.00
Mobile home	1,455.00
Average size residence	1,820.00
Large size residence (if 24 gpm or less)	2,185.00
Large size residence (if more than 24 gpm)	Base 1,820.00 (+ $100.00 per each gpm of the customer's instantaneous peak water demand in excess of 18 gpm)
(2) Attached residential:	
Rooming house unit	$ 545.00
Small size unit	1,090.00
Average size unit	1,455.00
Large size unit (if 18 gpm or less)	1,820.00
Large size unit (if more than 18 gpm)	Base 1,455.00 (+ $100.00 per each gpm of the customer's instantaneous peak water demand in excess of 15 gpm)

(3) Nonresidential:

Base amount	$1,820.00
Additional fee for each gpm over 18 gpm, provided that the wastewater discharge does not exceed the wastewater discharge described in subsection 11-2-33(k), B.R.C. 1981	100.00/gpm

(4) The PIF for a customer who exceeds the wastewater discharge described in subsection 11-2-33(k), B.R.C. 1981, is calculated as follows:

[(PDH/25,000,000 gallons per day) x $84,000,000.00] plus

[(ABOD/23,360 lbs. per day) x $15,400,000.00] plus

[(ATSS/22,060 lbs. per day) x $14,400,000.00] plus

[(ANH_3/830 lbs. per day) x $2,200,000.00] = Total PIF

Where:
PDH = customer's peak day hydraulic loading in million gallons per day
25,000,000 gallons per day = city's current hydraulic and collection capacity
$84,000,000.00 = value of city's hydraulic and collection capacity
ABOD = thirty-day average BOD_5 loading removal in lbs. per day
23,360 lbs. per day = city's current BOD_5 removal capacity
$15,400,000.00 = value of city's BOD_5 removal capacity
ATSS = customer's thirty-day average total suspended solids (TSS) loading requiring removal in lbs. per day
22,060 lbs. per day = city's current TSS removal capacity
$14,400,000.00 = value of city's TSS removal capacity
ANH_3 = customer's thirty-day average ammonia nitrogen as N (NH_3-N) loading requiring removal in lbs. per day
830 lbs. per day = city's current NH_3-N removal capacity
$2,200,000.00 = value of city's NH_3-N removal capacity

Ordinance Nos. 5012 (1986); 5075 (1987); 5526 (1992); 5676 (1994); 5769 (1996); 5835 (1996); 6054 (1999); 7439 (2005).

4-20-30 **Firearms Permit Application Fee.**

Repealed.

Ordinance Nos. 4946 (1985); 5676 (1994); 5835 (1996); 7319 (2003).

4-20-31 **Wastewater Classification Survey Filing Fee And Industrial And Groundwater Discharge Permit Fees And Charges.**

(a) Applicants for an industrial discharge permit shall pay the following permit fees:

(1) Flow:

Gallons Per Day	Annual Fee
0 - 10,000	$3,255.00
10,001 - 25,000	4,590.00
Over 25,000	5,785.00

(2) Industries that are issued more than one permit will be charged an annual fee based on the total gallons per day from all their permit discharges.

(3) Fee to review a wastewater classification survey is $100.00.

(b) An applicant for a groundwater discharge permit shall pay the following permit fees:

(1) The fee to review a groundwater discharge permit application shall be $100.00.

(2) For an applicant that will have a continuous, ongoing discharge, the annual fee shall be $450.00 per year. The first year permit fee shall be payable upon the issuance of the permit and shall be paid every year thereafter on the anniversary of such issuance for the duration of the permit. Annual fees are not applied to construction de-watering discharges occurring over a period of no more than one hundred eighty days.

(c) The fee for dumping domestic septic wastes at the septage receiving station at the wastewater treatment plant in accordance with section 11-3-9, "Septage Tank Waste," B.R.C. 1981, shall be $70.00 per thousand gallons.

Ordinance Nos. 4946 (1985); 5012 (1986); 5158 (1988); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-32 **Occupation Tax.**

Repealed.

Ordinance Nos. 4789 (1983); 4946 (1985); 5012 (1986); 5150 (1988); 5187 (1989); 5425 (1991).

4-20-33 **Solar Access Permit Fees.**

(a) The application fee for a solar access permit pursuant to subsection 9-9-17(h), B.R.C. 1981, shall be $550.00.

(b) The application fee for an exception pursuant to subsection 9-9-17(f), B.R.C. 1981, shall be $550.00.

(c) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

Ordinance Nos. 5603 (1993); 5676 (1994); 5835 (1996); 7439 (2005); 7476 (2006).

4-20-34 **Subdivision Fees.**

Repealed.

Ordinance Nos. 4803 (1984); 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5425 (1991); 5603 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7087 (2000).

4-20-35 **Parking Meter Hood Permit Fees And Deposit.**

(a) An applicant for a parking meter hood permit shall pay a fee calculated as follows for a daily, weekly, monthly, or annual permit:

(1) Daily: The maximum hourly street meter rate anywhere in the city is multiplied by the maximum number of hours any street meter is in operation.

(2) Weekly: The daily rate times the maximum number of days any street meter is in operation.

(3) Monthly: The weekly rate times four.

(4) Annual: The weekly rate times fifty-two.

(b) An applicant for a parking meter hood permit shall pay a deposit of $50.00 per hood or sign, refundable if the hood is returned in substantially the same condition of its issue within five business days after expiration of the permit.

Ordinance Nos. 5308 (1990); 5676 (1994); 5760 (1995); 5835 (1996).

4-20-36 **Animal-Drawn Vehicle Permit Fees.**

An applicant for an animal-drawn vehicle permit shall pay $51.50 per commercial-use vehicle.

Ordinance Nos. 5676 (1994); 5835 (1996).

4-20-37 **Historic Preservation Application Fees.**

(a) An applicant for designation of an individual landmark shall pay $25.00.

(b) An applicant for a designation of a historic district shall pay $75.00.

(c) An applicant for a demolition permit for applications for demolition, moving, and removal of non-landmarked buildings that are over fifty years old shall pay:

(1) Initial staff review of application: $50.00.

(2) Initial committee review of application: $275.00.

(3) If a public hearing is required: $1,466.00.

Ordinance Nos. 5676 (1994); 5835 (1996); 7213 (2002); 7439 (2005); 7475 (2006).

4-20-38 **Tax License Fees.**

(a) An applicant for a sales and use tax license under section 3-2-11, "Sales And Use Tax License," B.R.C. 1981, shall pay a fee of $25.00.

(b) An applicant for a public accommodations tax license under section 3-3-7, "Licensing And Reporting Procedure," B.R.C. 1981, shall pay a fee of $25.00.

(c) An applicant for an admissions tax license under section 3-4-6, "Licensing And Reporting Procedure," B.R.C. 1981, shall pay a fee of $25.00.

Ordinance Nos. 4789 (1983); 4866 (1984); 5525 (1992); 5599 (1993); 5676 (1994); 5835 (1996).

4-20-39 **Animal Impoundment Fee.**

The animal impoundment fee prescribed by subsection 6-1-25(b), B.R.C. 1981, is $40.00 per animal with a license and $60.00 per animal without a license. There is also a $12.00 per day fee for feeding and keeping the animal by the city.

Ordinance Nos. 4789 (1983); 4935 (1985); 5012 (1986); 5240 (1989); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996).

4-20-40 **Horse Concession Park Use Fee.**

The fee for the horse concession park use permit prescribed by subsection 8-3-7(b), B.R.C. 1981, is $100.00 per horse per year.

Ordinance Nos. 4789 (1983); 5676 (1994); 5835 (1996).

4-20-41 **Park And Recreation Admission Fees.**

(a) The fees for admission to the East Boulder Community Center and the North and the South Boulder Recreation Centers are:

(1) Daily:

Adult	$ 6.00
Teen	3.50
Child	3.25
Senior	4.00

(2) Annual Pass:

	Resident	Nonresident
Adult	$455.00	$569.00
Teen	193.00	242.00
Child	177.00	222.00
Senior	263.00	329.00

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(3) Ten Admission Pass:

	Resident	Nonresident
Adult	$54.00	$56.00
Teen	32.00	33.00
Child	29.00	30.00
Senior	36.00	37.00

(4) Twenty Admission Pass:

	Resident	Nonresident
Adult	$102.00	$107.00
Teen	60.00	62.00
Child	55.00	58.00
Senior	68.00	71.00

(5) Forty Admission Pass:

	Resident	Nonresident
Adult	$180.00	$196.00
Teen	104.00	114.00
Child	98.00	106.00
Senior	120.00	130.00

(6) Climbing Wall:

	Resident/Nonresident
Private lessons	$25.00/one person per hour 35.00/two persons per hour

	Resident	Nonresident
Groups (minimum of eight and maximum of ten participants)	$ 75.00 for one and one-half hours 100.00 for two hours	$ 94.00 for one and one-half hours 125.00 for two hours

(7) Childcare:

	Resident/Nonresident
Drop-in	$ 6.50 for 1.5 hours of service per child 3.50 for each additional child for 1.5 hours of service

(8) Childcare Punch Cards:

	Resident/Nonresident
Ten visits	$58.50 for first child, 35.00 for each additional child
Twenty visits	110.50 for first child, 70.00 for each additional child
Forty visits	195.00 for first child, 140.00 for each additional child

(b) The fees for admission to the Spruce and Scott Carpenter pools are:

(1) Outdoor Pool Daily:

	Resident/Nonresident
Adult	$5.50
Teen	3.00
Child	2.75
Senior	3.50

(2) Outdoor Pool Season Pass:

	Resident	Nonresident
Adult	$133.00	$166.25
Teen	46.00	57.50
Child	41.00	51.25
Senior	69.00	86.25
Family	173.00 for 4 + 25.00 each additional family member	216.25 for 4 + 30.00 each additional family member

(c) The fees for admission to Boulder Reservoir are:

(1) Gate Admission only:

Adult	$6.00
Child	2.50
Teen	4.00
Senior	4.50

(2) Season Gate:

	Resident	Nonresident
Family (4 passes)	$125.00	$175.00
Adult	65.00	80.00
Child	27.50	35.00
Teen	36.00	45.00
Senior	37.50	50.00

(3) Boat (includes gate admission for two adults):

Daily (Monday through Friday, no holidays):	Resident	Nonresident
Sailboard and sailboat	$27.50	$ 45.00
Jet ski and powerboat	50.00	100.00
Boat (under 49 HP)	30.00	50.00

Daily (weekends and holidays):	Resident	Nonresident
Sailboat and sailboard	$35.00	$50.00

Season Boat:	Resident	Nonresident
Wet dock	$500.00	$700.00
Dry trailer	375.00	525.00
Shore mooring	225.00	325.00
Winter storage only	350.00	350.00
Overnight storage	25.00 per night	25.00 per night

	Resident	Nonresident
Seven day motor (49 or more HP)	$450.00	$600.00
Five day motor (49 or more HP)	175.00	250.00
Seven day motor (under 49 HP)	125.00	175.00
Five day sailboat	90.00	135.00
Seven day sailboat	150.00	250.00
Five day sailboard	75.00	135.00
Seven day sailboard	150.00	250.00
Seven day jet ski	450.00	600.00
Five day jet ski	175.00	250.00

(d) The fees for Flatirons Municipal Golf Course are:

(1) Per Round (Monday through Thursday):

Adult	Resident/Nonresident
9 holes	$17.50
18 holes	26.00
Child/Teen	
9 holes	11.00
18 holes	18.00

Student	Resident/Nonresident
9 holes	$15.50
18 holes	23.00
Senior	
9 holes	14.50
18 holes	22.00

(2) Per Round (Friday through Sunday and Holidays):

Adult	Resident/Nonresident
9 holes	$19.50
18 holes	30.00
Child/Teen	
9 holes	13.00
18 holes	20.00
Student	
9 holes	17.50
18 holes	27.00
Senior	
9 holes	16.50
18 holes	26.00

Regular fees apply Friday through Sunday and Holidays November 1 through February 29.

(3) Season Pass:	Monday–Friday	Unrestricted
Adult	$610.00	$920.00
Junior	320.00	500.00
Senior	500.00	750.00*

*Annual pass holders pay $3.00 for nine holes and $5.00 for eighteen holes when passes are valid. All passes expire at the end of the calendar year in which they were purchased.

(4) 20/20 Value Pass:	Resident/Nonresident
Adult	$ 625.00
Student	625.00
Child/Teen	425.00
Junior	425.00
Family	1,200.00

The 20/20 Value Pass gives the holder a twenty percent discount on daily player fees, cart rental, range balls, and allows purchase of all merchandise at twenty percent below original marked price.

The pass expires when the accumulated discounted value of the services and goods purchased with the pass equals the purchase price (see prices above), or one year from the date of purchase, whichever is first. If the value of the pass is not fully expended within that year, the remaining balance may be used for one additional year at regular rates.

(5) Junior and Student Punchcards:

	Student		Juniors	
9 Holes Monday – Thursday	10 rounds	$139.50	10 rounds	$ 99.00
18 Holes Monday – Thursday	10 rounds	207.00	10 rounds	162.00
9 Holes Friday – Sunday	10 rounds	157.50	10 rounds	117.00
18 Holes Friday – Sunday	10 rounds	243.00	10 rounds	180.00

(e) The fees for parks and recreation special events are: The city manager may set different entry fees for special events.

(f) For this section, a child is age four through twelve, a teen is age thirteen through eighteen, a student is a person age nineteen through twenty-five who has a valid student identification card from a recognized institution of higher education, an adult is age nineteen through fifty-nine, and a senior is age sixty and older.

(g) The city manager may set different fees for parks and recreation special promotional pricing.

(h) The city manager may reduce the fees from time to time as market conditions warrant, and may also raise them again, so long as the fee never exceeds that specified in this chapter. The manager shall give notice of fee reductions by filing a schedule of fees with the city clerk, and displaying the reduced fees on the city's website. Reductions shall be in effect as of the effective date specified in the schedule. The manager shall give notice of fee increases in the same manner, but such increases shall not take effect until at least two weeks have passed since notice was given.

(i) If the city manager decides to allow any category of annual pass to be paid for in monthly installments of one-twelfth of the total fee, the manager shall charge holders who elect to pay in this way an additional fee totaling $45.00 per year ($3.75 per installment) to cover the increased transactional costs to the city. If one person pays for several annual pass installments (whether for one pass or for different passes within the same account) in a single transaction, only one transaction fee shall be charged.

(j) For recreation center annual passes, the first adult member of the household pays full price; all other family members pay half price when passes are purchased at the same time.

Ordinance Nos. 4789 (1983); 4869 (1985); 4946 (1985); 5012 (1986); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-42 **Park Land Acquisition And Development Fees.**

Repealed.

Ordinance Nos. 4789 (1983); 4802 (1983); 4803 (1984); 4866 (1984); 4946 (1985); 5012 (1986); 5044 (1987); 5150 (1988); 5216 (1989); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 6039 (1998).

4-20-43 **Development Application Fees.**

(a) Subdivision fees:

(1) An applicant for subdivision approval shall pay the following fees:

(A) Preliminary plat

Initial application	$4,560.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	2,280.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(B) Subdivision agreement and/or final plat

Standard

Initial application	2,560.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Complex

Initial application	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(2) An applicant for construction of public improvements required as part of any approved subdivision shall pay the fees set forth in section 4-20-6, "Public Right-Of-Way Permit And Contractor License Fees," B.R.C. 1981.

(3) An applicant for a lot line adjustment shall pay the following fees:

Initial application	$ 770.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(4) An applicant for a lot line elimination shall pay the following fees:

Initial application	460.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(5) An applicant for a minor subdivision shall pay the following fees:

Initial application	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(6) An applicant for a miscellaneous plan review (additional plan review required by changes, additions, or revisions to approved plans) shall pay $128.00 per hour of staff time required, with a minimum charge of one hour.

(7) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

(b) Land use regulation fees:

(1) The fee for a blue line amendment will be assessed at the time of the application.

(2) An applicant for zoning of land to be annexed shall pay the following fees:

Feasibility study	
Annexation feasibility study (Will apply as credit to initial annexation application fee if submitted within the same calendar year.)	$ 2,050.00
Standard	
Initial application	16,900.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	8,450.00
Residential, no potential for additional dwelling units	
Initial application	8,450.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	4,225.00

(3) An applicant for approval of a use review shall pay the following fees:

Standard	
Initial application	2,050.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Nonconforming uses and nonstandard lots and buildings	
Initial application	1,715.00

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	$ 858.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(4) An applicant for the concept plan review and comment process shall pay $6,740.00. Applicant shall also pay the planning board/city council administrative fee.

(5) An applicant for approval of a site review or an amendment to a site review shall pay the following fees:

Standard

Initial application	$ 8,660.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	4,330.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Simple site review

Initial application	4,560.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	2,280.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Minor site review

Initial application	2,050.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Complex site review

Initial application	26,215.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	13,108.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(6) An applicant for rezoning shall pay the following fees:

Initial application	$13,685.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	6,843.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(7) An applicant for an outside city utility permit shall pay the following fees:

Initial application	4,560.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	2,280.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(8) An applicant for a temporary water utility connection permit shall pay $128.00 per hour of staff time required, with a minimum charge of one hour.

(9) An applicant for a planning board review shall pay an administrative fee of $1,540.00 plus a $128.00 hourly rate for staff time required.

(10) An applicant for a conditional use review shall pay $1,065.00, unless a different fee is specified herein.

(11) An applicant for an accessory dwelling unit permit shall pay $410.00.

(12) An applicant for the transfer of an accessory dwelling unit shall pay $164.00.

(13) An applicant for an owner's accessory unit shall pay $410.00.

(14) An applicant for selling from a moveable structure, vacant lot, or a parking lot (includes Christmas tree sales) shall pay the following fees:

Initial application	$246.00
Application renewal	82.00

(15) An applicant for a cooperative housing unit conditional use review shall pay $575.00.

(16) An applicant for an antenna for wireless telecommunication service shall pay $2,380.00.

(17) An applicant for a group home facility shall pay $492.00.

(18) An applicant for an administrative parking reduction shall pay $590.00.

(19) An applicant for an administrative parking deferral shall pay $328.00.

(20) An applicant for an administrative solar exception shall pay $246.00.

(21) An applicant for a review for development under section 9-7-9, "Two Detached Dwellings On A Single Lot," B.R.C. 1981, shall pay $574.00.

(22) An applicant for vacation of a public street or alley shall pay $8,995.00. An applicant for vacation of a public easement shall pay $492.00.

(23) An applicant for an administrative setback variance shall pay $246.00. An applicant for a variance from a front yard setback for parking shall pay $513.00.

(24) An applicant for a minor modification to an approved discretionary review plan shall pay the following fees:

Standard	$738.00
Simple	164.00

(25) An applicant for a conditional height review shall pay $246.00.

(26) An applicant for temporary outdoor entertainment shall pay the following fees:

Initial application	$246.00
Application renewal	82.00

(27) An applicant for a miscellaneous plan review (additional plan review required by changes, additions, or revisions to approved plans) or other services associated with development review shall pay $128.00 per hour of staff time required, with a minimum charge of one hour.

(28) <u>New development related fees</u>:

An applicant requesting a zoning verification letter shall pay $133.00.

An applicant for a development extension/staff approval review shall pay $133.00.

An applicant for a development extension/planning board approval shall pay an administrative fee of $1,540.00 plus $128.00/hour for staff time required.

An applicant requesting to rescind a development agreement shall pay $533.00.

An applicant for an administrative relief/transportation/parking shall pay $267.00.

An applicant for an administrative relief/nonconforming use substitution shall pay $267.00.

An applicant for an administrative relief/landscaping review shall pay $267.00.

An applicant requesting initial property addressing shall pay $31.00 plus $16.00/unit.

An applicant requesting a change of address shall pay $267.00.

An applicant requesting a street name change/city council approval shall pay an administrative fee of $1,540.00 plus $128.00/hour for staff time required.

Boulder Valley Comprehensive Plan fees:

An applicant for a land use designation change outside the annual update process shall pay $615.00.

(29) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

(c) Technical document review fees: The documents and fees listed in this section may be required as part of a technical document review, but may also be requested for any review process which would warrant a review type listed below:

(1) An applicant for a utility report plan and profile review shall pay the following fees:

Simple	$ 513.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Standard	2,050.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Complex	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(2) An applicant for a Colorado Department of Transportation Highway Access Permit shall pay $615.00.

(3) An applicant for a transportation plan and report shall pay the following fees:

Simple	$ 513.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Standard	2,050.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Complex	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(4) An applicant for a storm water quality and erosion control plan and report shall pay the following fees:

Simple	$ 513.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Standard	2,050.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Complex	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(5) An applicant for a right-of-way/easement dedication shall pay $205.00.

These fees are not applicable for dedications which occur on a plat as part of a subdivision process.

Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	$ 128.00/hour

(6) An applicant for a final plan review shall pay the following fees:

Final architecture, landscaping and site plan combined - this only applies to site review simple category	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Final architecture plan	820.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Final landscaping plan	820.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Final site plan	820.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(7) An applicant for a miscellaneous plan review (additional plan review required by changes, additions or revisions to approved plans) shall pay $128.00 per hour or staff time required with a minimum charge of one hour.

An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

Ordinance Nos. 4803 (1984); 4927 (1985); 5341 (1990); 5562 (1993); 5603 (1993); 5676 (1994); 5760 (1995); 5806 (1996); 5835 (1996); 5894 (1997); 6093 (1999); 6099 (1999); 7211 (2002); 7439 (2005); 7476 (2006); 7484 (2006).

4-20-44 **Floodplain Development Permits And Flood Control Variance Fees.**

(a) If the floodplain development permit is for a development not located within the high hazard zone or the conveyance zone:

(1) An applicant for a floodplain development permit for the construction of a fence, or for flatwork, shall pay $31.00.

(2) An applicant for a floodplain development permit for construction of a shed, garage, deck, or for interior "rehabilitation" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure shall pay $77.00.

(3) An applicant for a floodplain development permit for exterior "rehabilitation" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure, or for improvements to an existing structure not meeting the thresholds for "substantial damage," or for a "substantial improvement" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, shall pay $513.00. For review of plan revisions, an applicant shall pay $103.00.

(4) An applicant for a floodplain development permit for work on an existing residential structure exceeding the threshold for "substantial damage," or for a "substantial improvement" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, or any commercial or nonresidential addition, or any new single family detached residential, new commercial or mixed use, or attached residential structure elevated to flood protection elevation shall pay $1,025.00. For review of plan revisions, an applicant shall pay $205.00.

(5) An applicant for a floodplain development permit for an addition to an existing structure or construction of a new structure with "floodproofing" as that term is defined in section 9-16-1, "General Definitions," B.R.C. 1981, shall pay $4,920.00. For review of plan revisions, an applicant shall pay $513.00.

(b) If the floodplain development permit is for a development located within the high hazard zone or the conveyance zone and a floodplain analysis is not required, the applicant shall pay $2,460.00. For review of plan revisions, an applicant shall pay $256.00.

(c) If the development is located within the high hazard zone or conveyance zone and the city manager, pursuant to paragraph 9-3-6(b)(3), B.R.C. 1981, requires the applicant to furnish a floodplain analysis, the applicant shall pay $4,920.00. For review of plan revisions, an applicant shall pay $513.00.

(d) An applicant for a variance from the floodplain regulation provisions of section 9-3-7, "Variances," B.R.C. 1981, shall pay $1,540.00.

(e) An applicant for a map revision that is located within the floodway or conveyance zone and includes a floodplain analysis shall pay $4,920.00. For review of plan revisions, an applicant shall pay $513.00.

(f) An applicant for a map revision that involves fill and is not located within the floodway or conveyance zone shall pay $1,540.00. For review of plan revisions, an applicant shall pay $205.00.

(g) An applicant for a floodplain information request shall pay $26.00 for each address.

Ordinance Nos. 4748 (1983); 4946 (1985); 5012 (1986); 5199 (1989); 5425 (1991); 5525 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 6034 (1998); 7349 (2004); 7439 (2005); 7476 (2006).

4-20-45 **Storm Water And Flood Management Fees.**

(a) Owners of detached residences and attached single-unit metered residences in the city shall pay the following monthly storm water and flood management fees:

Size Of Parcel	
(1) Up to 15,000 sq. ft.	$6.55
(2) 15,000-30,000 sq. ft.	8.20
(3) 30,001 sq. ft. and over	9.85

(b) The owners of all other parcels of land in the city on which any improvement has been constructed shall pay a storm water and flood management fee based on the monthly rate in paragraph (a)(1) of this section (for up to a fifteen thousand square foot parcel) multiplied by the ratio of the runoff coefficient of the parcel to a coefficient of 0.43 and by the ratio of the area of the parcel in square feet to a seven thousand square foot parcel. If the calculation results in a fee less than the monthly rate in paragraph (a)(1) of this section, then the fee specified in paragraph (a)(1) of this section will be assessed.

Ordinance Nos. 4749 (1983); 4946 (1985); 5190 (1989); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7278 (2003); 7439 (2005).

4-20-46 **Storm Water And Flood Management Utility Plant Investment Fee.**

Owners of all parcels of land in the city submitting building permit applications shall pay a storm water and flood management plant investment fee based on a base rate of $1,785.00. The base rate shall be multiplied by the ratio of the area of the parcel in square feet to a seven thousand square foot parcel and by the ratio of the runoff coefficient of the parcel less 0.2 to a runoff coefficient of 0.2.

Ordinance Nos. 5190 (1989); 5526 (1992); 5676 (1994); 5769 (1996); 5835 (1996); 7439 (2005).

4-20-47 **Zoning Adjustment And Building Appeals Filing Fees.**

(a) The fee for filing an appeal to or requesting a variance from the board of zoning adjustment and building appeals under subsection 9-9-21(s) or section 10-2-5, "Appeals And Variances," 10-3-9, "Temporary Rental License Appeals," 10-5-2, "Adoption Of International Building Code With Modifications," 10-6-2, "Adoption Of The National Electrical Code With Modifications," 10-9-2, "Adoption Of The International Mechanical Code With Modifications," 10-10-2, "Adoption Of The International Plumbing Code With Modifications," or 10-12-24, "Appeals

And Variances," B.R.C. 1981, is $103.00, except that the fee for an emergency appeal is $205.00.

(b) The fee for requesting a variance from the board of zoning adjustment and building appeals under subsection 9-9-21(s), B.R.C. 1981, is $513.00.

(c) The fee for requesting a variance from the board of zoning adjustment and building appeals under section 9-2-3, "Variances And Interpretations," B.R.C. 1981, is $513.00.

(d) The fee for filing an appeal to the board of zoning adjustment and building appeals under section 10-12-24, "Appeals And Variances," B.R.C. 1981, is $513.00.

Ordinance Nos. 4879 (1985); 4984 (1986); 5012 (1986); 5341 (1990); 5425 (1991); 5525 (1992); 5603 (1993); 5676 (1994); 5835 (1996); 7439 (2005); 7476 (2006).

4-20-48 **Elevator, Dumbwaiter, Materials Lift, Escalator, Moving Walk, Wheelchair Lift, And Stairway Lift Certificate Fees.**

(a) An applicant for an elevator, escalator, or moving walk certificate shall pay an annual fee of $159.00 for each such device.

(b) An applicant for a dumbwaiter certificate shall pay an annual fee of $17.50 for each dumbwaiter.

(c) An applicant for a materials lift, wheelchair lift, or stairway lift certificate shall pay an annual fee of $76.25 for each lift.

Ordinance Nos. 4886 (1985); 5081 (1987); 5150 (1988); 5341 (1990); 5425 (1991); 5525 (1992); 5572 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005).

4-20-49 **Neighborhood Parking Permit Fee.**

(a) A zone resident applying for a neighborhood parking permit shall pay $17.00 for each permit or renewal thereof.

(b) A business applying for a neighborhood parking permit for employees shall pay $75.00 for each permit or renewal thereof.

(c) An individual who does not reside within the zone applying for a neighborhood parking permit, if permitted in the zone, shall pay $78.00 for each quarterly permit or renewal thereof.

Ordinance Nos. 4966 (1986); 5676 (1994); 5835 (1996); 5869 (1997); 7247 (2002); 7439 (2005).

4-20-50 **Development Excise Tax.**

Repealed.

Ordinance Nos. 5216 (1989); 5240 (1989); 5341 (1990); 5425 (1991); 5676 (1994); 5835 (1996); 6039 (1998).

4-20-51 **Transportation Excise Tax.**

Repealed.

Ordinance Nos. 5216 (1989); 5676 (1994); 5835 (1996); 6039 (1998).

4-20-52 **Fire Code Permit And Inspection Fees.**

(a) The fees for permits under the Fire Code adopted by section 10-8-2, "Adoption Of International Fire Code With Modifications," B.R.C. 1981, are:

(1) (A) Flammable and combustible liquid regular permit: $20.00.

(B) Flammable and combustible liquid special permit: $25.00.

(C) Flammable and combustible liquid special permit simulated demonstration: $250.00.

(Permits (A) and (B) are valid for one year and, upon application, shall be renewed upon payment of the fees given above. If changed conditions require a new simulated demonstration, the demonstration fee shall be paid.)

(2) L.N.G. installation review and inspection fee: $500.00, but the city manager may waive a portion of the fee if actual costs of review and inspection are less than that amount.

(b) The fire protection contractor test fee shall be $30.00 for each system specialty per test.

(c) Fire protection system reinspection fees are:

(1) Underground fire line 200 PSI test:

- first reinspection	$ 50.00
- second reinspection	100.00
- each subsequent reinspection	200.00

(2) Aboveground hydrostatic sprinkler system test:

- first reinspection	50.00
- second reinspection	100.00
- each subsequent reinspection	200.00

(3) Final pump test of completed sprinkler system:

- first re-test	100.00
- second re-test	150.00
- each subsequent re-test	300.00

(4) All other initial installations of fire protection and alarm systems:

- first reinspection	50.00
- each subsequent reinspection	100.00

(5) Commercial/business inspections:

- third reinspection	50.00
- each subsequent reinspection	100.00

(d) Fees required by paragraph (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section shall be paid prior to the reinspection being accomplished.

(e) False fire alarm fees are:

Third false activation within any calendar year	$100.00
Fourth false activation within any calendar year	250.00
Fifth false activation within any calendar year	300.00
Sixth and subsequent false activation within any calendar year	500.00

(f) The fee for an administrative appeal under chapter 10-8, "Fire Prevention Code," B.R.C. 1981, is $20.00.

Ordinance Nos. 5029 (1987); 5245 (1989); 5599 (1993); 5676 (1994); 5835 (1996).

4-20-53 **Wetland Permit And Map Revision Fees.**

The fees for permits or other services described in section 9-3-9, "Wetlands Protection," B.R.C. 1981, shall be:

Simple wetland permit	$ 565.00
Standard wetland permit	2,255.00
Review of application revisions	169.00
Mitigation plan review	567.00 + base permit fee + city's direct cost plus 20% for consultant review of the plan
Wetland boundary determination	3,068.00 + city's direct cost for consultant review
Wetland functional evaluation	205.00 + city's direct cost for consultant review

Ordinance Nos. 5521 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7338 (2004); 7439 (2005); 7476 (2006).

4-20-54 **Parks And Open Space Parking Permit Fee.**

The fees for parking permits issued under chapter 4-24, "Parks And Open Space Parking Permits," B.R.C. 1981, shall be:

Daily Permit:	$ 3.00
Annual Permit:	15.00

Ordinance Nos. 5546 (1993); 5676 (1994); 5835 (1996).

4-20-55 **Court And Vehicle Impoundment Costs, Fees, And Civil Penalties.**

(a) The costs, fees, or civil penalties authorized in chapter 2-6, "Courts And Confinements," B.R.C. 1981, shall be:

(1) Scofflaw civil penalty . . . . . $ 25.00

(2) Immobilization or impoundment civil penalty	$ 50.00
(3) Deferred sentence administrative costs: traffic violations	75.00
Deferred sentence administrative costs: all other violations	100.00
Deferred prosecution administrative costs	50.00
(4) Juror fees:	
panel only	3.00
actual service for day	6.00
(5) Witness fee	5.00
(6) Complaining witness default fee	300.00
(7) Court costs:	
plea	25.00
trial to court	25.00
jury trial	25.00
(8) Probation supervision fee	50.00
(9) Community service fee	35.00
(10) Personal service of process: automated vehicle identification complaint:	
served by a person other than a peace officer	20.00
served by a peace officer	60.00
served by certified mail	3.00
(11) Warrant processing fee	30.00
(12) Failure to appear fee	30.00
(13) Stay fee (payment plan)	15.00

(b) The administration fee for vehicles impounded under chapter 7-7, "Towing And Impoundment," B.R.C. 1981, shall be:

(1) Abandoned and inoperable vehicle impoundment fee	$ 25.00
(2) Inoperable vehicle on private property impoundment fee	25.00

Ordinance Nos. 5760 (1995); 5835 (1996); 5954 (1997); 6073 (1999); 7439 (2005).

4-20-56 **Fire Contractor License.**

(a) An applicant for a fire contractor license shall pay the following annual fee according to the license requested:

(1) Class A	$299.00
(2) Class B	175.00
(3) Class C	175.00
(4) Class D	175.00
(5) Class E	87.50

(b) The fees herein prescribed shall not be prorated.

(c) An applicant for a permit required by this code shall pay the following fees, computed on the dollar value of the completed mechanical installation, including materials and labor:

TABLE OF PERMIT FEES

Dollar Value	Fee
$100.00 or less	$12.85
100.01 through $400.00	15.85
400.01 through 800.00	18.80
800.01 and above	18.80 for the first $800.00 plus $3.55 for each additional $100.00 or fraction thereof

(d) The reinspection fee is $89.00 per occurrence.

(e) The after hours inspection fee is $116.00 per hour, with a two-hour minimum.

Ordinance Nos. 6015 (1998); 6037 (1998); 7439 (2005).

4-20-57 **News Box Fees.**

(a) The annual fee for leases of news boxes governed by chapter 4-27, "News Box Leases And Regulation," B.R.C. 1981, is $78.00 per full size box, $41.00 for a double-sized slot, and $22.50 for a single-sized slot, payable in advance at time of application or renewal. Fees shall be prorated by month for partial year periods, and partial months shall constitute a full month.

(b) The waiting list fee is $25.00 for each box or slot desired, and shall not be prorated or refunded.

Ordinance Nos. 7282 (2003); 7439 (2005).

4-20-58 **Prairie Dog Lethal Control Permit Fees.**

(a) An applicant for a prairie dog lethal control permit shall pay a processing fee of $1,500.00 to offset administrative costs associated with issuing and monitoring lethal control permits. This processing fee shall be in addition to any other mitigation cost or payment required in conjunction with approved wildlife management practices.

(b) An applicant for a prairie dog lethal control permit shall pay a fee of $1,200.00 per acre of active prairie dog habitat lost, prorated for any partial acres of lost habitat.

Ordinance No. 7321 (2005).

4-20-59 **Domestic Partnership Registration Fees.**

An applicant for the registration or termination of a domestic partnership shall pay an application or termination fee of $25.00.

Ordinance No. 7416 (2005).

4-20-60 **Voice And Sight Control Evidence Tag Fees.**

(a) An applicant for a Voice and Sight Control Evidence Tag who is a resident of the City of Boulder shall pay an application fee of $15.00, and a nonresident shall pay an application fee of $18.75. Additional Voice and Sight Control Evidence Tags may be provided to persons who reside in the same household as the applicant upon payment of a duplicate tag fee of $5.00.

(b) The supplemental fee pursuant to section 6-13-5, "Revocation And Reinstatement Of Voice And Sight Control Evidence Tags Upon Violations," B.R.C. 1981, shall be $50.00, regardless of residency.

Ordinance Nos. 7443 (2006); 7458 (2006).

4-20-61 **Open Space And Mountain Parks Commercial And Limited Use Permit Fees.**

(a) An applicant for a Commercial Use Permit on Open Space and Mountain Parks properties shall pay an application fee of $300.00.

(b) An applicant for a Commercial Use Permit on Open Space and Mountain Parks properties that is a tax exempt organization described in Internal Revenue Code section 501(c)(3) or a governmental agency shall pay an application fee of $150.00.

(c) An applicant for a Limited Use Permit on Open Space and Mountain Parks properties shall pay an application fee of $50.00.

Ordinance No. 7458 (2006).

4-20-62 **City Manager Rebate Authority.**

(a) The city manager may grant rebates of any fees paid pursuant to this chapter, paid by primary employers in connection with equipment acquisition, construction projects, construction equipment and construction materials when, in the judgment of the city manager, the rebate will serve the economic interests of the city by helping attract or retain a primary employer which contributes to a socially sustainable community. These rebates may include, but are not limited to, fees paid pursuant to sections 4-20-43, "Development Application Fees," 4-20-44, "Floodplain Development Permits And Flood Control Variance Fees," 4-20-45, "Storm Water And Flood Management Fees," 4-20-46, "Storm Water And Flood Management Utility Plant Investment Fee," and 4-20-52, "Fire Code Permit And Inspection Fees," B.R.C. 1981. The city manager may promulgate interpretive guidelines to define more specifically the circumstances under which rebates may be granted and to establish application procedures or other matters necessary or desirable for implementation of this subsection. Any fees rebated pursuant to this subsection shall be deemed payable by the city's general fund. This subsection shall be repealed and no longer in effect after December 31, 2007, unless extended by action of the city council.

Ordinance No. 7478 (2006).

4-20

TITLE 4 LICENSES AND PERMITS

Chapter 20 Fees[1]

Section:

[1]Adopted by Ordinance Nos. 4637, 4651. Amended by Ordinance Nos. 4647, 4713, 5341, 5940, 6032, 7008, 7087, 7168, 7240, 7319, 7406. Derived from Ordinance Nos. 3887, 3913, 4130, 4334.

4-20-1 **Airport Fees.**

(a) Airport hangar fees are $200.00 per month.

(b) Airport tie-down fees are $39.00 per month for asphalt.

Ordinance Nos. 4789 (1983); 4865 (1984); 4945 (1985); 5012 (1986); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5835 (1996).

4-20-2 **Alcohol And Fermented Malt Beverage License And Application Fees.**

(a) The applicant for a malt, vinous, or spirituous liquor license shall pay the appropriate application fee, as follows:

(1) New license	$ 500.00
(2) Transfer of location or ownership of license	500.00
(3) License renewal	50.00
(4) Late applications fee for expired license	500.00
(5) Special event	25.00
(6) Temporary permit for transfer of ownership	100.00
(7) Bed and breakfast permit	25.00
(8) Duplicate license	50.00
(9) Trade name/corporation name change	50.00
(10) Temporary modification of premises	50.00
(11) Permanent modification of premises	100.00

(12) Five hundred foot measurement for liquor license application ..... $ 50.00

(13) Tasting permit 50.00

(b) Each applicant for a hotel and restaurant license shall pay a manager registration fee of $75.00 to the city.

(c) Each applicant for a fermented malt beverage license shall pay the appropriate application fee, as follows:

(1) New license ..... $ 500.00

(2) Transfer of location or ownership of license 500.00

(3) License renewal 50.00

(4) Late applications fee for expired license 500.00

(5) Special event 25.00

(6) Temporary permit for transfer of ownership 100.00

(d) Each licensee licensed under chapter 4-2, "Beverages License," B.R.C. 1981, shall pay the following applicable annual license fee at the time of applying for the license, which is refundable if the license is denied:

(1) Retail liquor store ..... $ 22.50

(2) Liquor-licensed drugstore 22.50

(3) Beer and wine 48.75

(4) Hotel and restaurant 75.00

(5) Tavern 75.00

(6) Club 41.25

(7) Arts 41.25

(8) Racetrack 75.00

(9) Brew pub 75.00

(10) Fermented malt beverage:

(A) On-premises 3.75

(B) Off-premises 3.75

(C) On- and off-premises 3.75

(e) Statutory administrative fee per person for background checks caused by changes in structure of entity 100.00

(f) Special event - liquor 25.00/day

(g) Special event - beer . . . . . $ 10.00/day

Ordinance Nos. 4838 (1984); 5081 (1987); 5150 (1988); 5347 (1990); 5425 (1991); 5599 (1993); 5676 (1994); 5835 (1996); 5899 (1997); 7380 (2004).

4-20-3 **Auctioneer License Fees.**

An applicant for an auctioneer license shall pay an annual fee of $63.20.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-4 **Building Contractor License And Building Permit Fees.**

(a) An applicant for a building contractor license shall pay the following annual fee according to the type of license requested:

(1) Class A $448.00

(2) Class B 299.00

(3) Class C 192.00

(4) Class D-1 through D-8 . . . . . 149.00

(5) Class D-9 . . . . . 15.00

(6) Class E 73.00

(b) The fees herein prescribed shall not be prorated.

(c) Building permit fees are as follows:

(1)	$	500.00 or less		$ 27.35
(2)		500.01 through	$ 2,000.00	27.35 for the first $500.00 plus $3.55 for each additional $100.00 or fraction thereof, to and including $2,000.00.
(3)		2,000.01 through	25,000.00	80.05 for the first $2,000.00 plus $16.20 for each additional $1,000.00 or fraction thereof, to and including $25,000.00.
(4)		25,000.01 through	50,000.00	452.75 for the first $25,000.00 plus $11.65 for each additional $1,000.00 or fraction thereof, to and including $50,000.00.
(5)		50,000.01 through	100,000.00	744.05 for the first $50,000.00 plus $8.10 for each additional $1,000.00 or fraction thereof, to and including $100,000.00.
(6)		100,000.01 through	500,000.00	1,148.60 for the first $100,000.00 plus $6.45 for each additional $1,000.00 or fraction thereof, to and including $500,000.00.

(7)	$ 500,000.01 through $1,000,000.00	$3,737.80 for the first $500,000.00 plus $5.45 for each additional $1,000.00 or fraction thereof, to and including $1,000,000.00.
(8)	1,000,000.01 and up	6,482.80 for the first $1,000,000.00 plus $4.20 for each additional $1,000.00 or fraction thereof.

(d) Other fees are as follows:

(1)	Demolition Permit	
	(A) Interior/nonloadbearing	23.95
	(B) All other	169.30
(2)	Fence Permit and Retaining Wall Permit	3.95 for each $100.00 (No maximum)
(3)	Temporary Event Permit Fee	27.35
(4)	Reinspection Fee	92.00 per occurrence (Payable before any further inspections can be done.)
(5)	Change of Use Fee	79.00 (Can be credited to building permit fee if permit applied for and paid within ninety days.)
(6)	After Hours Inspection	120.00 per hour -- two-hour minimum
(7)	Plan Check Fee (due at time of permit application):	
	(A) Residential, single-family	Twenty-five percent of building permit fee
	(B) Residential, multi-family	Sixty-five percent of building permit fee
	(C) Nonresidential	Sixty-five percent of building permit fee
(8)	Plan Check Fee for revised plans (due at time of plan resubmittal):	
	(A) Revision to plan:	Fifty percent of plan check fee
	(B) Minor revision to plan:	Twenty-five percent of plan check fee
(9)	Energy Code Calculation Fee:	
	Heat Loss Calculation Check Fee:	
	(A) Residential	$ 81.80
	(B) Commercial	101.45

Corrections that necessitate resubmission will be charged an extra twenty-five percent of original fee.

4-20-4

(10) Reinstatement of Permit — Fifty percent of Building Permit Fee (Energy Fee will not be charged if no further review is required.)

(11) Temporary Certificate of Occupancy — $169.30

(12) Replacement of Lost Plans/New Red-lines:

(A) Residential/tenant finish — $113.65 plus cost of reproduction

(B) Commercial - New — 338.80 plus cost of reproduction

(13) Gasoline Tank Installations — 67.70

(14) House Moving Permit — 57.00

(15) Grading Fees:

(A) Grading Plan Review Fees:

(i) Fifty cubic yards or less . . . . . No fee

(ii) Fifty-one through one hundred cubic yards . . . . . $ 18.20

(iii) One hundred one through one thousand cubic yards 27.30

(iv) One thousand one through ten thousand cubic yards 36.35

(v) Ten thousand one through one hundred thousand cubic yards--$36.35 for the first ten thousand cubic yards, plus $18.20 for each additional ten thousand yards or fraction thereof.

(vi) One hundred thousand one through two hundred thousand cubic yards--$200.40 for the first one hundred thousand cubic yards, plus $10.85 for each additional ten thousand cubic yards or fraction thereof.

(vii) Two hundred thousand one cubic yards or more--$309.40 for the first two hundred thousand cubic yards, plus $5.40 for each additional ten thousand cubic yards or fraction thereof.

(viii) Additional plan review required by changes, additions, or revisions to approved plans--$50.00 per hour (minimum charge--one-half hour).

(B) Grading Permit Fees:

(i) Fifty cubic yards or less . . . . . $ 18.20

Fifty-one through one hundred cubic yards 27.30

(ii) One hundred one through one thousand cubic yards--$27.30 for the first one hundred cubic yards plus $12.30 for each additional one hundred cubic yards or fraction thereof.

(iii) One thousand one through ten thousand cubic yards--$142.00 for the first one thousand cubic yards, plus $10.85 for each additional one thousand cubic yards or fraction thereof.

(iv) Ten thousand one through one hundred thousand cubic yards--$240.25 for the first ten thousand cubic yards, plus $49.00 for each additional ten thousand cubic yards or fraction thereof.

(v) One hundred thousand one cubic yards or more--$682.55 for the first one hundred thousand cubic yards, plus $27.30 for each additional ten thousand yards or fraction thereof.

The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5177 (1989); 5341 (1990); 5525 (1992); 5599 (1993); 5676 (1994); 5835 (1996); 7439 (2005); 7453 (2006); 7495 (2006).

4-20-5 **Circus, Carnival, And Menagerie License Fees.**

An applicant for a circus, carnival, and menagerie license shall pay $333.75 per day of operation.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-6 **Public Right-Of-Way Permit And Contractor License Fees.**

(a) An applicant for a contractor in the public right-of-way license shall pay $196.00 per year.

(b) An applicant for a permit for construction in the public right-of-way, for improvements which are, or will become, through construction acceptance, owned and operated by the city, shall pay the following fees:

(1) An applicant shall pay permit fees for all other construction work, including excavation, as follows: a base permit fee of $80.00, and:

(A) $77.00 for one linear foot through fifty feet plus $0.92 for each linear foot over fifty linear feet of existing or new sidewalks, trails, curbwalks, and curb and gutter to be constructed and inspected, repaired, or replaced;

(B) $77.00 for one linear foot through one hundred feet plus $0.71 per linear foot over one hundred feet of trench excavated or bored and inspected;

(C) $77.00 for one linear foot through one hundred feet plus $0.71 per linear foot over one hundred feet of pipeline to be installed and inspected;

(D) $115.50 for one square yard through three hundred square yards plus $0.33 per square yard over three hundred square yards of concrete or asphalt to be constructed and inspected for new or overlaid street, parking, or alley sections;

(E) $115.50 for one square foot through three hundred square feet plus $0.33 per square foot over three hundred square feet of concrete or asphalt to be constructed and inspected for the patching (repair) of street, parking, or alley sections;

(F) $19.25 per cubic yard, with a minimum fee of $192.50 of structural concrete, masonry, or stonework to be installed and inspected for retaining walls, box culverts, wing walls, drop structures, and other activities not covered by the fees above; and

(G) The following fees for each appurtenance to be installed and inspected:

Appurtenance	Fee
Maintenance hole	$115.50
Fire hydrant	77.00
Valve box and valve	77.00
Fitting (bend, tee, cross, etc.)	38.50
Inlet	115.50
Service line stub	77.00
Kick block	38.50
Meter pit	
$^3/_4$" - 1"	38.50
$1^1/_2$" - 2"	57.75
3" and larger	77.00

(2) An applicant for a permit for placement in the right-of-way of temporary construction equipment or materials, including, but not limited to, construction dumpsters, construction fencing, heavy equipment or cranes, scaffolding, or covered walkways, for a single project on adjacent private property, not in association with the construction of public improvements within the right-of-way, shall pay the base permit fee plus $77.00. Such a permit shall be approved only when the applicant can demonstrate that placement of the temporary construction equipment or materials outside of the right-of-way is not feasible, and shall be effective for a time period not to exceed the more restrictive of: a) the authorized time frame in the permit conditions, or b) thirty days. After the authorized time frame or thirty days have expired, the applicant shall either remove the temporary construction equipment or materials or obtain a new permit to allow the temporary construction equipment or materials to remain in the right-of-way for the duration of the new permit, which shall not exceed thirty days.

(c) An applicant for a permit for construction in the public right-of-way of improvements to utilities which are not owned or operated by the city shall pay the following fees:

(1) An applicant shall pay permit fees for all construction work, including excavation, as follows: a base permit fee of $130.00 plus any of the following that apply:

(A) $77.00 for one foot through fifty feet plus $0.92 for each linear foot of existing or new sidewalks, trails, curbwalks, and curb and gutter over fifty linear feet to be constructed and inspected, repaired, or replaced;

(B) $77.00 for one foot through one hundred feet plus $0.71 per linear foot over one hundred feet of trench excavated or bored and inspected;

(C) $77.00 for one foot through one hundred feet plus $0.71 per linear foot over one hundred feet of pipeline to be installed and inspected;

(D) $115.50 for one square yard through three hundred square yards plus $0.33 per square yard over three hundred square yards of concrete/asphalt to be constructed and inspected for new or overlaid street, parking or alley sections;

(E) $115.50 for one square foot through three hundred square feet plus $0.33 per square foot over three hundred square feet of concrete to be constructed and inspected for patching (repair) of street, parking, or alley sections;

(F) $19.25 per cubic yard, with a minimum fee of $192.50, of structural concrete, masonry, or stonework to be installed and inspected for retaining walls, box culverts, wing walls, drop structures, and other activities not covered by the above fees; and

(G) $38.50 plus $11.15 for each appurtenance over three appurtenances to be installed and inspected.

(2) For the purposes of this subsection, "appurtenance" means any part of a utility system other than pipe, conduit, cable, or wire.

(d) An applicant for a utility permit shall pay the following additional fee:

Permit	Fee
Utility construction	$64.00

(e) The fees herein prescribed shall not be prorated.

(f) The reinspection fee is $92.00 per hour with a one-hour minimum.

(g) The after hours inspection fee is $120.00 per hour, with a two-hour minimum.

(h) The fee for any permit issued after construction has begun in the public right-of-way shall be twice the amount of each fee listed above.

(i) An applicant for a permit to excavate an area in the pavement of any public street or alley with surface paving less than three years old as set forth in section 8-5-13, "Construction And Restoration Standards For Newly Constructed Or Overlayed Streets," B.R.C. 1981, shall pay an impact fee for loss of useful pavement life of $3.65 per square foot of paved surface area removed during excavation.

(j) An applicant for a permit to work in the public right-of-way that includes closure or alteration of a transportation facility for more than twenty-four hours and for which a traffic control plan is required pursuant to section 8-5-10, "Traffic Control," B.R.C. 1981, shall pay a traffic control inspection fee as follows:

(1) $160.00 for a duration of one week or less.

(2) $320.00 per month for a duration greater than one week.

(k) An applicant for any permit that includes disturbance of greater than one acre of land (and thus is required by subsection 11-5-6(c), B.R.C. 1981, to install erosion controls) shall pay an erosion control/storm water management site inspection fee of $320.00 per month until such time as the land has been stabilized in accordance with the *Design And Construction Standards.*

(l) An applicant for a permit to construct a storm water detention or storm water quality facility required by paragraph 11-5-6(b)(4), B.R.C. 1981, shall pay a fee of $480.00 per facility.

(m) An applicant for a permit to connect to the storm water utility system in accordance with section 11-5-4, "Connections To The Storm Water Utility System," B.R.C. 1981, shall pay:

(1) A permit fee of $120.00 per connection.

(2) An inspection fee (first two inspections inclusive) of $160.00. Each subsequent inspection is $89.00.

Ordinance Nos. 4866 (1984); 4946 (1985); 5012 (1986); 5599 (1993); 5676 (1994); 5835 (1996); 5919 (1997); 7439 (2005); 7495 (2006).

4-20-7 **Dog License Fee.**

(a) An applicant for a dog license shall pay the following fees per year:

(1) For dogs less than one year old or for altered dogs upon presentation of a veterinary certificate showing alteration:

(A) One-year license: $14.00.

(B) Three-year license: $36.00.

(2) For unaltered dogs one year or more old:

(A) One-year license: $28.00.

(B) Three-year license: $78.00.

(3) Additional fee for licenses renewed later than April 1 of the calendar year in which renewal is due: $5.00.

(b) An applicant to transfer a dog license shall pay the fees specified for a new license, subject to the proration provisions of this section.

(c) The holder of a dog license shall pay $2.00 for a replacement dog tag.

(d) The fees prescribed in subsections (a) and (b) of this section shall be prorated on a monthly basis for all licenses except renewals.

Ordinance Nos. 5081 (1987); 5150 (1988); 5425 (1991); 5676 (1994); 5835 (1996); 7349 (2004).

4-20-8 **Electrical Contractor Registration And Electrical Permit Fees.**

(a) For each electrical permit, the following fees shall be paid in addition to the fees established for building permits under section 4-20-4, "Building Contractor License And Building Permit Fees," B.R.C. 1981:

(1) (A) Residential (one- and two-unit dwellings, and townhouses, new construction, extensive remodeling, and additions [based on enclosed living area]):

Less than 500 square feet	$35.75
500 through 999 square feet	50.45
1,000 through 1,499 square feet	67.85
1,500 through 1,999 square feet	88.05
2,000 square feet or more	88.05 plus $5.75 per 100 square feet over 2,000 square feet

(B) Residential Service Change	$35.75
(C) Photovoltaic System Permit	67.85

(2) All other fees (including, without limitation, commercial construction and multi-family) based on the total cost of the electrical installations, including labor and electrical materials and items except as provided in paragraphs (a)(3) and (a)(4) of this section:

$ 300.00 or less	$ 41.75
300.01 through $3,000.00	49.60
3,000.01 and up	19.10 per $1,000.00 of total valuation or fraction thereof
Photovoltaic System Permit	135.70
(3) Mobile Home Spaces	41.75 per space
(4) Temporary Construction Power Permit	35.50

(b) The reinspection fee is $92.00 per occurrence.

(c) The after hours inspection fee is $120.00 per hour, with a two-hour minimum.

(d) The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-9 **Food Service And Vending Machine Operator License Fees.**

Repealed.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5024 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7061 (2000).

4-20-10 **Itinerant Merchant License Fee.**

An applicant for an itinerant merchant license shall pay $44.40 per year.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-11 **Mall License And Permit Fees.**

The following fees shall be paid before issuance of a mall building extension, kiosk, mobile vending cart, ambulatory vendor, entertainment vending, personal services vending, animal, or special activity permit and rental of advertising space on informational kiosks:

(a) For building extension permits, an annual fee of $14.00 per square foot of occupied space;

(b) For kiosk permits, an annual fee to be negotiated by contract with the city manager;

(c) For mobile vending carts, $1,753.00 per year, payable in two equal payments by April 1 and August 1, or, for substitution or other permits which begin later in the year and are prorated, within thirty days of permit approval;

(d) For ambulatory vendor permits, $88.00 per month from May through September and $44.00 per month from October through April;

(e) For any permits requiring use of utilities to be provided by the city, up to a maximum of $14.50 per day;

(f) For rental of advertising space on informational kiosks, $1,735.00 per quarter section per year;

(g) For animal permits, $0.00 per permit;

(h) For entertainment vending permits, $11.50 per month;

(i) For personal services vending permits, $88.00 per month from May through September and $44.00 from October through April; and

(j) For a newspaper vending machine permit, $56.50 per year.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5081 (1987); 5150 (1988); 5240 (1989); 5313 (1990); 5425 (1991); 5453 (1992); 5599 (1993); 5676 (1994); 5695 (1995); 5835 (1996); 7002 (1999); 7439 (2005); 7495 (2006).

4-20-12 **Local Improvement District Fees.**

The fee for a special assessment certificate under chapter 8-1, "Local Improvements," B.R.C. 1981, is $25.00.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5187 (1989); 5240 (1989); 5347 (1990); 5525 (1992); 5676 (1994); 5835 (1996).

4-20-13 **Mechanical Contractor License And Mechanical Permit Fees.**

(a) An applicant for a mechanical contractor license shall pay the following annual fee according to the license requested:

(1) Class A	$247.00
(2) Class B	124.00
(3) Class C	124.00
(4) Class D	124.00
(5) Class E	62.00

(b) The fees herein prescribed shall not be prorated.

(c) An applicant for a permit required by this code shall pay the following fees, computed on the dollar value of the completed mechanical installation, including materials and labor:

TABLE OF PERMIT FEES

Dollar Value	Fee
$100.00 or less	$13.25
100.01 through $400.00	16.35
400.01 through 800.00	19.40
800.01 and above	19.40 for the first $800.00 plus $3.65 for each additional $100.00 or fraction thereof

(d) The reinspection fee is $92.00 per occurrence.

(e) The after hours inspection fee is $120.00 per hour, with a two-hour minimum.

(f) The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 6015 (1998); 7439 (2005); 7495 (2006).

4-20-14 **Mobile Home Park Permit And Mobile Home Installer License Fee.**

(a) An applicant for a mobile home installer license shall pay $149.00 per year.

(b) An applicant for a mobile home permit for tie-down, blocking, or other structural installation shall pay a fee of $56.65.

Ordinance Nos. 4789 (1983); 4866 (1984); 4879 (1985); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-15 **Plumber, Plumbing Contractor, And Plumbing Permit Fees.**

(a) An applicant for a plumbing contractor license shall pay $271.90 per year.

(b) An applicant for a plumbing permit shall pay the following fees:

SCHEDULE OF FEES

New Construction-Residential

1-dwelling-unit structures ($1^1/_2$ baths or less)	$ 67.10
1-dwelling-unit structures (2 - $3^1/_2$ baths)	91.60
1-dwelling-unit structures (4 or more baths)	116.15
2-dwelling-unit structures	108.90
3- to 15-dwelling-unit structures	41.20 per unit
16- to 30-dwelling-unit structures	37.90 per unit
Structures containing more than 30 dwelling units	33.35 per unit

For purposes of this section, a roughed-in bathroom constitutes a bathroom.

Commercial, Industrial, and Miscellaneous

Remodel or add fixtures to one-dwelling-unit structures	$ 33.35

All other fees shall be computed on the dollar value of the complete plumbing installation including fixtures and all installation costs, as follows:

$100.00 or less	$ 13.25
100.01 - $400.00	16.35
400.01 - 800.00	19.40
800.01 and over	19.40 for the first $800.00 plus $3.65 for each additional $100.00 or fraction thereof

(c) The reinspection fee is $92.00 per occurrence.

(d) The after hours inspection fee is $120.00 per hour with a two-hour minimum.

(e) The fees herein prescribed shall not be prorated.

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-16 **Police Alarm Response Fees.**

Repealed.

Ordinance Nos. 4760 (1983); 5676 (1994); 5835 (1996); 7312 (2003).

4-20-17 **Secondhand Dealer And Pawnbroker License Fee.**

(a) An applicant for a secondhand dealer license shall pay $87.20 per year.

(b) An applicant for a pawnbroker license shall pay $1,689.95 per year.

(c) The fees for a new license prescribed in subsections (a) and (b) of this section shall be prorated on a monthly basis.

Ordinance Nos. 4789 (1983); 4866 (1984); 4946 (1985); 5012 (1986); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-18 **Rental License Fee.**

The following fees shall be paid before the city manager may issue a rental license or a renewed rental license:

(a) Dwelling and Rooming Units:	$ 45.00 per building
(b) Accessory Dwelling Unit:	45.00 per unit

Ordinance Nos. 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5425 (1991); 5525 (1992); 5494 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7023 (1999).

4-20-19 **Taxi Driver License Fee.**

Repealed.

Ordinance Nos. 4866 (1984); 4946 (1985); 5150 (1988); 5240 (1989); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 6062 (1999); 7008 (1999).

4-20-20 **Revocable Right-Of-Way Permit/Lease Application Fee.**

(a) An applicant for a revocable right-of-way permit/lease application shall pay $310.00.

Resubmittal of revocable right-of-way permit/lease application within four weeks of initial application shall pay $155.00.

Permit renewal fee: $155.00.

(b) An applicant for an encroachment investigation shall pay the following fees:

Residential encroachment:	$ 708.00
Commercial encroachment:	1,415.00

(c) An applicant for an encroachment off the Pearl Street Mall shall pay an annual fee of $9.80 per square foot of leased area.

(d) An applicant for a monitoring well encroachment shall pay $516.50 per well per year.

(e) Applications for any other encroachments not covered by this section will be reviewed and assessed a fee on a case-by-case basis.

Ordinance Nos. 4866 (1984); 5150 (1988); 5341 (1990); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-21 **Sign Contractor License Fees And Sign Permit Fees.**

(a) An applicant for a sign contractor license shall pay the following fee:

Type of Contractor	Required Annual Fee
Class A contractor (manufacturer or installer of signs and related structures)	$ 324.45
Class B contractor (creator of painted signs)	159.65

(b) An applicant for a sign permit shall pay the following fee:

Sign Valuation	Required Fee
Signs not requiring plan check or electrical review and inspections	$ 86.75
Signs not requiring plan check but include electrical review and inspection	168.40

Signs requiring plan check but not including electrical review and inspection	$ 238.60
Signs requiring plan check and electrical review and inspection	325.40

The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Ordinance Nos. 4866 (1984); 4879 (1985); 5150 (1988); 5341 (1990); 5525 (1992); 5676 (1994); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-22 **Air Carrier Landing Fee.**

The landing fee prescribed by paragraph 11-4-6(a)(1), B.R.C. 1981, is $0.30 per one thousand pounds of maximum gross landing weight, or $1.00, whichever is greater.

Ordinance Nos. 4807 (1984); 4877 (1985); 5012 (1986); 5676 (1994); 5835 (1996).

4-20-23 **Water Permit Fees.**

An applicant for a water permit under section 11-1-14, "Permit To Make Water Main Connections," 11-1-15, "Out-Of-City Water Service," or 11-1-16, "Permit To Sell Water," B.R.C. 1981, or for water meter installation under section 11-1-36, "Location And Installation Of Meters; Maintenance Of Access To Meters," B.R.C. 1981, or for testing or inspection of backflow prevention assemblies under section 11-1-25, "Duty To Maintain Service Lines And Fixtures," B.R.C. 1981, and for inspection for cross-connections under section 11-1-25, "Duty To Maintain Service Lines And Fixtures," B.R.C. 1981, shall pay the following fees:

(a) Permit fee (stub, connection, enlargement, renewal, abandonment):

(1) Water residential	$ 120.00
(2) Water nonresidential	160.00
(3) Water private property repair	40.00
(4) Irrigation residential	120.00
(5) Irrigation nonresidential	160.00
(6) Fire line residential	120.00
(7) Fire line nonresidential	160.00
(8) Main extension	308.00

(b) Inspection fee (stub, connection, enlargement, renewal, abandonment):

(1) Water residential (first two inspections inclusive)	160.00
(2) Water nonresidential (first two inspections inclusive)	200.00

(3)	Irrigation residential (first two inspections inclusive)	$ 160.00
(4)	Irrigation nonresidential (first two inspections inclusive)	200.00
(5)	Fire line residential (first two inspections inclusive)	160.00
(6)	Fire line nonresidential (first two inspections inclusive)	200.00
(7)	Each inspection after the first two inspections	89.00
(8)	Clear water testing fee	230.00

(c) Annual water resale permit 50.00

(d) Water meter installation fee:

(1)	$^3/_4$" meter	471.00
(2)	1" meter	629.00
(3)	$1^1/_2$" meter (domestic)	1,792.00
(4)	$1^1/_2$" meter (sprinkler)	2,116.00
(5)	2" meter (domestic)	2,153.00
(6)	2" meter (sprinkler)	2,312.00
(7)	3" meter	2,726.00
(8)	4" meter	3,552.00
(9)	Install $^3/_4$" meter transponder	191.00
(10)	Install 1" meter transponder	224.00
(11)	Install $1^1/_2$" meter transponder	272.00
(12)	Install 2" meter transponder (domestic)	297.00
(13)	3" to 8" meter transponder (domestic)	708.00
(14)	2" to 8" meter transponder (sprinkler)	708.00
(15)	Call back for $^3/_4$" and 1"	40.00
(16)	Call back for $1^1/_2$" and 2"	71.00

Sales tax is due on materials portion of installation.

(e) Tap fee:

(1)	$^3/_4$" in DIP or CIP	85.00
(2)	$^3/_4$" in AC or PVC	157.00

(3)	1" in DIP or CIP	$ 91.00
(4)	1" in AC or PVC	160.00
(5)	$1^1/_2$"	280.00
(6)	2"	354.00
(7)	4"	360.00
(8)	6"	419.00
(9)	8"	504.00
(10)	12"	667.00
(11)	Call back for installing a water tap	108.00

Sales tax is due on materials portion of installation.

(f) The emergency water conservation special permit fee is $75.00.

(g) Tests and inspections for backflow prevention assemblies:

(1)	To test or inspect first backflow prevention assembly	115.00
(2)	Each additional assembly at same location	75.00
(3)	For cross-connection inspection first hour	115.00
(4)	For each additional hour at same location	75.00

Ordinance Nos. 4866 (1984); 4946 (1985); 5012 (1986); 5068 (1987); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 5875 (1997); 7439 (2005); 7495 (2006).

4-20-24 **Water Service Fees.**

A person shall pay the following charges for water services:

(a)	To terminate water service	$ 24.00
(b)	To deliver water service termination notice	10.00
(c)	To remove water meter	44.00
(d)	To reset water meter	39.00
(e)	To resume water service	22.00
(f)	To resume water service after 3:00 p.m. weekends or holidays	46.00
(g)	Special meter read	29.00

(h) To test meter and meter tests accurate . . . . . $ 50.00

(i) Water monitors 200.00

Ordinance Nos. 4946 (1985); 5068 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-25 **Monthly Water User Charges.**

(a) Treated water monthly service charges:

Meter Size	Inside City	Outside City
3/4"	$ 8.55	$ 12.81
1"	14.62	21.93
1 1/2"	31.93	47.89
2"	56.20	84.29
3"	125.46	188.18
4"	222.40	333.61
6"	499.50	749.33
8"	887.53	1,331.29

(b) Treated water quantity charges:

(1) Block Rate Structure:

	Block Rates per thousand gallons of water	Block Size (% of monthly water budget)
Block 1	$1.88	0 – 60%
Block 2	2.50	61 – 100%
Block 3	5.00	101 – 150%
Block 4	7.50	151 – 200%
Block 5	12.50	Greater than 200%

(2) Definitions:

(A) "Block Rate Structure" is the water budget rate structure which includes Blocks 1-5. These blocks represent an increasing block rate structure such that the price of water increases as more water is used, particularly when the amount of water used exceeds the customer's water budget. This rate structure is intended to:

- promote water conservation and the efficient use of water;
- support community goals;
- reflect the value of water;
- send a price signal to customers who waste water;
- recover needed revenues for administration, operations, maintenance, capital projects, debt payments and reserves for the water utility;
- avoid additional costs of new water development; and
- avoid additional costs of new and expanded water treatment.

The rate structure provides an individualized water budget to each customer that is expected to meet the customer's specific water needs. The revenues generated from the block rate structure will be used to satisfy the quantity charge portion of the basic revenue requirements of the water utility.

(B) "Monthly water budget" means the amount of water allocated to the water utility customers to meet their anticipated watering needs for the month. The monthly water budget shall be the indoor and/or outdoor allocation for each water utility customer. The allocation shall be based on reasonable and necessary indoor and/or outdoor use, water conservation, and other relevant factors associated with water use in the city. The allocations shall be defined by rules and guidelines issued by the city manager.

(c) Drought Alert Stages are timing mechanisms for specific drought responses by all water utility customers. In the determination of the appropriate Drought Alert Stage, the city manager shall make a finding that in order to ensure an adequate amount of water supply for that particular water year, plus a reasonable amount of water reserved for future years, it is necessary to declare the appropriate Drought Alert Stage. These drought stages and the related responses shall be defined by rules and guidelines issued by the manager and shall include, at a minimum, the following factors:

(1) Boulder's projected mountain storage during the ensuing May through June period based on snowpack measurements and the projected resulting streamflows during the spring runoff period;

(2) Boulder's portion of water projected to be available in Colorado Big Thompson Storage Reservoirs during the ensuing May through June period;

(3) Boulder's unrestrained water demand;

(4) Other appropriate data and operating experience; and

(5) Conservation responses to each Drought Alert Stage.

(d) Bulk water and metered hydrant rate: $8.00 per thousand gallons of water used. (Service charges do not apply.)

(e) Irrigation water leased on an annual basis: Colorado Big Thompson $27.00 per acre foot; all other based on cost of assessment plus ten percent administrative fee or $27.00 per acre foot, whichever is greater.

Ordinance Nos. 5068 (1987); 5106 (1988); 5158 (1988); 5240 (1989); 5377 (1991); 5426 (1991); 5526 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7270 (2003); 7359 (2004); 7439 (2005); 7495 (2006).

4-20-26 **Water Plant Investment Fees.**

(a) Water utility customers shall pay the following plant investment fees:

Customer Description	PIF Amount
(1) Detached residential:	
Small size residence	$ 7,770.00
Mobile home	7,770.00
Average size residence	9,710.00
Large size residence (if 24 gpm or less)	11,650.00
Large size residence (if more than 24 gpm)	Base 9,710.00 (+ $540.00 per each gpm of the customer's instantaneous peak water demand in excess of 18 gpm)

(2) Attached residential:

Rooming house unit	$ 2,915.00
Small size unit	5,825.00
Average size unit	7,770.00
Large size unit (if 18 gpm or less)	9,710.00
Large size unit (if more than 18 gpm)	Base 7,770.00 (+ $540.00 per each gpm of the customer's instantaneous peak water demand in excess of 15 gpm)

(3) Nonresidential:

Base amount	$ 9,710.00
Additional fee for each gpm over 18 gpm, provided that the water use does not exceed the water use demand described in subsection 11-1-52(l), B.R.C. 1981.	540.00/gpm

(4) Irrigation service:

Detached residential and attached residential	0.00
Nonresidential	645.00/gpm through 180 gpm

(5) The PIF for a customer whose total water demand exceeds the water use demand described in subsection 11-1-52(l), B.R.C. 1981, is as follows:

(A) Raw Water

(AYWA/34,480 acre feet) x $428,000,000.00 plus

(B) Water Delivery Infrastructure

(PDWD/50,000,000 gallons per day) x $316,000,000.00 = Total PIF

Where: AYWA = customer's average year water demand in acre feet

34,480 acre feet = city's usable water rights capacity

$428,000,000.00 = value of city's raw water

PDWD = customer's peak day water demand in million gallons per day

50,000,000 gallons per day = city's current treated water delivery capacity

$316,000,000.00 = value of city's water delivery infrastructure

Ordinance Nos. 5012 (1986); 5075 (1987); 5526 (1992); 5599 (1993); 5676 (1994); 5769 (1996); 5835 (1996); 6054 (1999); 7439 (2005); 7495 (2006).

4-20-27 **Wastewater Permit Fees.**

An applicant for a wastewater tap or permit under section 11-2-8, "When Connections With Sanitary Sewer Mains Required," or 11-2-9, "Permit To Make Sanitary Sewer Connection," B.R.C. 1981, shall pay the following fees:

(a) Permit fee (stub, connection, enlargement, renewal, abandonment):

(1) Wastewater residential	$120.00
(2) Wastewater nonresidential	160.00
(3) Wastewater private property repair	40.00
(4) Sewer main extension permit	308.00

(b) Inspection fee (stub, connection, enlargement, abandonment):

(1) Wastewater residential (first two inspections inclusive)	160.00
(2) Wastewater nonresidential (first two inspections inclusive)	200.00
(3) Each inspection after the first two inspections	89.00

(c) Sewer tap fee:

(1) 4" PVC and VCP	122.00
(2) 4" RCP	182.00
(3) 6" PVC and VCP	135.00
(4) 6" RCP	192.00
(5) Manhole tap	507.00
(6) Call back for installing a sewer tap	71.00

Sales tax is due on materials portion of installation.

Ordinance Nos. 4946 (1985); 5012 (1986); 5068 (1987); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-28 **Monthly Wastewater User Charges.**

(a) Monthly service charge:

Meter Size	Inside City	Outside City
$^3/_4$"	$ 0.74	$ 1.12
1"	1.33	1.99
$1^1/_2$"	2.98	4.47
2"	5.30	7.94
3"	11.91	17.87

Meter Size	Inside City	Outside City
4"	$21.17	$ 31.76
6"	47.65	71.47
8"	84.71	127.06

(b) Quantity charge:

(1) Average strength sewage (up to and including two hundred twenty mg/l TSS, twenty-five mg/l NH_3-N, or two hundred thirty mg/l BOD):

	Inside City	Outside City
per one thousand gallons of billable usage	$ 3.50	$ 5.25

(2) Consumers with sewage strengths exceeding two hundred twenty mg/l TSS, or twenty-five mg/l NH_3-N, or two hundred thirty mg/l BOD, shall pay the quantity charge for average strength sewage and, additionally, $450.00 per one thousand pounds of sewage which exceeds such sewage strengths for TSS, $635.00 per one thousand pounds of sewage which exceeds such sewage strengths for NH_3-N, and $445.00 per one thousand pounds of sewage which exceeds such sewage strengths for BOD.

(3) The quantity charge for all residential accounts with average strength sewage will be based on each property's Average Winter Consumption ("AWC") from the last AWC computation period or the number of thousand gallons of water actually consumed during the month, whichever is lower, except during the AWC computation period, during which charges will be based on actual water consumption. "AWC" means the average number of thousand gallons of water use per month reflected on an account's utility bill for the most recent consecutive months of December, January, February, and March. For accounts registering no water use in one or more monthly billing periods, an average will be established based on those months in which there was usage, historical records, or other available relevant data. The average for billing purposes will be recalculated in April of each year. The quantity charge for all nonresidential accounts with average strength sewage will be based on the actual number of thousand gallons of water consumed during each month. Notwithstanding the foregoing, the quantity charge for all commercial and industrial accounts with a separate irrigation meter will be based on the actual number of thousand gallons of water consumed as determined at the non-irrigation meter.

(4) For any new user connecting to the utility, or for a user making a change in the use of the premises or making a substantial expansion of the premises, the city manager will make an estimate of water consumed during an average winter month based upon a count of plumbing fixtures, consumption of similar users, or such other information that under all the circumstances is relevant in making such a determination. Such estimate when made will be used in charging for sewer service for a detached residence until the first month of the AWC computation period, at which time actual water use will be used to determine sewer quantity charges.

(5) The city manager may require any user of the wastewater utility to meter water used from wells or sources other than the water utility of the city. The manager may use any reasonable method to establish the wastewater service charges to such user.

Ordinance Nos. 4874 (1985); 4969 (1986); 5012 (1986); 5068 (1987); 5158 (1988); 5243 (1989); 5426 (1991); 5526 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-29 **Wastewater Plant Investment Fees.**

(a) Sanitary sewer utility customers shall pay the following plant investment fees:

Customer Description	PIF Amount
(1) Detached residential:	
Small size residence	$1,485.00
Mobile home	1,485.00
Average size residence	1,855.00
Large size residence (if 24 gpm or less)	2,225.00
Large size residence (if more than 24 gpm)	Base 1,855.00 (+ $105.00 per each gpm of the customer's instantaneous peak water demand in excess of 18 gpm)
(2) Attached residential:	
Rooming house unit	$ 555.00
Small size unit	1,115.00
Average size unit	1,485.00
Large size unit (if 18 gpm or less)	1,855.00
Large size unit (if more than 18 gpm)	Base 1,485.00 (+ $105.00 per each gpm of the customer's instantaneous peak water demand in excess of 15 gpm)
(3) Nonresidential:	
Base amount	$1,855.00
Additional fee for each gpm over 18 gpm, provided that the wastewater discharge does not exceed the wastewater discharge described in subsection 11-2-33(k), B.R.C. 1981	105.00/gpm

(4) The PIF for a customer who exceeds the wastewater discharge described in subsection 11-2-33(k), B.R.C. 1981, is calculated as follows:

[(PDH/25,000,000 gallons per day) x $85,600,000.00] plus

[(ABOD/23,360 lbs. per day) x $15,700,000.00] plus

[(ATSS/22,060 lbs. per day) x $14,675,000.00] plus

[(ANH_3/830 lbs. per day) x $2,250,000.00] = Total PIF

Where: PDH = customer's peak day hydraulic loading in million gallons per day
25,000,000 gallons per day = city's current hydraulic and collection capacity
$85,600,000.00 = value of city's hydraulic and collection capacity
ABOD = thirty-day average BOD_5 loading removal in lbs. per day
23,360 lbs. per day = city's current BOD_5 removal capacity
$15,700,000.00 = value of city's BOD_5 removal capacity

ATSS = customer's thirty-day average total suspended solids (TSS) loading requiring removal in lbs. per day
22,060 lbs. per day = city's current TSS removal capacity
$14,675,000.00 = value of city's TSS removal capacity
ANH_3 = customer's thirty-day average ammonia nitrogen as N (NH_3-N) loading requiring removal in lbs. per day
830 lbs. per day = city's current NH_3-N removal capacity
$2,250,000.00 = value of city's NH_3-N removal capacity

Ordinance Nos. 5012 (1986); 5075 (1987); 5526 (1992); 5676 (1994); 5769 (1996); 5835 (1996); 6054 (1999); 7439 (2005); 7495 (2006).

4-20-30 **Firearms Permit Application Fee.**

Repealed.

Ordinance Nos. 4946 (1985); 5676 (1994); 5835 (1996); 7319 (2003).

4-20-31 **Wastewater Classification Survey Filing Fee And Industrial And Groundwater Discharge Permit Fees And Charges.**

(a) Applicants for an industrial discharge permit shall pay the following permit fees:

(1) Flow:

Gallons per Day	Annual Fee
0 - 10,000	$3,350.00
10,001 - 25,000	4,725.00
Over 25,000	5,960.00

(2) Industries that are issued more than one permit will be charged an annual fee based on the total gallons per day from all their permit discharges.

(3) Fee to review a wastewater classification survey is $100.00.

(b) An applicant for a groundwater discharge permit shall pay the following permit fees:

(1) The fee to review a groundwater discharge permit application shall be $100.00.

(2) For an applicant that will have a continuous, ongoing discharge, the annual fee shall be $450.00 per year. The first year permit fee shall be payable upon the issuance of the permit and shall be paid every year thereafter on the anniversary of such issuance for the duration of the permit. Annual fees are not applied to construction de-watering discharges occurring over a period of no more than one hundred eighty days.

(c) The fee for dumping domestic septic wastes at the septage receiving station at the wastewater treatment plant in accordance with section 11-3-9, "Septage Tank Waste," B.R.C. 1981, shall be $70.00 per thousand gallons.

Ordinance Nos. 4946 (1985); 5012 (1986); 5158 (1988); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-32 **Occupation Tax.**

Repealed.

Ordinance Nos. 4789 (1983); 4946 (1985); 5012 (1986); 5150 (1988); 5187 (1989); 5425 (1991).

4-20-33 **Solar Access Permit Fees.**

(a) The application fee for a solar access permit pursuant to subsection 9-9-17(h), B.R.C. 1981, shall be $550.00.

(b) The application fee for an exception pursuant to subsection 9-9-17(f), B.R.C. 1981, shall be $550.00.

(c) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

Ordinance Nos. 5603 (1993); 5676 (1994); 5835 (1996); 7439 (2005); 7476 (2006).

4-20-34 **Subdivision Fees.**

Repealed.

Ordinance Nos. 4803 (1984); 4866 (1984); 5012 (1986); 5150 (1988); 5341 (1990); 5425 (1991); 5603 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7087 (2000).

4-20-35 **Parking Meter Hood Permit Fees And Deposit.**

(a) An applicant for a parking meter hood permit shall pay a fee calculated as follows for a daily, weekly, monthly, or annual permit:

(1) Daily: The maximum hourly street meter rate anywhere in the city is multiplied by the maximum number of hours any street meter is in operation.

(2) Weekly: The daily rate times the maximum number of days any street meter is in operation.

(3) Monthly: The weekly rate times four.

(4) Annual: The weekly rate times fifty-two.

(b) An applicant for a parking meter hood permit shall pay a deposit of $50.00 per hood or sign, refundable if the hood is returned in substantially the same condition of its issue within five business days after expiration of the permit.

Ordinance Nos. 5308 (1990); 5676 (1994); 5760 (1995); 5835 (1996).

4-20-36 **Animal-Drawn Vehicle Permit Fees.**

An applicant for an animal-drawn vehicle permit shall pay $51.50 per commercial-use vehicle.

Ordinance Nos. 5676 (1994); 5835 (1996).

4-20-37 **Historic Preservation Application Fees.**

(a) An applicant for designation of an individual landmark shall pay $25.00.

(b) An applicant for a designation of a historic district shall pay $75.00.

(c) An applicant for a demolition permit for applications for demolition, moving, and removal of non-landmarked buildings that are over fifty years old shall pay:

(1) Initial staff review of application: $50.00.

(2) Initial committee review of application: $275.00.

(3) If a public hearing is required: $1,466.00.

Ordinance Nos. 5676 (1994); 5835 (1996); 7213 (2002); 7439 (2005); 7475 (2006).

4-20-38 **Tax License Fees.**

(a) An applicant for a sales and use tax license under section 3-2-11, "Sales And Use Tax License," B.R.C. 1981, shall pay a fee of $25.00.

(b) An applicant for a public accommodations tax license under section 3-3-7, "Licensing And Reporting Procedure," B.R.C. 1981, shall pay a fee of $25.00.

(c) An applicant for an admissions tax license under section 3-4-6, "Licensing And Reporting Procedure," B.R.C. 1981, shall pay a fee of $25.00.

Ordinance Nos. 4789 (1983); 4866 (1984); 5525 (1992); 5599 (1993); 5676 (1994); 5835 (1996).

4-20-39 **Animal Impoundment Fee.**

The animal impoundment fee prescribed by subsection 6-1-25(b), B.R.C. 1981, is $45.00 per animal with a license; board fee for bite animal quarantine (dangerous animals) is $20.00 per day. There is also a $15.00 per day fee for feeding and keeping the animal by the city.

Ordinance Nos. 4789 (1983); 4935 (1985); 5012 (1986); 5240 (1989); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7495 (2006).

4-20-40 **Horse Concession Park Use Fee.**

The fee for the horse concession park use permit prescribed by subsection 8-3-7(b), B.R.C. 1981, is $100.00 per horse per year.

Ordinance Nos. 4789 (1983); 5676 (1994); 5835 (1996).

4-20-41 **Park And Recreation Admission Fees.**

(a) The fees for admission to the East Boulder Community Center and the North and the South Boulder Recreation Centers are:

(1) Daily:

Adult	$ 6.25
Teen	3.75
Child	3.25
Senior	4.25

(2) Annual Pass:

	Resident	Nonresident
Adult	$473.00	$592.00
Teen	207.00	259.00
Child	179.00	224.00
Senior	279.00	349.00

(3) Ten Admission Pass:

	Resident	Nonresident
Adult	$56.50	$59.50
Teen	34.00	36.00
Child	29.00	31.00
Senior	38.50	40.50

(4) Twenty Admission Pass:

	Resident	Nonresident
Adult	$106.00	$114.00
Teen	64.00	69.00
Child	55.00	59.00
Senior	72.00	78.00

(5) Forty Admission Pass:

	Resident	Nonresident
Adult	$194.00	$208.00
Teen	116.00	124.00
Child	100.00	108.00
Senior	132.00	142.00

(6) Climbing Wall:

	Resident/Nonresident
Private lessons	$25.00/one person per hour 35.00/two persons per hour

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	Resident	Nonresident
Groups (minimum of eight and maximum of ten participants)	$ 75.00 for one and one-half hours 100.00 for two hours	$ 94.00 for one and one-half hours 125.00 for two hours

(7) Childcare:

	Resident/Nonresident
Drop-in	$ 6.50 for 1.5 hours of service per child 3.50 for each additional child for 1.5 hours of service

(8) Childcare Punch Cards:

	Resident/Nonresident
Ten visits	$58.50 for first child, 35.00 for each additional child
Twenty visits	110.50 for first child, 70.00 for each additional child
Forty visits	195.00 for first child, 140.00 for each additional child

(b) The fees for admission to the Spruce and Scott Carpenter pools are:

Outdoor Pool Daily:

	Resident/Nonresident
Adult	$5.50
Teen	3.25
Child	2.75
Senior	3.75

(c) The fees for season pass allowing admission to the Boulder Reservoir, Scott Carpenter Pool, and the Spruce Pool are:

Outdoor Aquatic Facility Season Passes (Splash Pass):

Season Pass	Resident	Nonresident
Child/Teen	$ 50.00	$ 62.50
Adult/Senior	100.00	125.00
Family	200.00	250.00

The "Splash Pass" provides admission to all three outdoor aquatic facilities: Boulder Reservoir, Scott Carpenter Park, and Spruce Pool.

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(d) The fees for admission to Boulder Reservoir are:

(1) Gate Admission only:

Adult	$6.00
Child	2.75
Teen	4.00
Senior	4.50

(2) Boat (includes gate admission for two adults):

Daily (Monday through Friday, no holidays):	Resident	Nonresident
Sailboard	$27.50	$ 45.00
Sailboat	27.50	45.00
Jet ski and powerboat	50.00	100.00
Boat (under 49 HP)	30.00	50.00

Daily (weekends and holidays):	Resident	Nonresident
Sailboard	$35.00	$50.00
Sailboat	35.00	50.00

Season Boat:	Resident	Nonresident
Wet dock	$500.00	$700.00
Dry trailer	375.00	525.00
Shore mooring	225.00	325.00
Winter storage only	350.00	350.00
Overnight storage	25.00 per night	25.00 per night

	Resident	Nonresident
Seven day motor (49 or more HP)	$450.00	$600.00
Five day motor (49 or more HP)	175.00	250.00
Seven day motor (under 49 HP)	125.00	175.00
Five day sailboat	90.00	135.00
Seven day sailboat	150.00	250.00
Five day sailboard	75.00	135.00
Seven day sailboard	150.00	250.00
Seven day jet ski	450.00	600.00
Five day jet ski	175.00	250.00

(e) The fees for Flatirons Municipal Golf Course are:

(1) Per Round (Monday through Thursday):

Adult	Resident/Nonresident
9 holes	$17.50
18 holes	26.00
Child/Teen	
9 holes	11.00
18 holes	18.00
Student	
9 holes	15.50
18 holes	23.00
Senior	
9 holes	14.50
18 holes	22.00

(2) Per Round (Friday through Sunday and Holidays):

Adult	Resident/Nonresident
9 holes	$20.00
18 holes	31.00
Child/Teen	
9 holes	13.00
18 holes	20.00
Student	
9 holes	18.00
18 holes	28.00
Senior	
9 holes	16.50
18 holes	26.00

Regular fees apply Friday through Sunday and Holidays October 15 through April 14.

(3) Season Pass:	Monday–Friday	Unrestricted
Adult	$640.00	$960.00
Junior	300.00	500.00
Senior	525.00	785.00*
Student	550.00	865.00

*Annual pass holders pay $3.00 for nine holes and $5.00 for eighteen holes when passes are valid. All passes expire at the end of the calendar year in which they were purchased.

(4) 20/20 Value Pass:

	Resident/Nonresident
Adult	$ 625.00
Student	625.00
Junior	425.00
Family	1,200.00

The 20/20 Value Pass gives the holder a twenty percent discount on daily player fees, cart rental, range balls, and allows purchase of all merchandise at twenty percent below original marked price.

The pass expires when the accumulated discounted value of the services and goods purchased with the pass equals the purchase price (see prices above), or one year from the date of purchase, whichever is first. If the value of the pass is not fully expended within that year, the remaining balance may be used for one additional year at regular rates.

(5) Junior and Student Punchcards:

	Student	Juniors
9 Holes Monday – Thursday	10 rounds $139.50	10 rounds $ 99.00
18 Holes Monday – Thursday	10 rounds 207.00	10 rounds 162.00
9 Holes Friday – Sunday	10 rounds 162.00	10 rounds 117.00
18 Holes Friday – Sunday	10 rounds 252.00	10 rounds 180.00

(f) The fees for parks and recreation special events are: The city manager may set different entry fees for special events.

(g) For this section, a child is age three through twelve, a teen is age thirteen through eighteen, a junior is eighteen years of age or less, a student is a person age nineteen through twenty-five who has a valid student identification card from a recognized institution of higher education, an adult is age nineteen through fifty-nine, and a senior is age sixty and older.

(h) The city manager may set different fees for parks and recreation special promotional pricing.

(i) The city manager may reduce the fees from time to time as market conditions warrant, and may also raise them again, so long as the fee never exceeds that specified in this chapter. The manager shall give notice of fee reductions by filing a schedule of fees with the city clerk, and displaying the reduced fees on the city's website. Reductions shall be in effect as of the effective date specified in the schedule. The manager shall give notice of fee increases in the same manner, but such increases shall not take effect until at least two weeks have passed since notice was given.

(j) If the city manager decides to allow any category of annual pass to be paid for in monthly installments of one-twelfth of the total fee, the manager shall charge holders who elect to pay in this way an additional fee totaling $45.00 per year ($3.75 per installment) to cover the increased transactional costs to the city. If one person pays for several annual pass installments (whether for one pass or for different passes within the same account) in a single transaction, only one transaction fee shall be charged.

(k) For recreation center annual passes, the first adult member of the household pays full price; all other family members pay half price when passes are purchased at the same time.

Ordinance Nos. 4789 (1983); 4869 (1985); 4946 (1985); 5012 (1986); 5081 (1987); 5150 (1988); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-42 **Park Land Acquisition And Development Fees.**

Repealed.

Ordinance Nos. 4789 (1983); 4802 (1983); 4803 (1984); 4866 (1984); 4946 (1985); 5012 (1986); 5044 (1987); 5150 (1988); 5216 (1989); 5240 (1989); 5341 (1990); 5425 (1991); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 6039 (1998).

4-20-43 **Development Application Fees.**

(a) Subdivision fees:

(1) An applicant for subdivision approval shall pay the following fees:

(A) Preliminary plat

Initial application	$4,560.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	2,280.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(B) Subdivision agreement and/or final plat

Standard

Initial application	2,560.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Complex

Initial application	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(2) An applicant for construction of public improvements required as part of any approved subdivision shall pay the fees set forth in section 4-20-6, "Public Right-Of-Way Permit And Contractor License Fees," B.R.C. 1981.

(3) An applicant for a lot line adjustment shall pay the following fees:

Initial application	$ 770.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(4) An applicant for a lot line elimination shall pay the following fees:

Initial application	460.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(5) An applicant for a minor subdivision shall pay the following fees:

Initial application	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(6) An applicant for a miscellaneous plan review (additional plan review required by changes, additions, or revisions to approved plans) shall pay $128.00 per hour of staff time required, with a minimum charge of one hour.

(7) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

(b) Land use regulation fees:

(1) The fee for a blue line amendment will be assessed at the time of the application.

(2) An applicant for zoning of land to be annexed shall pay the following fees:

Feasibility study

Annexation feasibility study (Will apply as credit to initial annexation application fee if submitted within the same calendar year.)	$ 2,050.00

Standard

Initial application	16,900.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	8,450.00

Residential, no potential for additional dwelling units

Initial application	8,450.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	4,225.00

(3) An applicant for approval of a use review shall pay the following fees:

Standard	
Initial application	$ 2,050.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Nonconforming uses and nonstandard lots and buildings	
Initial application	1,715.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	858.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(4) An applicant for the concept plan review and comment process shall pay $6,740.00. Applicant shall also pay the planning board/city council administrative fee.

(5) An applicant for approval of a site review or an amendment to a site review shall pay the following fees:

Standard	
Initial application	$ 8,660.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	4,330.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Simple site review	
Initial application	4,560.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	2,280.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Minor site review

Initial application	$ 2,050.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

Complex site review

Initial application	26,215.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	13,108.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(6) An applicant for rezoning shall pay the following fees:

Initial application	13,685.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	6,843.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(7) An applicant for an outside city utility permit shall pay the following fees:

Initial application	4,560.00
Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)	2,280.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

(8) An applicant for a temporary water utility connection permit shall pay $128.00 per hour of staff time required, with a minimum charge of one hour.

(9) An applicant for a planning board review shall pay an administrative fee of $1,540.00 plus a $128.00 hourly rate for staff time required.

(10) An applicant for a conditional use review shall pay $1,065.00, unless a different fee is specified herein.

(11) An applicant for an accessory dwelling unit permit shall pay $410.00.

(12) An applicant for the transfer of an accessory dwelling unit shall pay $164.00.

(13) An applicant for an owner's accessory unit shall pay $410.00.

(14) An applicant for the transfer of an owner's accessory unit shall pay $164.00.

(15) An applicant for a limited accessory unit shall pay $410.00.

(16) An applicant for the transfer of a limited accessory unit shall pay $164.00.

(17) An applicant for selling from a moveable structure, vacant lot, or a parking lot (includes Christmas tree sales) shall pay the following fees:

Initial application	$246.00
Application renewal	82.00

(18) An applicant for a cooperative housing unit conditional use review shall pay $575.00.

(19) An applicant for an antenna for wireless telecommunication service shall pay $2,380.00.

(20) An applicant for a group home facility shall pay $492.00.

(21) An applicant for an administrative parking reduction shall pay $590.00.

(22) An applicant for an administrative parking deferral shall pay $328.00.

(23) An applicant for an administrative solar exception shall pay $246.00.

(24) An applicant for a review for development under section 9-7-9, "Two Detached Dwellings On A Single Lot," B.R.C. 1981, shall pay $574.00.

(25) An applicant for vacation of a public street or alley shall pay $8,995.00. An applicant for vacation of a public easement shall pay $492.00.

(26) An applicant for an administrative setback variance shall pay $246.00. An applicant for a variance from a front yard setback for parking shall pay $513.00.

(27) An applicant for a minor modification to an approved discretionary review plan shall pay the following fees:

Standard	$738.00
Simple	164.00

(28) An applicant for a conditional height review shall pay $246.00.

(29) An applicant for temporary outdoor entertainment shall pay the following fees:

Initial application	$246.00
Application renewal	82.00

(30) An applicant for a miscellaneous plan review (additional plan review required by changes, additions, or revisions to approved plans) or other services associated with development review shall pay $128.00 per hour of staff time required, with a minimum charge of one hour.

(31) New development related fees:

An applicant requesting a zoning verification letter shall pay $133.00.

An applicant for a development extension/staff approval review shall pay $133.00.

An applicant for a development extension/planning board approval shall pay an administrative fee of $1,540.00 plus $128.00/hour for staff time required.

An applicant requesting to rescind a development agreement shall pay $533.00.

An applicant for an administrative relief/transportation/parking shall pay $267.00.

An applicant for an administrative relief/nonconforming use substitution shall pay $267.00.

An applicant for an administrative relief/landscaping review shall pay $267.00.

An applicant requesting initial property addressing shall pay $31.00 plus $16.00/unit.

An applicant requesting a change of address shall pay $267.00.

An applicant requesting a street name change/city council approval shall pay an administrative fee of $1,540.00 plus $128.00/hour for staff time required.

Boulder Valley Comprehensive Plan fees:

An applicant for a land use designation change outside the annual update process shall pay $615.00.

(32) An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

(c) Technical document review fees: The documents and fees listed in this section may be required as part of a technical document review, but may also be requested for any review process which would warrant a review type listed below:

(1) An applicant for a utility report plan and profile review shall pay the following fees:

Simple	$ 513.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Standard	2,050.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Complex	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(2) An applicant for a Colorado Department of Transportation Highway Access Permit shall pay $615.00.

(3) An applicant for a transportation plan and report shall pay the following fees:

Simple	$ 513.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Standard	2,050.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Complex	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(4) An applicant for a storm water quality and erosion control plan and report shall pay the following fees:

Simple	$ 513.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Standard	2,050.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Complex	4,100.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(5) An applicant for a right-of-way/easement dedication shall pay $205.00.

These fees are not applicable for dedications which occur on a plat as part of a subdivision process.

Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	$ 128.00/hour

(6) An applicant for a final plan review shall pay the following fees:

Final architecture, landscaping and site plan combined - this only applies to site review simple category	$1,025.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Final architecture plan	820.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Final landscaping plan	820.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour
Final site plan	820.00
Revisions (if applicable) - an hourly rate for staff time required after issuance of the first set of comments	128.00/hour

The above fees are applicable whether plans are submitted individually or as part of a full construction plan set.

(7) An applicant for a miscellaneous plan review (additional plan review required by changes, additions or revisions to approved plans) shall pay $128.00 per hour or staff time required with a minimum charge of one hour.

An application fee paid under this section may be refunded, but only if an unambiguous written request to withdraw the application and refund the fee is received in the city office where the application was presented within five days of the date on which the application was received at that office.

Ordinance Nos. 4803 (1984); 4927 (1985); 5341 (1990); 5562 (1993); 5603 (1993); 5676 (1994); 5760 (1995); 5806 (1996); 5835 (1996); 5894 (1997); 6093 (1999); 6099 (1999); 7211 (2002); 7439 (2005); 7476 (2006); 7484 (2006); 7495 (2006).

4-20-44 **Floodplain Development Permits And Flood Control Variance Fees.**

(a) If the floodplain development permit is for a development not located within the high hazard zone or the conveyance zone:

(1) An applicant for a floodplain development permit for the construction of a fence, or for flatwork, shall pay $31.00.

(2) An applicant for a floodplain development permit for construction of a shed, garage, deck, or for interior "rehabilitation" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure shall pay $77.00.

(3) An applicant for a floodplain development permit for exterior "rehabilitation" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure, or for improvements to an existing structure not meeting the thresholds for "substantial damage,"

or for a "substantial improvement" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, shall pay $513.00. For review of plan revisions, an applicant shall pay $103.00.

(4) An applicant for a floodplain development permit for work on an existing residential structure exceeding the threshold for "substantial damage," or for a "substantial improvement" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, or any commercial or nonresidential addition, or any new single family detached residential, new commercial or mixed use, or attached residential structure elevated to flood protection elevation shall pay $1,025.00. For review of plan revisions, an applicant shall pay $205.00.

(5) An applicant for a floodplain development permit for an addition to an existing structure or construction of a new structure with "floodproofing" as that term is defined in section 9-16-1, "General Definitions," B.R.C. 1981, shall pay $4,920.00. For review of plan revisions, an applicant shall pay $513.00.

(b) If the floodplain development permit is for a development located within the high hazard zone or the conveyance zone and a floodplain analysis is not required, the applicant shall pay $2,460.00. For review of plan revisions, an applicant shall pay $256.00.

(c) If the development is located within the high hazard zone or conveyance zone and the city manager, pursuant to paragraph 9-3-6(b)(3), B.R.C. 1981, requires the applicant to furnish a floodplain analysis, the applicant shall pay $4,920.00. For review of plan revisions, an applicant shall pay $513.00.

(d) An applicant for a variance from the floodplain regulation provisions of section 9-3-7, "Variances," B.R.C. 1981, shall pay $1,540.00.

(e) An applicant for a map revision that is located within the floodway or conveyance zone and includes a floodplain analysis shall pay $4,920.00. For review of plan revisions, an applicant shall pay $513.00.

(f) An applicant for a map revision that involves fill and is not located within the floodway or conveyance zone shall pay $1,540.00. For review of plan revisions, an applicant shall pay $205.00.

(g) An applicant for a floodplain information request shall pay $26.00 for each address.

Ordinance Nos. 4748 (1983); 4946 (1985); 5012 (1986); 5199 (1989); 5425 (1991); 5525 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 6034 (1998); 7349 (2004); 7439 (2005); 7476 (2006).

4-20-45 **Storm Water And Flood Management Fees.**

(a) Owners of detached residences and attached single-unit metered residences in the city shall pay the following monthly storm water and flood management fees:

Size of Parcel	
(1) Up to 15,000 sq. ft.	$6.75
(2) 15,000-30,000 sq. ft.	8.45
(3) 30,001 sq. ft. and over	10.15

(b) The owners of all other parcels of land in the city on which any improvement has been constructed shall pay a storm water and flood management fee based on the monthly rate in paragraph (a)(1) of this section (for up to a fifteen thousand square foot parcel) multiplied by the ratio of the runoff coefficient of the parcel to a coefficient of 0.43 and by the ratio of the area of the parcel in square feet to a seven thousand square foot parcel. If the calculation

results in a fee less than the monthly rate in paragraph (a)(1) of this section, then the fee specified in paragraph (a)(1) of this section will be assessed.

Ordinance Nos. 4749 (1983); 4946 (1985); 5190 (1989); 5525 (1992); 5599 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7278 (2003); 7439 (2005); 7495 (2006).

4-20-46 **Storm Water And Flood Management Utility Plant Investment Fee.**

Owners of all parcels of land in the city submitting building permit applications shall pay a storm water and flood management plant investment fee based on a base rate of $1,820.00. The base rate shall be multiplied by the ratio of the area of the parcel in square feet to a seven thousand square foot parcel and by the ratio of the runoff coefficient of the parcel less 0.2 to a runoff coefficient of 0.2.

Ordinance Nos. 5190 (1989); 5526 (1992); 5676 (1994); 5769 (1996); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-47 **Zoning Adjustment And Building Appeals Filing Fees.**

(a) The fee for filing an appeal to or requesting a variance from the board of zoning adjustment and building appeals under subsection 9-9-21(s) or section 10-2-5, "Appeals And Variances," 10-3-9, "Temporary Rental License Appeals," 10-5-2, "Adoption Of International Building Code With Modifications," 10-6-2, "Adoption Of The National Electrical Code With Modifications," 10-9-2, "Adoption Of The International Mechanical Code With Modifications," 10-10-2, "Adoption Of The International Plumbing Code With Modifications," or 10-12-24, "Appeals And Variances," B.R.C. 1981, is $103.00, except that the fee for an emergency appeal is $205.00.

(b) The fee for requesting a variance from the board of zoning adjustment and building appeals under subsection 9-9-21(s), B.R.C. 1981, is $513.00.

(c) The fee for requesting a variance from the board of zoning adjustment and building appeals under section 9-2-3, "Variances And Interpretations," B.R.C. 1981, is $513.00.

(d) The fee for filing an appeal to the board of zoning adjustment and building appeals under section 10-12-24, "Appeals And Variances," B.R.C. 1981, is $513.00.

Ordinance Nos. 4879 (1985); 4984 (1986); 5012 (1986); 5341 (1990); 5425 (1991); 5525 (1992); 5603 (1993); 5676 (1994); 5835 (1996); 7439 (2005); 7476 (2006).

4-20-48 **Elevator, Dumbwaiter, Materials Lift, Escalator, Moving Walk, Wheelchair Lift, And Stairway Lift Certificate Fees.**

(a) An applicant for an elevator, escalator, or moving walk certificate shall pay an annual fee of $164.00 for each such device.

(b) An applicant for a dumbwaiter certificate shall pay an annual fee of $18.00 for each dumbwaiter.

(c) An applicant for a materials lift, wheelchair lift, or stairway lift certificate shall pay an annual fee of $78.75 for each lift.

Ordinance Nos. 4886 (1985); 5081 (1987); 5150 (1988); 5341 (1990); 5425 (1991); 5525 (1992); 5572 (1993); 5676 (1994); 5760 (1995); 5835 (1996); 7439 (2005); 7495 (2006).

4-20-49 **Neighborhood Parking Permit Fee.**

(a) A zone resident applying for a neighborhood parking permit shall pay $17.00 for each permit or renewal thereof.

(b) A business applying for a neighborhood parking permit for employees shall pay $75.00 for each permit or renewal thereof.

(c) An individual who does not reside within the zone applying for a neighborhood parking permit, if permitted in the zone, shall pay $78.00 for each quarterly permit or renewal thereof.

Ordinance Nos. 4966 (1986); 5676 (1994); 5835 (1996); 5869 (1997); 7247 (2002); 7439 (2005).

4-20-50 **Development Excise Tax.**

Repealed.

Ordinance Nos. 5216 (1989); 5240 (1989); 5341 (1990); 5425 (1991); 5676 (1994); 5835 (1996); 6039 (1998).

4-20-51 **Transportation Excise Tax.**

Repealed.

Ordinance Nos. 5216 (1989); 5676 (1994); 5835 (1996); 6039 (1998).

4-20-52 **Fire Code Permit And Inspection Fees.**

(a) The fees for permits under the Fire Code adopted by section 10-8-2, "Adoption Of International Fire Code With Modifications," B.R.C. 1981, are:

(1) (A) Flammable and combustible liquid regular permit: $20.00.

(B) Flammable and combustible liquid special permit: $25.00.

(C) Flammable and combustible liquid special permit simulated demonstration: $250.00.

(Permits (A) and (B) are valid for one year and, upon application, shall be renewed upon payment of the fees given above. If changed conditions require a new simulated demonstration, the demonstration fee shall be paid.)

(2) L.N.G. installation review and inspection fee: $500.00, but the city manager may waive a portion of the fee if actual costs of review and inspection are less than that amount.

(b) The fire protection contractor test fee shall be $30.00 for each system specialty per test.

(c) Fire protection system reinspection fees are:

(1) Underground fire line 200 PSI test:

- first reinspection	$ 50.00
- second reinspection	100.00
- each subsequent reinspection	200.00

(2) Aboveground hydrostatic sprinkler system test:

- first reinspection	$ 50.00
- second reinspection	100.00
- each subsequent reinspection	200.00

(3) Final pump test of completed sprinkler system:

- first re-test	100.00
- second re-test	150.00
- each subsequent re-test	300.00

(4) All other initial installations of fire protection and alarm systems:

- first reinspection	50.00
- each subsequent reinspection	100.00

(5) Commercial/business inspections:

- third reinspection	50.00
- each subsequent reinspection	100.00

(d) Fees required by paragraph (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section shall be paid prior to the reinspection being accomplished.

(e) False fire alarm fees are:

Third false activation within any calendar year	$100.00
Fourth false activation within any calendar year	250.00
Fifth false activation within any calendar year	300.00
Sixth and subsequent false activation within any calendar year	500.00

(f) The fee for an administrative appeal under chapter 10-8, "Fire Prevention Code," B.R.C. 1981, is $20.00.

Ordinance Nos. 5029 (1987); 5245 (1989); 5599 (1993); 5676 (1994); 5835 (1996).

4-20-53 **Wetland Permit And Map Revision Fees.**

The fees for permits or other services described in section 9-3-9, "Wetlands Protection," B.R.C. 1981, shall be:

Simple wetland permit	$ 565.00
Standard wetland permit	2,255.00
Review of application revisions	169.00
Mitigation plan review	567.00 + base permit fee + city's direct cost plus 20% for consultant review of the plan
Wetland boundary determination	3,068.00 + city's direct cost for consultant review
Wetland functional evaluation	205.00 + city's direct cost for consultant review

Ordinance Nos. 5521 (1992); 5676 (1994); 5760 (1995); 5835 (1996); 7338 (2004); 7439 (2005); 7476 (2006).

4-20-54 **Parks And Open Space Parking Permit Fee.**

The fees for parking permits issued under chapter 4-24, "Parks And Open Space Parking Permits," B.R.C. 1981, shall be:

Daily Permit:	$ 3.00
Annual Permit:	15.00

Ordinance Nos. 5546 (1993); 5676 (1994); 5835 (1996).

4-20-55 **Court And Vehicle Impoundment Costs, Fees, And Civil Penalties.**

(a) The costs, fees, or civil penalties authorized in chapter 2-6, "Courts And Confinements," B.R.C. 1981, shall be:

(1) Scofflaw civil penalty	$ 25.00
(2) Immobilization or impoundment civil penalty	50.00
(3) Deferred sentence administrative costs: traffic violations	75.00
Deferred sentence administrative costs: all other violations	100.00
Deferred prosecution administrative costs	50.00
(4) Juror fees:	
panel only	3.00
actual service for day	6.00
(5) Witness fee	5.00
(6) Complaining witness default fee	300.00
(7) Court costs:	
plea	25.00
trial to court	25.00
jury trial	25.00
(8) Probation supervision fee	50.00
(9) Community service fee	35.00
(10) Personal service of process: automated vehicle identification complaint:	
served by a person other than a peace officer	20.00
served by a peace officer	60.00
served by certified mail	3.00
(11) Warrant processing fee	30.00
(12) Failure to appear fee	30.00
(13) Stay fee (payment plan)	15.00

(b) The administration fee for vehicles impounded under chapter 7-7, "Towing And Impoundment," B.R.C. 1981, shall be:

(1) Abandoned and inoperable vehicle impoundment fee	$ 25.00
(2) Inoperable vehicle on private property impoundment fee	25.00

Ordinance Nos. 5760 (1995); 5835 (1996); 5954 (1997); 6073 (1999); 7439 (2005).

4-20-56 **Fire Contractor License.**

(a) An applicant for a fire contractor license shall pay the following annual fee according to the license requested:

(1) Class A	$299.00
(2) Class B	175.00
(3) Class C	175.00
(4) Class D	175.00
(5) Class E	87.50

(b) The fees herein prescribed shall not be prorated.

(c) An applicant for a permit required by this code shall pay the following fees, computed on the dollar value of the completed mechanical installation, including materials and labor:

TABLE OF PERMIT FEES

Dollar Value	Fee
$100.00 or less	$13.25
100.01 through $400.00	16.35
400.01 through 800.00	19.40
800.01 and above	19.40 for the first $800.00 plus $3.65 for each additional $100.00 or fraction thereof

(d) The reinspection fee is $92.00 per occurrence.

(e) The after hours inspection fee is $120.00 per hour, with a two-hour minimum.

(f) The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Ordinance Nos. 6015 (1998); 6037 (1998); 7439 (2005); 7495 (2006).

4-20-57 **News Box Fees.**

(a) The annual fee for leases of news boxes governed by chapter 4-27, "News Box Leases And Regulation," B.R.C. 1981, is $80.00 per full size box, $42.00 for a double-sized slot, and $23.50 for a single-sized slot, payable in advance at time of application or renewal. Fees shall be prorated by month for partial year periods, and partial months shall constitute a full month.

(b) The waiting list fee is $25.00 for each box or slot desired, and shall not be prorated or refunded.

Ordinance Nos. 7282 (2003); 7439 (2005); 7495 (2006).

4-20-58 **Prairie Dog Lethal Control Permit Fees.**

(a) An applicant for a prairie dog lethal control permit shall pay a processing fee of $1,500.00 to offset administrative costs associated with issuing and monitoring lethal control permits. This processing fee shall be in addition to any other mitigation cost or payment required in conjunction with approved wildlife management practices.

(b) An applicant for a prairie dog lethal control permit shall pay a fee of $1,200.00 per acre of active prairie dog habitat lost, prorated for any partial acres of lost habitat.

Ordinance No. 7321 (2005).

4-20-59 **Domestic Partnership Registration Fees.**

An applicant for the registration or termination of a domestic partnership shall pay an application or termination fee of $25.00.

Ordinance No. 7416 (2005).

4-20-60 **Voice And Sight Control Evidence Tag Fees.**

(a) An applicant for a Voice and Sight Control Evidence Tag who is a resident of the City of Boulder shall pay an application fee of $15.00, and a nonresident shall pay an application fee of $18.75. Additional Voice and Sight Control Evidence Tags may be provided to persons who reside in the same household as the applicant upon payment of a duplicate tag fee of $5.00.

(b) The supplemental fee pursuant to section 6-13-5, "Revocation And Reinstatement Of Voice And Sight Control Evidence Tags Upon Violations," B.R.C. 1981, shall be $50.00, regardless of residency.

Ordinance Nos. 7443 (2006); 7458 (2006).

4-20-61 **Open Space And Mountain Parks Commercial And Limited Use Permit Fees.**

(a) An applicant for a Commercial Use Permit on open space and mountain parks properties shall pay an application fee of $300.00 and, for each hour over eight hours spent by staff processing the application, an additional fee of $30.00 per hour.

(b) An applicant for a Commercial Use Permit on open space and mountain parks properties that is a tax exempt organization described in Internal Revenue Code section 501(c)(3) or a governmental agency shall pay an application fee of $150.00 and, for each hour over eight hours spent by staff processing the application, an additional fee of $30.00 per hour.

(c) An applicant for a Limited Use Permit on open space and mountain parks properties shall pay an application fee of $50.00 and, for each hour over eight hours spent by staff processing the application, an additional fee of $30.00 per hour.

Ordinance Nos. 7458 (2006); 7504 (2006).

4-20-62 **City Manager Rebate Authority.**

(a) The city manager may grant rebates of any fees paid pursuant to this chapter, paid by primary employers in connection with equipment acquisition, construction projects, construction equipment and construction materials when, in the judgment of the city manager, the rebate will serve the economic interests of the city by helping attract or retain a primary employer which contributes to a socially sustainable community. These rebates may include, but are not limited to, fees paid pursuant to sections 4-20-43, "Development Application Fees," 4-20-44, "Floodplain Development Permits And Flood Control Variance Fees," 4-20-45, "Storm Water And Flood Management Fees," 4-20-46, "Storm Water And Flood Management Utility Plant Investment Fee," and 4-20-52, "Fire Code Permit And Inspection Fees," B.R.C. 1981. The city manager may promulgate interpretive guidelines to define more specifically the circumstances under which rebates may be granted and to establish application procedures or other matters necessary or desirable for implementation of this subsection. Any fees rebated pursuant to this subsection shall be deemed payable by the city's general fund. This subsection shall be repealed and no longer in effect after December 31, 2007, unless extended by action of the city council.

Ordinance No. 7478 (2006).

TITLE 4 LICENSES AND PERMITS

Chapter 21 Sign Contractor License[1]

Section:

4-21-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by licensing persons who install, erect, move, or maintain signs in the city.

4-21-2 License Required.

No person shall engage in the business of installing, erecting, moving, or maintaining signs, as defined in this code[2], in the city without first obtaining from the city manager a license under this chapter.

4-21-3 Classification Of Licenses.

(a) A Class A license entitles the licensee to contract for the manufacture and installation of signs and related structures, including awnings which are directly supported by the structure only and canvas canopies being supported by building and vertical supports, and to paint signs on existing structures. The annual fee for a Class A license is that prescribed by section 4-20-21, "Sign Contractor License Fees And Sign Permit Fees," B.R.C. 1981.

(b) A Class B license entitles the licensee to contract for painting signs on existing structures. The annual fee for a Class B license is that prescribed by section 4-20-21, "Sign Contractor License Fees And Sign Permit Fees," B.R.C. 1981.

Ordinance Nos. 5493 (1992); 6015 (1998).

4-21-4 Application For License.

An applicant for a contractor license shall:

(a) Apply on forms furnished by the city manager, provide such information relating to the applicant's competence, education, training, and experience as the city manager may require;

(b) Pay the fee prescribed by section 4-20-21, "Sign Contractor License Fees And Sign Permit Fees," B.R.C. 1981; and

[1]Adopted by Ordinance No. 4659. Derived from Ordinance No. 3913.
[2]Section 9-9-21, "Signs," B.R.C. 1981.

(c) Provide evidence of insurance coverage required by section 4-1-8, "Insurance Required," B.R.C. 1981.

4-21-5 **Authority To Deny Issuance Of License.**

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions set forth in subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor's license revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any contracting business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

Ordinance No. 5039 (1987).

4-21-6 **Contractor Responsibilities.**

A contractor licensed under this chapter is responsible for all work performed under each contract executed pursuant to the license, whether the contractor, an employee, or a subcontractor performs the work.

4-21-7 **Revocation And Suspension Of License.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981. Grounds for suspension or revocation include, without limitation, failure to maintain required insurance.

4-21-8 **Term Of License.**

The term of the license issued under this chapter is twelve months from its date of issuance.

TITLE 4 LICENSES AND PERMITS

Chapter 22 Elevator, Dumbwaiter, Materials Lift, Escalator, And Moving Walk License[1]

Section:

4-22-1 Legislative Intent.

The purpose of this chapter is to protect the public welfare by licensing public elevators, dumbwaiters, materials lift, escalators, and moving walks used in the city.

Ordinance No. 5462 (1992).

4-22-2 Definitions.

The terms used in this chapter have the meanings defined in this code and in the "Safety Code For Elevators And Escalators," included within the Building Code at chapter 10-5, "Building Code," B.R.C. 1981.

Ordinance Nos. 4984 (1986); 5462 (1992).

4-22-3 License Required.

No person shall operate any elevator, dumbwaiter, materials lift, escalator, or moving walk in the city without first obtaining a license therefor from the city manager under this chapter.

Ordinance No. 5462 (1992).

4-22-4 License Application.

An applicant may obtain an elevator, dumbwaiter, materials lift, escalator, or moving walk license after:

(a) Filing an application therefor with the city manager that includes the applicant's name, address, and the proposed or existing location of the elevator, dumbwaiter, materials lift, escalator, or moving walk;

(b) Paying the fee prescribed in section 4-20-48, "Elevator, Dumbwaiter, Materials Lift, Escalator, Moving Walk, Wheelchair Lift, And Stairway Lift Certificate Fees," B.R.C. 1981; and

[1]Adopted by Ordinance No. 4886.

(c) Providing evidence of the insurance coverage required by section 4-1-8, "Insurance Required," B.R.C. 1981.

Ordinance Nos. 5271 (1990); 5462 (1992).

4-22-5 **Authority To Deny Issuance Of License.**

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions in subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any elevator, dumbwaiter, materials lift, escalator, or moving walk license under this code revoked or suspended;

(2) The applicant has previously failed to comply with this code or other ordinances and regulations of the city relating to an elevator, dumbwaiter, materials lift, escalator, or moving walk; or

(3) The elevator, dumbwaiter, materials lift, escalator, or moving walk does not comply with this code or other ordinances or regulations of the city.

(b) If the city manager denies a license application under this section, the manager shall follow the procedure prescribed by subsection 4-1-9(b), B.R.C. 1981.

Ordinance No. 5462 (1992).

4-22-6 **Conveyances To Which Chapter Not Applicable.**

Nothing in this chapter applies to the installation or operation of an elevator, dumbwaiter, materials lift, escalator, or moving walk in a private residence. For purposes of this chapter, the term "private residence" means a dwelling unit which is occupied only by the members of a single family[1].

Ordinance No. 5462 (1992).

4-22-7 **Term Of License.**

The term of a license issued under this chapter is one year.

Ordinance No. 5462 (1992).

4-22-8 **Inspections Required.**

No person who is licensed or who applies for a license under this chapter shall fail, upon request by the city manager, to submit to an inspection of the elevator, dumbwaiter, materials lift, escalator, or moving walk for which such license was or is to be issued, which inspection shall be conducted as prescribed under the provisions of the "Safety Code For Elevators And Escalators," included within the Building Code at chapter 10-5, "Building Code," B.R.C. 1981.

Ordinance Nos. 4984 (1986); 5462 (1992).

[1]See section 3, ANSI/ASME A17.1-1981; and paragraphs 1-2-1(b)(46) and (b)(49), B.R.C. 1981.

4-22-9

4-22-9 **Revocation.**

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

Ordinance No. 5462 (1992).

TITLE 4 LICENSES AND PERMITS

Chapter 23 Neighborhood Parking Zone Permits[1]

Section:

4-23-1 Legislative Intent.

The purpose of this chapter is to set the standards for issuance and administration of neighborhood parking zone permits.

4-23-2 Permit Issuance.

(a) Upon designation of a neighborhood permit parking zone pursuant to section 2-2-15, "Neighborhood Permit Parking Zones," B.R.C. 1981, the city manager shall issue parking permits for vehicles owned by or in the custody of and regularly used by residents of such zone, by persons employed by a business located within such zone, and, if provided in the zone, by individual nonresidents upon receipt of a completed application therefor and payment of the fees prescribed in section 4-20-49, "Neighborhood Parking Permit Fee," B.R.C. 1981. The city manager may issue nonresident commuter permits up to December 31, 2007, after which date this permit will no longer be available within neighborhood permit parking zones, unless re-authorized by the city council before that time.

(b) A vehicle displaying a valid permit issued pursuant to this section may be parked in the zone specified in the permit without regard to the time limits prescribed for the zone.

(c) No more than two resident permits shall be in effect at any time for any person. No person shall be deemed a resident of more than one zone, and no more than one permit may be issued for any one vehicle even if persons residing in different zones share ownership or use.

(d) Resident permits issued under this section shall be specific for a single vehicle, shall not be transferred, and shall be displayed thereon only as the manager by regulation may prescribe. The permittee shall remove the permit from the vehicle if the vehicle is sold, leased, or no longer in the custody of the permittee.

(e) "Business," for the purpose of this chapter, includes nonresidential institutions, but does not include home occupations. Three business employee permits may be in effect at any time for any business without regard to number of employees or off-street parking. In the alternative, upon application by the manager of the business, the city manager may issue employee permits to a business according to the following formula: half of the number of full-time equivalent employees minus the number of off-street parking spaces under the control of the business at that location equals the maximum number of employee permits for the business. Full-time equivalent employees of the business are calculated based upon one such employee for every full forty hours worked at that location by employees of the business within the periods of time in a week during which the neighborhood permit parking restrictions are in effect. On its application, the employer shall designate the employee vehicles, not to exceed

[1]Adopted by Ordinance No. 4966. Amended by Ordinance No. 5869.

the number allowed, for which each permit is valid. A business permit is valid only for the vehicles listed thereon, and shall be displayed on the vehicle for which the permit is being used only as the manager by regulation may prescribe.

(f) The manager shall by regulation declare when the permit year shall begin for each neighborhood parking permit zone. Permits issued based on new applications submitted during the last month of a permit year shall also be valid for the succeeding permit year. Otherwise there shall be no proration of the fee.

(g) In considering applications for resident permits, the manager may require proof that the applicant has a legal right to possession of the premises claimed as a residence. If the manager has probable cause to believe that the occupancy limitations of subsection 9-8-5(a), B.R.C. 1981, are being violated, no further permits shall be issued under this section for the residence in question until the occupancy thereof is brought into compliance.

(h) If the permit or the portion of the vehicle to which a resident permit has been affixed is damaged such that it must be replaced, the permittee, upon application therefor, shall be issued a replacement at a prorated cost. The manager may require display of the damaged permit before a new permit is issued.

(i) No person shall use or display any permit issued under this section in violation of any provision of this code.

(j) The maximum number of nonresident permits issued on any given block face within a zone shall be four. In addition, if the manager determines that the average daily percentage of unoccupied neighborhood parking spaces, on block faces where commuter permits have been allocated, drops below twenty-five percent for four consecutive hours between the hours of 9:00 a.m. and 5:00 p.m. of any given weekday, then the manager shall reduce the number of commuter permits by a number estimated to maintain an average daily percentage of unoccupied neighborhood parking spaces of twenty-five percent. But for any part of Goss Street or Circle, Grove Street or Circle, or the portions of 16th Street through 23rd Street between Arapahoe Avenue and Canyon Boulevard, included within any neighborhood parking permit zone, the average daily percentage of unoccupied neighborhood parking spaces which must be maintained without reduction in commuter permits shall be fifteen percent. The manager may also, for this Goss-Grove zone, allocate commuter permits initially to educational institutions and organizations representing postal workers in rough proportion to the needs of these groups. Such groups may renew such permits. Distribution of such permits by such groups to their clientele shall be at a price not to exceed the cost of the permit.

Ordinance Nos. 5271 (1990); 7004 (1999); 7243 (2002); 7247 (2002).

4-23-3 **Guest Permits.**

Residents issued a permit pursuant to this chapter may obtain two two-week permits per year for use by houseguests of the permittee. The permit shall be indelibly marked in the space provided thereon with the date of its first use. The permit shall thereafter be valid only for the succeeding thirteen consecutive days. The manager may by regulation define the circumstances under which additional guest permits may be issued in cases of reasonable need consistent with residential use of the dwelling.

4-23-4 **Temporary Permits.**

Upon application to the manager, any person licensed or registered as a contractor in the city may obtain at no cost a reasonable number of temporary permits for the vehicles of the contractor

and the contractor's employees for the period of time that the contractor is engaged in work within a neighborhood permit parking zone for which a permit has been issued under the provisions of title 10, "Structures," B.R.C. 1981.

4-23-5 **Revocation.**

The manager, after notice and a hearing as set forth in section 4-1-10, "Revocation Of Licenses," B.R.C. 1981, may revoke any permit issued pursuant to this chapter for any of the grounds set forth therein or on the ground that it has been misused. Revocation shall bar the permittee from holding any permit under this chapter for a period of one year thereafter.

TITLE 4 LICENSES AND PERMITS

Chapter 24 Parks And Open Space Parking Permits[1]

Section:

4-24-1 Legislative Intent.

The purpose of this chapter is provide for the issuance and administration of a permit parking system in city parks, parkways, recreation areas, and open space in instances in which the city manager has determined to institute such a system.

4-24-2 Designation Of Areas Subject To Permit Requirement.

The city manager may, after consultation with the Parks and Recreation Advisory Board or the Open Space Board of Trustees, as applicable, designate specific city parks, parkways, recreation areas, or open space land, or portions of such places, as areas in which motor vehicles may park only by permit. The designation becomes effective when the manager erects a sign at each entrance to the area affected by the permit requirement, or at some other place which is reasonably calculated to give notice to drivers of motor vehicles, indicating the requirement.

4-24-3 Permit Issuance.

The city manager shall, upon payment of the fee specified in section 4-20-54, "Parks And Open Space Parking Permit Fee," B.R.C. 1981, issue a parks or open space parking permit. This permit is valid only for the period specified, which shall be for a day or a calendar year, and for the vehicle for which issued. The manager may provide for issuance of such permits at such places and times as the manager finds expedient, and may provide for unattended issuance in which the applicant places the fee in an envelope, writes the license plate number of the vehicle and the current date on the envelope, and deposits the envelope and fee as written instructions direct, and retains and displays the specified portion of the envelope as a permit. No permit is valid without prepayment of the specified fee and display of the permit in a place within the vehicle where its number and any other information required to be placed upon it is clearly visible to a peace officer from outside the vehicle, and is in the location specified by the manager in the permit instructions.

4-24-4 Exemption From Permit.

A valid, current license plate indicating that the vehicle is registered in Boulder County, Colorado, shall be deemed a permit under this chapter, and no fee is required before such a vehicle may be parked in areas governed by this chapter. If the vehicle is properly registered in Boulder County, Colorado, but still legally bears a current license plate indicating registration in a different Colorado county, then the city manager may issue, at no cost, an annual permit under this chapter to the owner or some other person legally in possession of the vehicle.

[1]Adopted by Ordinance No. 5546.

TITLE 4 LICENSES AND PERMITS

Chapter 25 Fire Contractor License[1]

Section:

4-25-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by assuring that the persons responsible for performing work covered by the city's fire code[2] are qualified to do so and that they possess insurance to protect consumers from losses due to their services.

4-25-2 Definition Of Fire Contractor.

As used in this chapter "fire contractor" means a person that undertakes or performs, with or for another, any fire installation, alteration, repair or other work in the city for which a permit issued under the International Fire Code from the city is required under this code. But this term does not include subcontractors working for and under the supervision of a fire contractor licensed under this chapter or a homeowner performing work upon the owner's residence, or a building or structure accessory thereto, that is intended for the owner's personal use.

4-25-3 License Required; Exception.

(a) No person shall perform any work as a fire contractor in the city without first obtaining a license from the city manager under this chapter.

(b) No fire permit shall be issued for work to be done by a person who does not have a valid, current license as required by this chapter that covers the type of work to be performed.

4-25-4 Classifications Of Licenses.

(a) A Class A license entitles the licensee to undertake or perform any work covered by the city fire code fire sprinkler systems. The annual fee for a Class A license is that prescribed by section 4-20-13, "Mechanical Contractor License And Mechanical Permit Fees," B.R.C. 1981.

(b) A Class B license entitles the licensee to undertake or perform hood extinguishing systems.

(c) A Class C license entitles the licensee to undertake or perform fire alarm systems.

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[1]Adopted by Ordinance No. 6015.
[2]Chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

(d) A Class D license entitles the licensee to undertake or perform special hazard systems.

(e) A Class E license entitles the licensee to undertake or perform hand or portable fire extinguishers.

4-25-5 License Application.

An applicant for a fire contractor license shall:

(a) Apply on forms furnished by the city manager, provide such information relating to the applicant's competence, education, training, and experience as the city manager may require, and pay the fee prescribed in section 4-20-56, "Fire Contractor License," B.R.C. 1981; and

(b) File the evidence of insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981.

4-25-6 Authority To Deny Issuance Of License.

(a) The city manager may deny an application for a license under this chapter upon a finding of any of the conditions prescribed by subsection 4-1-9(a), B.R.C. 1981, or upon a determination that:

(1) The applicant has had any contractor license revoked or suspended; or

(2) The applicant has previously failed to comply with the ordinances and regulations of the city relating to conducting any contracting business licensed by this code.

(b) If the city manager denies a license application under this section, the manager shall follow the procedures prescribed by subsection 4-1-9(b), B.R.C. 1981.

4-25-7 Contractor Responsibilities.

A contractor licensed under this title is responsible for all work performed under the contract, whether the contractor, an employee, or a subcontractor performs the work.

4-25-8 Revocation And Suspension Of License.

The city manager may suspend or revoke a license issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981. Grounds for suspension or revocation include, without limitation, the failure to maintain required insurance.

4-25-9 Term Of License.

The term of the license issued under this chapter is twelve months from its date of issuance.

4-25-10 Fire Protection Contractors.

(a) Any person licensed as a Class F contractor pursuant to this chapter, upon paying the fee prescribed by section 4-20-56, "Fire Contractor License," B.R.C. 1981, shall take one or more of the tests designed by the city manager to test the qualifications of the applicant to install

fire protection or detection systems in accordance with the provisions of chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

(b) Separate tests shall be offered in the following categories:

(1) Fire sprinkler systems;

(2) Hood extinguishing systems;

(3) Fire alarm systems;

(4) Special hazard systems; and

(5) Hand or portable fire extinguishers.

(c) Upon passing a test, the applicant's license shall be endorsed as a fire protection contractor for such category of work. Each endorsement shall be valid during the term of the license. Each renewal of such license shall be similarly endorsed. The endorsement may be suspended or revoked in accordance with the provisions of this chapter.

(d) After July 1, 1987, no person shall perform any work as a contractor installing any fire suppression, detection, or protection device required to be installed in any building by chapter 10-8, "Fire Prevention Code," B.R.C. 1981, without a license pursuant to this chapter.

(e) All installers of fire alarm systems shall be licensed as low voltage wire installers by the State of Colorado, which license shall be endorsed as stated in subsection (c) of this section upon completion of the fire alarm systems test.

(f) All line voltage work, when necessary on a fire alarm system, shall be completed by a State of Colorado licensed electrician.

TITLE 4 LICENSES AND PERMITS

Chapter 26 Cemetery Permits[1]

Section:

4-26-1 Legislative Intent.

This chapter is intended to provide for the issuance or denial of permits for activities in the Columbia Cemetery as required by chapter 8-7, "Cemeteries," B.R.C. 1981.

4-26-2 Definitions.

The definitions applicable to chapter 8-7, "Cemeteries," B.R.C. 1981, apply to this chapter.

4-26-3 Burial Permits - Earth Interment.

(a) No person shall bury, re-bury, or disinter any person in the Columbia Cemetery without a permit issued by the city manager. No person engaged in a burial, reburial, or disinterment pursuant to a permit issued by the manager shall fail to insure that all the work complies with all of the requirements of this section and any other applicable law.

(b) Permits shall be issued or denied by the manager based on the following standards:

(1) Forty-eight hours' advance notice of interment is required during the normal working week (Monday through Friday, holidays excepted). Notification of a pending Monday morning interment must be given by 2:00 p.m. Friday.

(2) The application for an interment must specify the exact location on the lot of the grave to be opened. When instructions regarding the location of a grave on a lot are indefinite, or for any reason the grave cannot be opened where specified, the mortuary may, with the approval of the city manager, open the grave on the lot where it deems best and proper, so as not to delay the funeral; and the city shall not be liable in damages for any error so made.

(3) The grave shall be of such depth that there shall be no less than thirty inches of distance from the uppermost surface of the outer burial container to adjacent ground elevation. However, if large rocks are encountered which cannot reasonably be removed, this depth may be reduced the minimum amount necessary to deal with the rocks, but in no case shall the depth be less than eighteen inches.

(4) All burials shall be made in such a way that there will be no settlement due to caskets, vaults, or other containers having insufficient strength to support, through intermediate

[1]Adopted by Ordinance No. 7268.

tamped fill, normal mechanized cemetery maintenance equipment. Topsoil replaced around and on top of containers shall be tamped sufficiently to assure minimal settling. Original or new lawn grass sod shall be placed over the soil fill in such a manner that, after normal settling, the grave surface shall be level with adjacent ground. Excess soil shall be neatly removed from the cemetery premises.

(5) No new plantings (other than sod), flowerbeds, or additional shrubbery shall be permitted on grave spaces as part of interment.

(6) The city manager may refuse interment in any grave space, and refuse to open or allow to be opened any grave for any purpose, unless a written deed is presented to show proper ownership of the grave space. If a deed is not available, then some other evidence must be presented to the city manager to establish ownership. Such evidence must show the section, lot and grave space number[1]. The city does not assume liability should the wrong grave space be opened and used.

(c) Upon receipt of an application for interment, the city manager shall determine if the grave may be dug using machinery. Graves may normally be dug using machinery except in instances where the city manager deems that the use of machinery or equipment will cause significant damage to turf, grounds, individual lots, landscaping, walks, grave spaces, grave markers, or other property in the cemetery. If the use of machinery will cause significant damage, the city manager may require the applicant either to hand dig the grave, use plywood or other suitable material to protect the grounds, or wait until conditions are such that machinery may be used.

(d) The city manager may stop all work of any nature whenever proper preparations therefor have not been made, when tools or machinery are insufficient or defective, when work is being executed in such a manner as to threaten life or property, when any reasonable request on the part of the city manager has been disregarded, when work is not being executed in accordance with specifications, or when any person employed on the work violates any provision of the permit or law governing the cemetery.

(e) The completed work is subject to the approval of the city manager, and if unsatisfactory, it may be ordered to be removed by the manager at the permittee's sole expense, and no permittee shall fail to comply with such an order.

(f) There is no fee for an earth interment permit.

4-26-4 **Disinterment Permits.**

(a) No person shall conduct any disinterment of a body without a permit from the city manager.

(b) Application for a disinterment permit shall be made at least ten days before the date on which the work is to occur.

(c) The manager shall not issue any disinterment permit unless the applicant presents a valid order of a court of competent jurisdiction approving the disinterment.

(d) Disinterment is subject to all the provisions of this chapter governing the conduct of earth interment.

(e) There is no fee for a disinterment permit.

[1]Information is available on grave space ownership at the city's Carnegie Branch Library for Local History at 1125 Pine Street. Information is also available on grave space use through the Parks and Recreation section of the city's website. However, the city cannot vouch for the completeness or accuracy of those records.

4-26-5 **Grave Marker Permits.**

(a) No grave space owner or other person shall erect or place or cause to be erected or placed, on any grave space in the cemetery, any grave marker unless pursuant to a permit issued by the city manager.

(b) An applicant shall furnish the manager a blueprint or sketch of the proposed grave marker, specifying size, location on lot, inscription, and kind and quality of material.

(c) In considering a grave marker permit application, the manager shall apply the following standards and may impose the following conditions:

(1) The manager may reject any plan or design for any grave marker which on account of size, design, or kind or quality of material is unsuited to the burial space on which it is to be placed. The manager may, by regulation, specify reasonable size, design, kind, and quality standards for markers and marker materials, bearing in mind that permanence is an important value for markers.

(2) Newly placed grave markers shall not encroach upon already existing grave markers on the grave space, or upon those existing in adjacent grave spaces.

(3) The area of the face of a grave marker shall not exceed twenty percent of the area of the grave space. The length of the base of a grave marker shall not exceed seventy-five percent of the width of the grave space. The width of the base of a grave marker shall not exceed twenty percent of the length of the grave space.

(4) A grave marker shall not exceed three feet in length or one foot in width on a single interment site. A double grave marker may be used if two people are buried in the grave space or in adjacent grave spaces in the same lot, and shall not exceed one foot in width and six feet in length.

(5) There shall be only one grave marker on any one grave space.

(6) All footings or other base must be of sufficient size and depth to assure that there will be no settling or tilting of the grave marker and any attached flower receptacle.

(7) All conservation work (repair or stabilization) of existing grave markers shall be in accordance with recognized professional standards, and the manager may require proof of the understanding of the applicant of those standards, and the ability to do work in accordance with them.

(d) The city shall not be liable for damages or injury from mowing and trimming the lawn about any grave marker.

(e) There is no fee for a grave marker permit.

4-26-6 **Eligibility For Grave Marker Permit.**

(a) Markers Where None Exist: The following persons are eligible for a grave marker permit where no grave marker exists:

(1) For a new burial, the person responsible for the burial or the mortuary conducting the burial.

(2) For an occupied grave space, any relative within the second degree of consanguinity as defined in this code. Where the applicant is not the parent or child of the deceased, the manager may require that the marker has the approval of the nearest living relative, ranked according to placement in the definition of consanguinity, and may require proof of that status. If more than one person occupies the same rank, there must be approval of a majority of such persons.

(3) For an occupied grave space where the applicant demonstrates that no relatives within the second degree of consanguinity are alive, any person may cause a grave marker to be installed for a veteran of the military service of the United States if it has been provided for that purpose by the Department of Veteran's Affairs of the federal government, or a successor federal agency.

(4) Any other permit for a new grave marker shall require the approval, by motion, of the city council.

(b) Replacement Of Markers: The following persons are eligible for a permit to replace an existing grave marker.

(1) Any relative within the second degree of consanguinity as defined in this code. Where the applicant is not the parent or child of the deceased, the manager may require that the replacement marker has the approval of the nearest living relative, ranked according to placement in the definition of consanguinity, and may require proof of that status. If more than one person occupies the same rank, there must be approval of a majority of such persons.

(2) No grave marker replacement permit for a marker placed fifty or more years before the date of application shall be approved by the city manager without the additional approval of the landmarks board pursuant to such procedures and standards as are used for landmark alteration certificates, except those procedures and standards which by their nature can have no reasonable application to grave markers.

(c) Repair Of Markers: The city manager may at any time take action to correct or remove a hazardous condition which arises due to the condition of any grave marker. The city manager may also for conservation purposes conduct such other repair or stabilization work on old grave markers as the manager deems appropriate, considering the resources available, by grant or gift or otherwise, for the purpose. The manager needs no permit for such work. Otherwise, only the following persons may apply for a permit to do repair or stabilization work on any marker:

(1) The person responsible for the original installation of the marker.

(2) Any relative within the second degree of consanguinity as defined in this code.

(3) Any corporation or association not for profit with a demonstrated purpose of historical preservation or of preservation or conservation of grave markers, or any organization eligible under the laws of the state for a bingo-raffle license[1].

4-26-7 **Landscaping Permits.**

(a) Upon application, the city manager may issue a permit allowing a person or group of persons to make landscaping improvements to the cemetery. No person shall plant any tree, shrub,

[1]The state statutes, in summary, limit these licenses to chartered branches, lodges, or chapters of a national or state organization, or a religious, charitable, labor, fraternal, educational, voluntary firefighters', or veterans' organization not for profit which has been in existence for at least five years and has for at least that time had dues-paying members carrying out its objectives.

grass, flower, flowerbed, or other plant material in the cemetery without a permit issued under this chapter.

(b) In considering such an application, the manager shall apply the following standards:

(1) No improvements shall be made on any section, lot, or grave space. Permits for improvements under this section shall be only for the general grounds of the cemetery.

(2) The manager shall not approve any landscaping permit application unless the proposed planting conforms to the general plan for the cemetery and to the Columbia Cemetery Preservation Master Plan.

(3) The manager may reject any plantings which are horticulturally inappropriate for the environment, which would, in the manager's opinion, require excessive maintenance or any expense for which there might not, in the future, be appropriated funds to manage properly, or which would interfere with burial or other ongoing uses of the cemetery.

(4) If the applicant asserts that the applicant will pay not only for the installation of the landscaping, but also its maintenance, the manager may take that into consideration, but any approval based on applicant maintenance shall be subject to the condition that if, at any time, the applicant does not maintain the landscaping, the manager may, without notice, remove the landscape materials.

(5) Any permit shall be subject to the condition that if the general plan for the cemetery or the Columbia Cemetery Preservation Master Plan changes, the manager may remove any landscaping in order to conform the cemetery to the plan.

(c) There shall be no fee for a permit issued under this section.

4-26-8 **Cemetery Special Event Permit.**

The city manager may issue a permit for a special event in the cemetery which is to occur in whole or in part outside of the allowed hours for the cemetery.

4-27-1

TITLE 4 LICENSES AND PERMITS

Chapter 27 News Box Leases And Regulation[1]

Section:

4-27-1 Legislative Intent.

(a) Newspaper distribution machines (often called newspaper vending machines or news boxes) on or adjacent to public sidewalks are a valuable method of distributing news and other information to the public. However, they constitute a fixed physical intrusion on public property, and their indiscriminate location on sidewalks can unnecessarily obstruct the primary function of the sidewalk, which is to allow persons to go from one place to another. They also can constitute visual blight, and can be distracting to motorists and pedestrians, and in Boulder they have had all of these effects. Furthermore, no other commercial activity would claim a right to physical occupation of the public sidewalk by proprietary structures in an unregulated manner, and even public utilities which have a high degree of autonomy from local regulation still must not interfere with the primary functions of the streets and sidewalks for which they have easements, express or implied.

(b) The city has carefully regulated the placement and form of newspaper distribution machines on its downtown mall since its inception in 1977 by providing news box banks onto which publishers of newspapers and other periodicals may install an openable face plate and their periodicals. These serve to group the machines in a few orderly and carefully chosen locations, and this has struck an appropriate balance between the competing needs for use of mall space and has allowed mall visitors and those who would serve them with publications reasonable opportunities to receive and give information. However, the mall contains significantly more pedestrian space than do the other streets and sidewalks in the downtown area of the city. The continued vitality of the city's downtown area has made downtown sidewalks increasingly congested, and thus, attractive locations for those who wish to disseminate information through newspaper distribution machines. The legislative record is replete with instances where unregulated placement of these machines, whether individually or in long phalanxes, have interfered with access to fire hydrants and parking meters, blocked access from vehicle parking to the sidewalk, interfered with bus stops, obstructed views in the corner sight triangle, and most poignantly have added to the difficulties that persons with mobility problems face in navigating the sidewalk. Further, significant portions of the downtown are within an historic district, and the unregulated placement and appearance of proprietary newspaper distribution machines interferes with the historic appearance of the area and the purposes of the district.

[1]Adopted by Ordinance No. 7282.

(c) Because of the problems associated with Boulder's fierce winds, it is essential that proprietary newspaper distribution machines be eliminated and that any news box or other rack or device serving any similar function in the distribution of publications be firmly affixed to the ground, and have a suitably functioning cover so that the materials are not scattered about. Permanent installation in turn requires city ownership to allocate fairly responsibilities and privileges to users of the right-of-way.

(d) Accordingly, this chapter is intended to regulate the design and placement of newspaper distribution machines within the right-of-way in the downtown commercial area of the city, where lack of regulation appears at present to present the most acute harm to the public good. However, the amount of space which can be devoted to these machines is limited, and thus, of necessity, a method of allocating that space must be devised.

(e) The city council has carefully considered what the best method of allocating this scarce public property resource for private newspaper distribution machines might be, and has determined that the news box bank method, similar to that which has been used on the downtown mall, best fits the circumstances of the downtown area, supplemented as needed with an additional joint use news box with multiple spaces for publications which are free and generally physically smaller.

(f) The city council has determined that joint use news boxes should be used in addition to individual news boxes, in order to accommodate free publications that cannot afford a larger individual news box space.

(g) The city council has determined that, at present, the problems caused by unregulated news boxes are most acute at only three locations, and that it desires to begin regulation by use of publicly owned news box banks only at those three locations. Publishers and distributors who use news boxes have contended that they should be allowed to regulate themselves, and reducing the areas to be regulated by the news box bank method from all of the downtown and University Hill to three areas will allow the industry to show if it can do what heretofore it has not had any interest in doing.

(h) Newspaper vending machines on the downtown Boulder Mall shall continue to be regulated in accordance with chapter 4-11, "Mall Permits And Leases," B.R.C. 1981.

(i) The city council has determined that requiring all news boxes everywhere on public property which are not in a public news box bank to contain identifying information, so that owners may be contacted by affected members of the public and public officials in case problems arise as a result of news box placement, is an insignificant intrusion and will, if publishers and distributors are in fact desirous of avoiding conflicts, improve public safety and welfare, and will be a necessary component of any further regulatory system short of the public news box bank system. The council has further determined that empty and apparently unused news boxes serve no useful purpose and are a nuisance, and that there should be a system by which the city may remove them from the public right-of-way.

(j) In adopting these regulations, the council intends to avoid doing anything which could be construed as censorship of the content of the publications placed in these news boxes, or of vesting standardless or unreviewable discretion in any public official which could be used to affect the content of the publications which appear in these newspaper distribution machines or otherwise interfere with rights guaranteed under the First Amendment, and this chapter and any other provisions of the code ancillary to it shall be interpreted so as to avoid any such unconstitutional applications.

Ordinance No. 7307 (2003).

4-27-2 **Area Regulated.**

Newspaper distribution machines are regulated by this chapter within the public right-of-way in only the following areas of the city:

(a) The RTD bus station, from one hundred sixty-five feet east of the southeast corner of Fourteenth Street and Walnut Avenue to the same southeast corner, then south on the east side of Fourteenth to Canyon Boulevard, then east along the north side of Canyon for one hundred sixty-five feet.

(b) The Post Office, from the alley on Fifteenth Street between Pearl Street and Walnut Avenue south along the west side of Fifteenth to the northwest corner of Fifteenth and Walnut, then west along the north side of Walnut for two hundred thirty feet.

(c) The Hotel Boulderado, from the alley on Thirteenth Street between Pine Street and Spruce Street south along the west side of Thirteenth to the northwest corner of Thirteenth and Spruce, then west along the north side of Spruce for one hundred thirty feet.

(d) These areas are collectively called in this chapter "the news box district."

4-27-3 **Definitions.**

As used in this chapter, the following terms have the following meanings unless the context requires otherwise:

"Joint use news box" means a separate structure designed to hold newspapers or other publications and protect them from the elements, that can be installed as part of a news box bank, and that contains provision for at least nine single slots for the distribution of several free publications, which materials passers by may obtain by opening a common door or doors without payment.

"News box" means one space in a news box bank designed to hold newspapers or other publications and protect them from the elements, which materials passers by may obtain by opening a door, whether after depositing money in a device which unlocks the door, or without payment by the customer, depending on the marketing of the publication. Where the context requires, news box also means a space in a joint use news box, and is used to indicate rights and responsibilities which are common to lessees of either type of space.

"News box bank" or "bank" means a structure or group of structures in one location erected by the city and firmly affixed to the ground with compartments which serve as a number of separate news boxes, and which may include a joint use news box.

"Newspaper distribution machine" means a device designed to hold newspapers or other publications and from which passers by may obtain the publications. Where depositing money in a device which unlocks a door is required, such machines are often called newspaper vending machines.

"Proprietary newspaper distribution machine" means such a machine placed or maintained on the public right-of-way within the news box district by a person other than the city. Where prohibited, the term refers to the machine without regard for whether the publication contained in the machine is a "publication" within the meaning of this section, or even whether there is any printed or other material within the machine.

"Publication" means a periodical which:

(a) Is published at least four times a year in different issues with sufficiently different content or format so each issue can be readily distinguished from previous or subsequent issues; and

(b) Is formed of printed sheets. The sheets may be die cut or deckle-edged, and may be made of paper, cellophane, foil, or other similar materials[1].

"Publisher" means the person who pays to have a publication printed or otherwise causes a publication to be printed or otherwise reproduced.

"Right-of-way" means a public street from property line to property line, but does not include alleys or paths not located within a street right-of-way. It also includes an easement or other right adjacent to the right-of-way which the city has acquired from the property owner for the purpose of locating news boxes.

"Space" means a full sized news box with a separate door, which may be coin operated, or a slot, either double sized or single sized, in a joint use news box, installed as part of a news box bank.

4-27-4 **Location Of News Box Banks.**

(a) The city council finds that the city manager has surveyed the news box district to determine the locations of existing proprietary newspaper distribution machines, the locations which are suitable for news box banks, and the appropriate size of each bank. The manager has used, in evaluating each location, general criteria to determine the effect on pedestrian and emergency services access on, to, and from streets and sidewalks, and public transportation, required maintenance of public facility infrastructure, vehicular safety, and the effect of the location, mass, and bulk of news box banks on the streetscape aesthetics of each block face, and has specifically considered sidewalk width, parking meter access, including access by persons with disabilities, access to bicycle parking, access to fire hydrants, access to bus stops, access to benches and trash receptacles, maintenance access to street trees, planters, utility and signal poles, access generally from the street to the sidewalk and the sidewalk to the street, blocking of views at intersections, alleys, and driveways, distance from intersections and driveways and alleys, distance from buildings, and the visibility of public art, and has determined the appropriate location for news box banks on each block face after taking into consideration the current locations and numbers of proprietary newspaper vending machines. The council has, after holding a public hearing, considered these determinations of the manager, and hereby ratifies them and adopts them as reasonable place and manner regulations of news box bank locations which reasonably reflect the carrying capacity of the news box district for news boxes within the right-of-way. These determinations are included in appendix A of this chapter.

(b) The city council finds that the city manager has surveyed the news box district to determine how best to relocate the users of existing proprietary distribution machines into news box banks located as specified in subsection (a) of this section. The council has, after holding a public hearing, considered these determinations of the manager, and hereby ratifies them and adopts them as reasonable place and manner regulations of news box bank locations, and includes them as an uncodified exhibit to the ordinance adopting this chapter to govern the transition to the news box bank system.

(c) Should, in the future, any news box bank require temporary or permanent removal because of construction or reconfiguration of the streets, sidewalks, or other portions of the right-of-

[1]The requirements in this part of the definition are drawn from the United States Postal Service manual as part of regulations which distinguish publications which are eligible for special mailing rates from those which are not. A deckle edge is a rough, untrimmed edge.

way, the city manager is directed to provide a replacement or replacements, if the removal is reasonably expected to exceed three months, located as conveniently to the removed bank as is reasonably practical.

(d) If leases for installed news boxes or slots in joint news boxes expire, and no applicant on the waiting list enters into a new lease, the city manager may remove the unused box, boxes, or bank. If an application is received which could be satisfied by a removed box, the manager shall reinstall the removed box as promptly as is practical, but in no event within two weeks after the applicant pays for a lease.

4-27-5 **Installation Of News Box Banks.**

(a) The city manager shall install news box banks as funds are appropriated for the purpose so that the existing proprietary newspaper distribution machines can be removed. The manager shall install news box banks on a per location basis, and no owner of an existing proprietary newspaper distribution machine within that location shall fail to remove it within fourteen calendar days thereafter. Thereafter, any proprietary newspaper distribution machine within the right-of-way at that location is declared to be a public nuisance, and may be summarily removed by the city manager, who may dispose of it in any convenient manner after ten days. If the machine is still in the possession of the city when the owner applies to the manager to get it back, the manager shall require full payment by the owner of the reasonable cost of removal and storage, plus fifteen percent for administration, before releasing the machine.

(b) The city manager shall provide the opportunity to install at least one joint use news box as part of each bank at the time of initial implementation of this chapter. If a bank does not have a joint news box attached as part of the initial implementation of this chapter, the manager may treat the bank as a location with available space and shall proceed in accordance with subsection 4-27-4(d), B.R.C. 1981, if and when application is made thereunder.

(c) When installing news box banks, the city manager shall consider sections 4-27-1, "Legislative Intent," and 4-27-4, "Location Of News Box Banks," B.R.C. 1981, and shall in addition follow these standards:

(1) The linear footage of banks on any block face shall not exceed twenty percent of the linear footage of the block face, measured from the property lines at each end of the block.

(2) No bank shall be longer than thirty linear feet.

(3) Except where vehicle parking or stopping is prohibited, no bank shall be installed within three feet of the vertical face of the curb, or of any other designated parking space or loading zone. No bank shall be installed so that the face of any box which opens is less than three feet from the vertical face of the curb.

(4) No bank shall be closer than five feet to a fire hydrant.

(5) No bank shall be closer than five feet to a bus stop sign, and no bank shall be installed in such a way as to interfere with access to busses at designated bus stops.

(6) No bank shall be closer than five feet from a crosswalk.

(7) No bank shall be installed on or over a tree grate.

(8) No bank shall be closer than three feet from any existing structure.

(9) No bank shall intrude into the intersection, alley, and driveway sight triangles, as calculated in accordance with section 9-9-7, "Sight Triangles," B.R.C. 1981.

4-27-6 **News Box Use.**

(a) On and after January 1, 2004, no person shall install, use, or maintain any proprietary newspaper distribution machine or similar device on the public right-of-way within the news box district other than in accordance with this chapter in a news box bank provided by the city.

(b) Spaces in the news box banks installed in the news box district are available for use by lease as provided in this chapter. But such leases shall be governed entirely by the provisions of this chapter, and without reference to principles of landlord-tenant law. The provisions of chapter 4-1, "General Licensing Provisions," B.R.C. 1981, concerning approval, denial, and revocation shall apply to administration of news box leases, including the applicable provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, but at the demand of the applicant any quasi-judicial hearing shall begin no less than five working days from receipt of the demand by the city manager, and shall not be continued, other than by agreement of the parties and the hearing officer, except at the instance of the applicant for good cause shown or at the instance of the city to prevent manifest injustice.

(c) A news box lease for an individual news box, a double sized slot in a joint use news box, or a single slot in a joint use news box is available to any publisher who wishes to place that publisher's publication therein. A news box lease is available for any particular publication for only one space in each of the banks within the news box district, and only one publication may be placed within a space. In order to be eligible for a lease, the applicant must be the publisher of the publication placed within a space, or an agent of a publisher. Where the applicant is an agent, the applicant shall so indicate, and the lease shall be valid only for the publications of such publisher and may not be assigned or transferred.

(d) The user may place a coin lock mechanism on an individual news box at the user's expense. Slots in a joint use news box shall contain only publications which are free[1].

(e) The user shall not place anything on the exterior of the news box other than the logo or identifying wording specified by section 4-27-7, "Obligations Of Users," B.R.C. 1981.

(f) Subject to the design constraints of the news box or joint news box, the user may place a copy of the publication found in the box vertically inside the face plate so that it is visible to customers, but may not place anything other than such publication in that position.

(g) The city manager shall not place nor permit the placing of any other advertising on the outside of the banks. But the manager may use any side of a bank other than the front face (where access to the publications is gained), at public expense, for designs or graphics designed to enhance the identity of the neighborhood in which it is located, or as a location for directories or maps showing pedestrians where they are and where local public and private services are to be found. This exception shall not be construed to permit the manager to place or permit paid advertisements, nor to cause the boxes or banks to become any kind of public forum.

4-27-7 **Obligations Of Users.**

(a) A news box lessee shall maintain the leased interior of the news box space, and, for individual news boxes, all mechanical workings of the individual box, including, without

[1]The configuration and design of the joint news boxes contemplated precludes coin or similar operation for a fee.

limitation, the window and face plate, the coin mechanism, the coin tray, and the lock, if any.

(b) The news box lessee may supply and affix to its leased individual news box or leased portion of a joint news box whatever logo or identifying wording it desires to use to let the public know which publication is inside the box. The identifying device shall be no larger than two inches high by fourteen inches wide for an individual news box, or two inches high and five and one half inches wide for a slot in a joint use news box. The identifying device shall be white text on a black background, and the device shall have a self-stick backing of a type approved by the city manager for its balance of adhesiveness and ease of removal, and be affixed in the location on the box specified by the city manager for all such boxes.

(c) A news box lease may be revoked when the machine is not stocked with the lessee's publication for a period of thirty days, or if the user has failed to maintain the news box for thirty days. The city manager shall not revoke a lease without notice to the user and an opportunity for a hearing. One seven-day opportunity to cure shall be extended in any calendar year prior to revocation.

4-27-8 **Term, Expiration, And Revocation.**

(a) A news box lease is valid for one calendar year, and expires if not renewed before expiration. Except for emergencies, unanticipated construction, changes in the location of transit stops, and other unanticipated situations where relocation is necessary in the public interest, lease locations shall not be changed by the city during any calendar year, but, with notice on or before November 1, may be relocated during the following calendar year.

(b) A lease can be prepaid for up to seven years in advance, in which case no application for renewal shall be required during such period. If a lessee surrenders a lease to the city in writing, the city manager shall refund the unused prepayment pro rata based on the number of whole calendar years remaining.

(c) No lease may be assigned or transferred except incidental to the sale of the publication from one publisher to another, and no lessee shall be deemed to possess any equity in the lease, although an existing lessee has priority in renewing. It shall be a grounds for revocation of the lease for any lessee to attempt to profit from the scarcity of sites for news boxes. No refund shall be made if a lease is revoked or expires.

(d) Upon denial of renewal of a lease, or revocation, or expiration for failure to renew, the city manager may remove the contents of any machine, change the locks, hold any contents and money as abandoned property, and issue a new lease for the news box or joint use news box slot to another person.

4-27-9 **Fee.**

(a) The fees for use of news boxes are set based on covering the city's administrative costs, the capital cost and installation cost for the box structures, and the annual maintenance cost. The capital costs and installation costs are figured based on a seven year amortization and may be adjusted, based on replacement costs and to accrue a fund therefor, and to reflect actual installation costs. The maintenance cost will be set based on actual cost for the previous year of district operation (the maintenance cost component is estimated for the first year of operation), based on a projection at the time the fees are set, and adjusted up or down depending on whether the maintenance fund has had a shortfall or a surplus. The administrative costs are based, initially, on the city's experience with mall newspaper vending machine permit administration, and may be adjusted in future years.

(b) The fee for a news box lease is that specified in section 4-20-57, "News Box Fees," B.R.C. 1981, and must be submitted with the application for the lease or renewal of the lease if a box is immediately available at a location desired by the applicant. If such a box is not available, the applicant shall pay the waiting list fee specified in section 4-20-57, "News Box Fees," B.R.C. 1981. An applicant on a waiting list who is notified that a box is available shall pay the annual fee within ten days of notice, either actual by any means, or of the date of mailing by first class mail, whichever comes first. The waiting list fee does not reduce the annual fee.

4-27-10 **Priority And Transition.**

(a) News box leases, other than renewals, are available on a first-come, first-served basis based on date of receipt of the application during normal city business hours at the place where this chapter is administered. The priority between any applications received by the manager on the same day shall be determined by lot.

(b) But for the purposes of transition to the lease system created by this chapter, owners of proprietary newspaper vending machines in the news box district as of the date of the most recent survey by the city manager before the introduction of the ordinance establishing this system shall be given a preference under the new system for a space.

(c) Should the first-come, first-served method, or the transition provisions of this section, not resolve allocation questions, the city manager shall select publications by lot from among the current applicants.

(d) The city manager shall structure the waiting lists so that they may be for a specific area. The manager may additionally structure the waiting lists to accommodate applications for multiple areas.

4-27-11 **Inapplicability Of Other Code Sections.**

Because it is essential that regulation of news boxes, given the First Amendment implications, be as clear and certain as possible, sections 2-3-5, "Downtown Management Commission," and 2-3-18, "Downtown Design Advisory Board," chapter 8-6, "Public Right-Of-Way And Easement Encroachments, Revocable Permits, Leases, And Vacations," title 9, "Land Use Code," and chapter 9-11, "Historic Preservation," B.R.C. 1981, shall have no applicability to the installation and administration of news box racks by the city manager pursuant to this chapter.

4-27-12 **News Box Identification Required.**

(a) No person shall place or maintain any proprietary newspaper distribution machine upon the public right-of-way outside of the news box district unless the machine has affixed to it in a place where such information can be easily seen, in type no smaller than twelve nor larger than sixteen point, the name, address, and telephone number of the person responsible for the maintenance of the machine.

(b) In addition to any action which the city manager may take to enforce this section, the manager is authorized to treat any machine which is in violation of this section as abandoned property.

4-27-13 **Unused News Boxes Prohibited.**

(a) No person who places or maintains any proprietary newspaper distribution machine upon the public right-of-way outside of the news box district shall fail to keep the machine stocked with publications for a period of thirty days or more, or fail to maintain the machine for thirty days.

(b) For the purposes of this section, "maintain" means to keep in a state of reasonable functionality, including, without limitation, keeping the machine upright, with doors which open and close, free from litter and debris inside, and free from graffiti on the housing.

(c) In addition to any action which the city manager may take to enforce this section, the manager is authorized to treat any machine which is in violation of this section as abandoned property. The manager shall not remove an apparently unused or unmaintained proprietary newspaper distribution machine without notice to the user and an opportunity for a hearing. One seven-day opportunity to cure shall be extended in any calendar year. Thereafter the manager is authorized to treat the machine as abandoned property.

(see following page for Appendix A)

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Appendix A
to Chapter 4-27, "News Box Leases And Regulation," B.R.C. 1981

Publications located at Post Office, RTD Bus Station and The Boulderado
As of April 11, 2003

Post Office - 15th and Walnut	RTD Bus Station - 14th and Walnut
Apartments For Rent	Boulder County Business Report
Auto Mart	Boulder Weekly
Boulder Weekly	Colorado Daily
Colorado Daily	Christian Science Monitor
Daily Camera	Daily Camera
Employment News	Employment News
Homes and Land	Jobs and Careers
Nexus	Investors Daily
Onion	Nexus
Denver Post	New York Times
Rocky Mountain News	Auto Mart
Employment Guide	Onion
Times Call	Denver Post
USA Today	Rocky Mountain News
Westword	USA Today
Boulder Valley Bargains	Westword
Post News Jobs Classifieds	Wall Street Journal
Wheels	Employment Guide
Rental Guide	Lafayette News
Denver Job Guide	Louisville Times
Women's Magazine	Erie Review
Mountain Gazette	Boulder Valley Bargains
New York Times	Wheels

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Post Office - 15th and Walnut

Jobs & Cars

RTD Bus Station - 14th and Walnut

Denver Job Guide

Rental Guide

I-GO Careers

Boulderado - 13th and Spruce

Employment Guide

Employment News

Boulder County Business Report

Wheels

Rental Guide

Car & Truck

Mountain Gazette

Denver Job Guide

Coldwell Buyer's Guide

Auto Mart

Women's Magazine

Post News Jobs

South Central Hotel/Motel Coupons

Boulder Valley Bargains

Investors Daily

Homes and Land

Nexus

New York Times

Onion

Denver Post

Rocky Mountain News

USA Today

Westword

Wall Street Journal

Jobs & Cars

Boulder Weekly

Colorado Daily

Daily Camera

TITLE 5

GENERAL OFFENSES

TITLE 5 GENERAL OFFENSES

Chapter 1 Definitions[1]

Section:
5-1-1 Definitions

5-1-1 Definitions.

The following terms used in this title have the following meanings unless the context clearly indicates otherwise:

"Act" means a bodily movement and includes words and possession of property.

"Affirmative defense" means a defense in which the defendant, to raise the issue, presents some credible evidence on that issue, unless the city's evidence raises the issue involving the alleged defense. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the violation.

"Age" shall mean the chronological age of a person.

"Approach" means to move closer with any part of the body or any extension thereof.

"Blackjack" means any billy club, sand club, sandbag, or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the opposite end, a strap or springy shaft that increases the force of impact.

"Bias motivated crime" shall mean the commission of any of the underlying offenses specified below if the offense is committed by reason of the actual or perceived race, color, religion, national origin, age, disability, sexual orientation, gender, gender identity or gender variance of another individual or group of individuals. The underlying offenses are sections 5-3-1, "Assault In The Third Degree," 5-3-2, "Brawling," 5-3-3, "Physical Harassment," 5-3-4, "Threatening Bodily Injury," 5-3-6, "Use Of Fighting Words," or 5-4-1, "Damaging Property Of Another," B.R.C. 1981. No "bias motivated crime" finding shall occur unless the allegation of bias motivation has been specifically charged and sustained by an in-court admission of a defendant, or by a specific finding established beyond a reasonable doubt by a judge or jury in a contested trial.

"Bodily injury" means physical pain, illness, or any impairment of physical or mental condition.

"Code enforcement officer" means any city employee or person employed under independent contract by the city who is appointed by the city manager to enforce the laws of the city. "Code enforcement officer" also means an authorized volunteer appointed by the city manager to enforce the laws concerning parking of vehicles in spaces reserved for the handicapped by issuing parking tickets.

"Conduct" means an act or omission and its accompanying state of mind, if any, or, where relevant, a series of acts or omissions.

"Culpable mental state" means intentionally, or with intent, or knowingly, or willfully, or recklessly, or negligently as set forth below:

[1]Adopted by Ordinance 4611. Amended by Ordinance No. 4654. Derived from Ordinance Nos. 4627, 4543.

(a) "Intentionally" or "with intent" means that one's conscious objective is to cause the specific result proscribed by the provision of this code or the ordinance defining the violation. All violations defined in this code in which the mental culpability requirement is expressed as "intentionally" or "with intent" are specific intent offenses. It is immaterial to the issue of specific intent whether or not the result actually occurred.

(b) "Knowingly" or "willfully" means, with respect to conduct or to a circumstance described by a section of this code or an ordinance defining a violation, that a person is aware that such person's conduct is of that nature or that the circumstance exists. With respect to a result this means that a person is aware that such person's conduct is practically certain to cause the result. All violations defined in this code in which the mental culpability requirement is expressed as "knowingly" or "willfully" are general intent offenses.

(c) "Recklessly" means consciously to disregard a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

(d) "Negligently" means to act with negligence with respect to a result or to a circumstance described by a section of this code by failing to exercise the degree of care that would be exercised by the ordinarily reasonable and prudent inhabitant of the city under the same or similar circumstances.

"Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death and which does, in fact, produce death.

"Deadly weapon" means any of the following that in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

(a) A firearm, whether loaded or unloaded;

(b) A knife;

(c) A bludgeon; or

(c) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

"Disability" shall mean a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. The term excludes current use of alcohol or drugs.

"Dwelling" means a building that is used, intended to be used, or usually used by a person for habitation, but excludes lobbies, boiler rooms, hallways, and other common areas of hotels, motels, apartments, condominiums, nursing homes, and similar communal residential buildings.

"Firearm" means any handgun, automatic revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

"Gas gun" means a device designed for projecting gas-filled projectiles that release their contents after having been projected from the device and includes projectiles designed for use in such a device.

"Gas or mechanically operated gun" means an air or gas operated gun that discharges pellets, BB shots, arrows, or darts, including, without limitation, BB guns, spring guns, and other similarly operated guns or weapons.

"Gender" shall have the same meaning as the term "sex" defined in section 12-1-1, "Definitions," B.R.C. 1981.

"Gender identity" and "gender variance" shall have the meanings defined in section 12-1-1, "Definitions," B.R.C. 1981.

"Gravity knife" means any knife with a blade that may be released from the handle or sheath thereof by the force of gravity or the application of centrifugal force, which when released is locked in place by means of a button, spring, lever or other device.

"Health care facility" means a state-licensed general hospital, psychiatric hospital, or community clinic, as defined in Colorado state statutes, as they may be amended from time to time, or a building containing an office or other place where a state-licensed physician practices medicine, on a full- or part-time basis, which is not required to be licensed under Colorado state statutes, but which is identified by a sign, visible from the adjacent public way.

"Illegal weapon" means a blackjack, gas gun, metallic knuckles, gravity knife, or switchblade knife.

"Knife" means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, but does not include a hunting or fishing knife carried for sports use.

"Mall" means the Downtown Boulder Mall as defined in Ordinance No. 4267, as amended by Ordinance No. 4543[1].

"Omission" means a failure to perform an act as to which a duty of performance is imposed by law.

"Peace officer" means any police officer or city code enforcement officer.

"Police officer" means:

(a) Any city police officer commissioned by the city manager;

(b) Any person appointed by the city manager pursuant to charter section 72;

(c) Any peace officer of another jurisdiction who is also commissioned by the city manager to enforce the laws of the city;

(d) Any city park patrol officer commissioned by the city manager;

(e) Any city fire chief or fire marshal or firefighter commissioned by the city manager; and

(f) Any other city employee designated by the city manager to exercise police powers, including the power of arrest, and commissioned by the city manager.

[1]The ordinances generally describe the area included within the mall as the entire right-of-way of Pearl Street from approximately the east curb line of 11th Street to the west curb line of 15th Street except for the roadway at the intersections at Broadway, 13th and 14th Streets; and, the area directly south of the Boulder County courthouse complex, specifically, the area bounded by the east curb line of 13th Street on the west, the west curb line of 14th Street on the east, the north boundary line of the Pearl Street right-of-way on the south and, on the north, by a line coinciding with the south wall of the west wing of the County courthouse complex and extending westerly at a right angle from the west wall thereof to the east curb line of 13th Street and extending easterly at a right angle from the east wall thereof to the west curb line of 14th Street; excepting, however, any buildings or portions of buildings which are owned by the County of Boulder and located in such area.

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"Serious bodily injury" means bodily injury that involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part of an organ of the body.

"Specific defense" means a defense in which the defendant, to raise the issue, presents some credible evidence on that issue, unless the city's evidence raises the issue involving the defense. If the issue involved in the specific defense is raised, it may be submitted to the trier of fact along with other issues, but the defendant bears the burden of proving the issue by a preponderance of the evidence, although the city must prove all other issues by proof beyond a reasonable doubt in any criminal action.

"Switchblade knife" means any knife, the blade of which opens automatically by hand pressure applied to a button, spring, or other device in its handle.

Ordinance Nos. 4969 (1986); 5037 (1987); 5462 (1992); 5805 (1996); 7496 (2007).

TITLE 5 GENERAL OFFENSES

Chapter 2 General Provisions[1]

Section:

5-2-1 Legislative Intent.

The provisions of this chapter apply to all prosecutions in municipal court for violation of this code, any ordinance of the city, or rule promulgated pursuant thereto.

5-2-2 Application Of Code.

(a) A person is subject to prosecution in the municipal court for a violation committed through the conduct of such person or through the conduct of another for whom such person is legally accountable, if:

(1) The conduct constitutes a violation and is committed either wholly or partly within the city or within any city park, parkway, recreation area, or open space;

(2) The conduct outside the city constitutes an attempt, as defined by this code, to commit a violation within the city;

[1]Adopted by Ordinance No. 4611. Amended by Ordinance No. 4730.

(3) The conduct outside the city constitutes a conspiracy to commit a violation within the city, and an act in furtherance of the conspiracy occurs in the city; or

(4) The conduct within the city constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction a violation prohibited under the laws of this city and such other jurisdiction.

(b) A violation is committed partly within this city if conduct occurs in this city that is an element of a violation or if the result of conduct in this city is such an element.

(c) Whether a violator is in or outside the city is immaterial to the commission of a violation based on an omission to perform a duty imposed by the law of this city.

(d) "City" as used in this section and in any summons, summons and complaint, or complaint alleging a violation of the code or any ordinance, includes both the area within the territorial limits of the City of Boulder, Colorado, and also those areas over which extraterritorial police power has been granted by the statutes of this state. It is the intent of the city council to extend the territorial jurisdiction of the municipal court as widely as possible. However, where specific sections of this code require that the violation occur "within the city" then the offense is limited to the territorial limits of the city.

5-2-3 **Common Law Crimes Abolished.**

Common law crimes are abolished, and no conduct shall constitute a violation unless it is prohibited by this code, an ordinance of the city, the charter, or a rule or regulation promulgated thereunder. But this provision does not affect the power of the municipal court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order lawfully entered, or a civil judgment or decree; nor does it affect the use of case law as an interpretive aid in the construction of the provisions of this code.

Ordinance No. 4969 (1986).

5-2-4 **General Penalties.**

(a) The penalty for violation of any provision of this code or any ordinance is a fine of not more than $1,000.00 per violation, or incarceration for not more than ninety days in jail, or by both such fine and incarceration, except as follows:

(1) Where any different provision is made elsewhere in this code or any ordinance;

(2) Where the defendant's criminal culpability is vicarious, jail may not be imposed as a penalty;

(3) Where a non-traffic violation is involved, in order to impose a jail sentence, the court must be satisfied from the evidence and other material available to it for sentencing that the defendant acted intentionally, knowingly, or recklessly with respect to the material elements of the violation. Where traffic offenses are concerned, ordinary negligence is sufficient to permit the imposition of jail;

(4) Where a defendant is a child under the age of ten years, in which case the child may not be held accountable in municipal court for any violation; or

(5) Where the defendant is a child of ten years through and including seventeen years of age, the child may not be sentenced to jail except upon conviction of a moving traffic

violation for which penalty points are assessed against the driving privilege under the laws of this state[1].

(b) Nothing in subsection (a) of this section is intended to:

(1) Remove or limit the discretion or authority of any public official to charge a child in a court other than the municipal court; or

(2) Limit the power of the municipal court to incarcerate a defendant for nonpayment of a fine or for contempt.

(c) The penalty for violation of any rule or regulations promulgated under authority delegated by the charter, this code, or any ordinance of the city is a fine of not more than $1,000.00 per violation, except as provided in paragraph (a)(4) of this section.

(d) The maximum penalty for violation of sections 5-3-1, "Assault In The Third Degree," 5-3-2, "Brawling," 5-3-3, "Physical Harassment," 5-3-4, "Threatening Bodily Injury," 5-3-6, "Use Of Fighting Words," and 5-4-1, "Damaging Property Of Another," B.R.C. 1981, when the offense is found to be a bias motivated crime, shall be a fine of not more than $2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration. The court shall not be required to make the findings required by subsection (a)(3) of this section in order to impose a sentence including incarceration. This ordinance shall not be applied in a manner that suppresses abstract thought or protected speech.

Ordinance Nos. 4969 (1986); 5639 (1994); 7496 (2007).

5-2-5 **Violations.**

(a) The terms "crime," "offense," "misdemeanor," and "violation" as used in this code or any uncodified ordinance are synonymous. Any act or omission declared to be a violation or to be unlawful or required or prohibited by the phrase "no person shall," or similar mandatory language in or by this code or any ordinance of the city or any rule promulgated thereunder constitutes a violation.

(b) Unless otherwise specifically provided in this code or an ordinance of the city or a rule promulgated thereunder, every day of a violation of the code, ordinance, or rule constitutes a separate violation.

5-2-6 **Statute Of Limitations.**

No person shall be prosecuted, tried, or punished for any violation under this code or any ordinance unless the action for said violation is instituted within one year of the date of the alleged violation, but the statute of limitations within which a prosecution must be instituted shall be tolled for:

(a) Any period not to exceed one year when the accused is absent from the city; or

(b) Any period in which a prosecution is pending against the accused for the same conduct, even if the summons, the complaint, or the summons and complaint that commence the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal.

[1]Wigent v. Shinsato, 601 P.2d 653 (Colo. App. 1979).

5-2-7 Requirements For Criminal Liability And For Offenses Of Strict Liability And Of Mental Culpability.

(a) The minimum requirement for criminal liability is the performance by a person of conduct that includes an act or the omission to perform an act. If such conduct is all that is required for commission of a particular violation, the violation is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to any material element of a violation, the violation is one of "mental culpability."

(b) If a section of this code provides that negligence suffices to establish an element of a violation, that element also is established if a person acts recklessly, knowingly, or intentionally. If recklessness suffices to establish an element of a violation, that element also is established if a person acts knowingly or intentionally. If acting knowingly suffices to establishing an element of a violation, that element also is established if a person acts intentionally.

5-2-8 Principals And Parties Subject To Charge Under This Code.

(a) A person is guilty of a violation committed by the behavior of another individual if:

(1) Such person is made accountable for the conduct of that other individual by the section defining the violation or by specific provision of this code or other ordinance of the city; or

(2) Such person acts with a mental state sufficient for the commission of the violation in question and causes an innocent individual to engage in such behavior. As used in this subsection, "innocent individual" includes any individual who is not guilty of the violation in question, despite such individual's behavior, because of duress, legal incapacity or exemption, or unawareness of the illegal nature of the conduct in question, or of the defendant's illegal purpose, or any other factor that precludes the mental state sufficient for the commission of the offense in question.

(b) A person is legally accountable as principal for the behavior of another constituting a violation if, with the intent to promote or facilitate the commission of the violation, such person aids, abets, or advises the other in planning or committing the violation.

(c) Unless otherwise provided by the section of this code or other ordinance of the city defining the violation, a person is not legally accountable for behavior of another individual constituting a violation if such person is a victim of that violation or the violation is so defined that such person's conduct is inevitably incidental to its commission.

(d) It is a specific defense under subsection (b) of this section that, prior to the commission of a violation, the defendant's effort to promote or facilitate its commission was terminated by the defendant, and such defendant either gave timely warning to law enforcement authorities or gave timely warning to the intended victim.

(e) In any prosecution for a violation in which liability is based upon the behavior of another pursuant to this code, it is no defense that the other has not been prosecuted for or convicted of any violation based upon the behavior in question or has been convicted of a different violation or degree of violation or that the defendant belongs to a class of persons who by definition of the violation are legally incapable of committing the violation in an individual capacity.

(f) A corporation is guilty of a violation if:

(1) The conduct constituting the violation consists of an omission to discharge a specific duty of affirmative performance imposed on the corporation by law; or

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(2) The conduct constituting the violation is engaged in or solicited by the board of directors or by an employee acting within such employee's scope of employment or on behalf of the corporation.

(3) It is a specific defense to corporate liability for moving traffic violations, other than those in which defects in equipment are involved, that the corporation placed no pressure on its employees that would reasonably be understood by them to encourage or require unlawful

(see following page for continuation of Section 5-2-8)

driving, and that the corporation also had a policy that it regularly followed of training its employees in safe driving and disciplining its employees for unsafe or illegal driving.

(g) A person is criminally liable for conduct constituting a violation that such person performs the act, omission, or possession, or causes it to occur in the name of or on behalf of a corporation to the same extent as if such person performed or caused that conduct in such person's own name or on such person's own behalf.

(h) Whenever the law imposes a specific duty of affirmative performance on any person, where that person is:

(1) A partnership, all the partners are liable for any failure to perform that duty;

(2) An association, all the members are liable for any failure to perform that duty; or

(3) A corporation, all the officers and agents who are responsible in the course of their employment for the performance of the duty are liable for any failure to perform that duty[1].

5-2-9 Criminal Attempt.

(a) A person commits criminal attempt if, acting with the kind of mental culpability otherwise required for commission of a violation, the person engages in conduct that constitutes a substantial step toward the commission of the violation. A substantial step is any conduct, whether act, omission, or possession, that strongly corroborates the firmness of the actor's purpose to complete the commission of the violation. Factual or legal impossibility of committing the violation is not a defense if the violation could have been committed had the intended circumstances been as the actor believed them to be, nor is it a defense that the violation attempted was actually perpetrated by the accused.

(b) A person who engages in conduct intending to aid another to commit a violation commits criminal attempt if the conduct would establish such person's complicity were the violation committed by the other, even if the other is not guilty of committing or attempting the violation.

(c) It is an affirmative defense to a charge under this section that the defendant abandoned the effort to commit the violation or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of the defendant's illegal intent.

(d) The maximum penalty upon conviction of attempting to violate a provision of this code, any ordinance of the city, or any rule promulgated thereunder is half the penalty that would apply if the offense had been committed.

5-2-10 Conspiracy.

(a) A person commits conspiracy to commit a violation if, with the intent to promote or facilitate its commission, such person agrees with another individual or individuals that they, or one or more of them, will engage in conduct that constitutes a violation or an attempt to commit a violation, or such person agrees to aid the other individual or individuals in the planning or commission of a violation or an attempt to commit a violation.

(b) No person may be convicted of conspiracy to commit a violation unless an overt act is proved to have been done by such person or by an individual with whom such person conspired in pursuit of that conspiracy.

[1]U.S. v. Currier Lumber Co., 70 F. Supp. 219 (1947), 166 F. 2d 346 (1st Cir. 1948); U.S. v. Jasper, 352 F. Supp. 254 (1972).

(c) If a person knows that an individual with whom such person conspires to commit a violation has conspired with another individual or individuals to commit the same violation, such person is guilty of conspiring to commit a violation with the other individual or individuals, whether or not such person knows their identity.

(d) If a person conspires to commit a number of violations, such person is guilty of only one conspiracy as long as such multiple violations are part of a single criminal episode.

(e) Subject to the provisions of subsection (f) of this section, two or more persons charged with conspiracy may be prosecuted jointly if:

(1) They are charged with conspiring with one another; or

(2) They are charged with being involved in conspiracies that are so related as to constitute different aspects of a scheme of organized illegal conduct. In such case it is immaterial that the persons charged are not parties to the same conspiracy.

(f) In any joint prosecution under subsection (e) of this section:

(1) Neither the liability of any defendant nor the admissibility against such defendant of evidence of acts or declarations of another shall be enlarged by this joinder; and

(2) The judge shall order a severance or take a special verdict as to any defendant who so requests, if the judge deems it necessary or appropriate to promote the fair determination of the defendant's guilt or innocence.

(g) It is an affirmative defense to a charge of conspiracy that the offender, after conspiring to commit a violation, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of the offender's illegal intent.

(h) Conspiracy is a continuing course of conduct that terminates when the violation or violations that are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom the defendant conspired.

(1) Abandonment is presumed if neither the defendant nor anyone with whom the defendant conspired does any overt act in pursuit of the conspiracy during the year prior to institution of the action.

(2) If an individual abandons the agreement, the conspiracy is terminated as to such individual only if and when such individual gives timely notice of such abandonment to those with whom the individual conspired, and the notice is evidenced by circumstances that corroborate the giving of the notice, or such individual informs the law enforcement authorities having jurisdiction of the existence of the conspiracy and of such individual's participation therein.

(i) It is immaterial to the liability of a person who conspires with another to commit a violation that:

(1) Such person or the individual with whom such person conspires does not occupy a particular position or have a particular characteristic that is an element of the violation, if such person believes that one of them does; or

(2) The individual with whom such person conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the violation.

(j) No person shall conspire to violate this code or the charter or any ordinance of the city.

5-2-11 **Prosecution Of Multiple Counts For Same Act.**

(a) When any conduct of a defendant establishes the commission of more than one violation, the defendant may be prosecuted for each such violation. A defendant may not be convicted for more than one violation if:

(1) One violation is included in the other, as defined in subsection (e) of this section;

(2) One violation consists only of an attempt to commit the other;

(3) Inconsistent findings of fact are required to establish the commission of the violations;

(4) The violations differ only by the fact that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) The violation is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless this code provides that specific periods or instances of such conduct constitute separate violations. This paragraph does not apply where counts differ only by the fact that they occurred on different days.

(b) If the several violations are known to the city attorney at the time of commencing the prosecution, all such violations upon which the city attorney elects to proceed shall be prosecuted by separate counts in a single prosecution if they are based on the same act or series of acts arising from the same criminal episode. Any violation not thus joined at trial by separate count cannot thereafter be the basis of a subsequent prosecution.

(c) If more than one guilty verdict is returned as to any defendant in a prosecution where multiple counts are tried as required by subsection (b) of this section, the sentences imposed shall run concurrently. This paragraph does not apply where counts differ only in that they occurred on different days or at different times on the same day.

(d) When a defendant is charged with two or more violations based on the same act or series of acts arising from the same criminal episode, the judge may, on application of either the defendant or the city attorney if the interest of justice so requires, order any such charge to be tried separately.

(e) A defendant may be convicted of a violation included in a violation charged in the complaint. A violation is so included if:

(1) It is established by proof of the same or less than all of the facts required to establish the commission of the violation charged;

(2) It consists of an attempt to commit the violation charged or to commit a violation otherwise included therein; or

(3) It differs from the violation charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lessor kind of culpability suffices to establish its commission.

(f) The judge is not obligated to charge the jury with respect to an included violation unless there is evidence sufficient to support a verdict acquitting the defendant of the violation charged and convicting the defendant of the included violation.

(g) If the same conduct is defined as a violation in different enactments or sections of this code or any ordinance of the city, the violator may be prosecuted under any one or all of the enactments or sections subject to the limitations provided by this section. It is immaterial to

the prosecution that one of the enactments or sections characterizes the violation as of lesser degree than another, or provides a lesser penalty than another, or was enacted by the city council at a later date than another, unless the later section or enactment specifically repeals the earlier.

5-2-12 **Applicability Of Defenses.**

Other than a failure of proof of any element of a violation, only the following may be defenses to a prosecution alleging violations of this code or other ordinance of the city.

(a) Any defense made specifically applicable by the section, chapter, or title defining the violation. All such defenses are specific defenses unless explicitly denominated as affirmative defenses.

(b) Any affirmative defenses defined in this chapter insofar as they are made specifically applicable by the section defining them.

(c) Any specific defenses defined in this chapter insofar as they are made specifically applicable by the section defining them.

(d) Except as specifically provided to the contrary, all exceptions, excuses, provisos, or exemptions found in the section defining a violation or in any other relevant section, if not matters of law, constitute specific defenses[1].

5-2-13 **Consent.**

(a) The consent of the victim to conduct charged to constitute a violation or to the result thereof is not a defense unless the consent negates an element of the violation or precludes the infliction of the harm or evil sought to be prevented by the law defining the violation.

(b) When conduct is charged to constitute a violation because it causes or threatens bodily injury, consent to that conduct or to the infliction of that injury is a defense only if the bodily injury consented to or threatened by the conduct consented to is not serious, the conduct and the injury are reasonably foreseeable hazards in joint participation in a lawful athletic contest or competitive sport, or the consent establishes a justification under this code or other ordinance of the city.

(c) Unless otherwise provided by this code or by the law defining the violation, assent does not constitute consent if:

(1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the violation;

(2) It is given by a person who, by reason of immaturity, mental disease, mental defect, or intoxication, is manifestly unable and is known or reasonably should be known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the violation;

(3) It is given by a person whose consent is sought to be prevented by the law defining the violation; or

(4) It is induced by force, duress, or deception.

[1]Duvall v. Commonwealth, 593 S.W. 2d 884 (Ky. App.); People v. Gray, 327 N.Y. S. 2d 201 (1971).

(d) Consent under this section is an affirmative defense, except for traffic law violations, where it is a specific defense. It is inapplicable where any government agency is the claimed victim.

5-2-14 **Execution Of Public Duty.**

(a) Unless inconsistent with other provisions of this code defining justifiable use of physical force or with other provisions of law, conduct that would otherwise constitute a violation is justifiable and not criminal when it is required or authorized by a provision of law or a judicial decree binding in the city.

(b) A "provision of law" and a "judicial decree" as used in subsection (a) of this section mean:

(1) Laws defining duties and functions of public servants;

(2) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;

(3) Laws governing the execution of legal process;

(4) Laws governing the military service and conduct of war; and

(5) Judgments and orders of court.

(c) Execution of public duty under this section is an affirmative defense.

5-2-15 **Choice Of Evils.**

(a) Conduct that would otherwise constitute a violation is justifiable and not criminal when it is unavoidably necessary as an emergency measure to avoid imminent public or private physical injury that is about to occur by reason of a situation occasioned or developed through no conduct of the actor and that is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly and convincingly outweigh the desirability of avoiding the injury sought to be prevented by the code section or ordinance defining the violation at issue.

(b) The necessity and justifiability of conduct under subsection (a) of this section do not rest upon considerations pertaining only to the morality and advisability of the code section or ordinance, either in its general application or with respect to its application to a particular class of cases arising thereunder.

(c) Before evidence relating to a defense of justification under this section is presented to a jury, the defendant shall first make a detailed offer of proof to the judge, who shall rule as a matter of law whether the claimed facts or circumstances would, if established, constitute a justification. If the judge admits such evidence, the judge shall again rule as a matter of law on the sufficiency of the evidence that, if believed by the jury, would establish the defense.

(d) Choice of evils under this section is a specific defense. It does not apply to traffic violations.

Ordinance No. 5099 (1988).

5-2-16 Use Of Physical Force.

(a) The use of physical force upon another person that would otherwise constitute a violation is justifiable and not criminal under any of the following circumstances:

(1) A parent, guardian, or other person entrusted with the care and supervision of a minor or an incompetent person and a teacher or other person entrusted with the care or supervision of a minor may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent it is reasonably necessary and appropriate to maintain discipline or promote the welfare of the minor or the incompetent person.

(2) A superintendent or other authorized official of a jail or correctional institution may, in order to maintain order and discipline, use reasonable and appropriate physical force when and to the extent that such official reasonably believes it necessary to maintain order and discipline.

(3) A person responsible for maintaining order in a common carrier of passengers or an individual acting under such person's direction may use reasonable and appropriate physical force when and to the extent that it is necessary to maintain order and discipline.

(4) A person acting under a reasonable belief that another individual is about to commit suicide or to self-inflict serious bodily injury may use reasonable and appropriate physical force upon that individual to the extent that it is reasonably necessary to thwart the result.

(5) A duly licensed physician or a person acting under such physician's direction may use reasonable and appropriate physical force for the purpose of administering a recognized form of treatment that such physician reasonably believes to be adapted to promoting the physical and mental health of the patient if:

(A) The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of a parent, guardian, or other person entrusted with the patient's care and supervision; or

(B) The treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person wishing to safeguard the welfare the patient would consent.

(6) A police officer acting in good faith under color of official authority.

(b) Justification of use of physical force under this section is an affirmative defense.

5-2-17 Use Of Physical Force In Defense Of A Person.

(a) Except as provided in subsection (b) of this section a person is justified in using physical force upon another individual in self defense or in defense of a third person from what the first person reasonably believes to be the use or imminent use of unlawful physical force by that other individual.

(b) Notwithstanding the provisions of subsection (a) of this section, a person is not justified in using physical force if:

(1) With an intent to cause bodily injury to another individual, such person provokes the use of unlawful physical force by that other individual;

(2) Such person is the initial aggressor, except that the use of physical force upon another individual under the circumstances is justifiable if such person withdraws from the encounter and effectively communicates to the other individual, the intent to do so, but the latter nevertheless continues or threatens the use of unlawful physical force; or

(3) The physical force involved is the product of a combat by agreement not specifically authorized by law.

(c) Use of physical force in defense of a person under this section is an affirmative defense.

5-2-18 Use Of Physical Force In Defense Of Premises.

(a) A person in possession or control of any building, realty, or other premises or a person who is licensed or permitted to be thereon is justified in using reasonable and appropriate physical force upon another individual when and to the extent that such person reasonably believes it necessary to prevent or terminate what such person reasonably believes to be the commission or attempted commission of an unlawful trespass by the other individual in or upon the building, realty, or premises.

(b) Use of physical force in defense of premises under this section is an affirmative defense.

5-2-19 Use Of Physical Force In Defense Of Property.

(a) A person is justified in using reasonable and appropriate physical force upon another individual when and to the extent that such person reasonably believes it necessary to prevent what is, in such person's reasonable belief, an attempt by the other individual to commit theft, criminal mischief, or criminal tampering involving property.

(b) Use of physical force in defense of property under this section is an affirmative defense.

5-2-20 Use Of Physical Force In Making An Arrest Or In Preventing An Escape.

(a) A police officer, a person who has been directed by a police officer to assist the officer, or a private person acting on his or her own account, is justified in using reasonable and appropriate physical force upon another individual when and to the extent that such officer or person reasonably believes it necessary as authorized by state or city law in making an arrest or in preventing an escape.

(b) Use of physical force in making an arrest or in preventing an escape under this section is an affirmative defense.

5-2-21 Duress.

(a) A person may not be convicted of a violation based upon conduct in which such person engaged because of the use of or threatened use of unlawful physical force upon such person or upon another individual, which force or threatened use thereof a reasonable person in such a situation would have been unable to resist. This defense is not available when a person intentionally, knowingly, or recklessly engages in a situation in which it is foreseeable that such person will be subjected to such force or threatened use thereof.

(b) Duress under this section is an affirmative defense.

5-2-22 **Entrapment.**

(a) Conduct that would otherwise constitute a violation is not criminal if the accused engaged in the proscribed conduct because the accused was induced to do so by a law enforcement official or a person acting under such official's direction seeking to obtain evidence for the purpose of prosecution and if the methods used to obtain that evidence were such as to create a substantial risk that the conduct would be committed by a person who, but for such inducement, would not have conceived of or engaged in conduct of the sort induced. Merely affording a person an opportunity to commit an offense is not entrapment even though representations or inducements are used that are calculated to overcome the violator's fear of detection.

(b) Entrapment under this section is a specific defense.

5-2-23 **Impaired Mental Condition.**

Evidence of an impaired mental condition or insanity may be offered in a proper case as bearing upon the capacity of the accused to form a specific intent if such an intent is an element of the violation charged. Otherwise, insanity is never a defense to a charge of violation of this code or other ordinance of the city.

5-2-24 **Intoxication.**

(a) Intoxication of the accused is not a defense to a charge of violation of this code or other ordinance of the city, except as provided in subsection (b) of this section; but in any prosecution for a violation, evidence of intoxication of the accused may be offered by the accused when it is relevant to negate the existence of a specific intent, if such intent is an element of the crime charged.

(b) A person is not criminally responsible for conduct if, by reason of intoxication that is not self-induced at the time of the conduct, such person lacks capacity to conform the conduct to the requirements of the law.

(c) "Intoxication" as used in this section means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.

(d) "Self-induced intoxication" means intoxication caused by substances that the accused knows or that a reasonable person would know have the tendency to cause intoxication and that the accused knowingly introduced or allowed to be introduced into the accused's body.

(e) Intoxication under this section is a specific defense.

5-2-25 **Mistake.**

(a) A person is not relieved of criminal liability for conduct because such person engaged in that conduct under a mistaken belief of fact unless:

(1) It negates the existence of a particular mental state essential to the commission of the violation;

(2) The section defining the violation or a section relating thereto expressly provides that a factual mistake or the mental state resulting therefrom constitutes a defense or exemption; or

(3) The factual mistake or the mental state resulting therefrom is of a kind that supports a defense of justification as defined in this code and is reasonable.

(b) A person is not relieved of liability for conduct because such person engages in that conduct under a mistaken belief that it does not as a matter of law constitute a violation, unless the conduct is permitted by one or more of the following:

(1) A provision of the charter, this code, or an ordinance of the city;

(2) A written administrative regulation, order, or grant of permission by a body or official authorized to make such order or grant of permission under the charter, this code, or an ordinance of the city;

(3) An official written interpretation of the section, ordinance, regulation, or order relating to the violation, made or issued by a public servant, agency, or body legally charged or empowered with the responsibility of administering, enforcing, or interpreting this section, ordinance, regulation, or order. If such interpretation is by judicial decision, it must be binding in the city.

(c) Ignorance or mistake under this section is a specific defense.

5-2-26 **Matters Of Local And Mixed Concern.**

It is the intention of the city council that those ordinances and provisions of this code that deal with matters of "local" concern supersede the laws of the State of Colorado to the extent that they conflict and that those that deal with matters of "mixed" concern apply concurrently with the laws of the State of Colorado. No provision of this code on a matter of "mixed" concern is to be construed expressly or by implication to permit conduct that is illegal under the laws of the State of Colorado or to prohibit conduct that is expressly permitted by the laws of the state. The provisions of this code are to be construed to apply to misdemeanors and other minor and petty offenses only and are not to be interpreted to apply to conduct that is defined as a felony under the laws of the State of Colorado.

5-2-27 **Penalties Not Released By Repeal.**

(a) The repeal, revision, amendment, or consolidation of any section of the Boulder Revised Code 1981, as amended, does not constitute a bar to the prosecution and punishment of an act already committed in violation of the section so repealed, unless the repealing, revising, amending or consolidating ordinance expressly so provides.

(b) Any such section so repealed, amended, revised, or consolidated shall remain in full force and effect for the purpose of sustaining all actions, suits, proceedings, and prosecutions brought thereunder that arose before the effective date of the repeal, amendment, revision, or consolidation. An administrative order that is stayed by administrative or judicial appeal shall be deemed to be an "action" brought under the code within the meaning of this subsection.

TITLE 5 GENERAL OFFENSES

Chapter 3 Offenses Against The Person[1]

Section:

5-3-1 Assault In The Third Degree.

No person shall recklessly cause bodily injury to another. This section does not apply where there is serious bodily injury, a deadly weapon is used, or the assault is otherwise felonious.

5-3-2 Brawling.

No person shall fight with another in a public place except in a prearranged amateur or professional contest of athletic skills.

5-3-3 Physical Harassment.

No person shall, with intent to harass or annoy another, strike, shove, kick, or otherwise touch or subject an individual to physical contact.

5-3-4 Threatening Bodily Injury.

No person shall knowingly, by threat or physical action, place another in fear of imminent bodily injury. This section does not apply if the threat or physical action is committed by the use of a deadly weapon or if the threat is made with the intent to induce the threatened person or another person to do an act or refrain from doing a lawful act against such individual's will.

5-3-5 Obstructing Public Streets, Places, Or Buildings.

(a) No person without legal privilege shall knowingly obstruct vehicular or pedestrian movement in a public place.

(b) For the purpose of this section "obstruct" means to interfere with or prevent, whether alone or with others, convenient or reasonable passage or use. For purposes of this section concerning a public walk, sidewalk, or building, "convenient" means providing enough

[1]Adopted by Ordinance No. 4611.

passageway to permit passage of a thirty-six-inch-wide wheelchair at an average unobstructed pedestrian speed. "Reasonable" includes permitting passage of a pedestrian without pause or detour, and evidence that a pedestrian had to alter substantially the pedestrian's direction of travel in order to accommodate a person sitting or lying in the pedestrian's way shall be prima facie evidence of obstruction.

(c) For the purpose of this section "public place" means in or upon any public highway, street, alley, walk, parking lot, building, park, or other public property, or in or upon those portions of any private property upon which the public has an express or implied license to enter or remain.

(d) For the purpose of this section "legal privilege" includes, without limitation, awaiting public transportation in areas designated therefor and acting in accordance with a license or permit used by the city for construction or other work in, over, on, or under, the public way or place.

(e) No person shall be deemed to have violated this section solely because of a gathering of persons for the purpose of hearing such person speak or solely because of being a member of such a gathering. Such person commits a violation by refusing to obey a reasonable request or order by a police officer to move:

(1) To prevent obstruction of a public street, alley, sidewalk, public way, place, or building, or entrance or doorway into or out of a building open to the public, if compliance with that order at the same time permits the gathering to continue to satisfy its communicative purpose; or

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or hazard.

(f) The provisions of subsection (a) of this section do not apply to persons on the sidewalk along the route of a parade permitted under section 7-2-14, "Permit Required For Parades, Processions, And Sound Trucks," B.R.C. 1981; but any such person who fails to move when requested to do so by a police officer making a lane available for pedestrians commits a violation of this section.

Ordinance No. 5955 (1997).

5-3-6 Use Of Fighting Words.

No person shall insult, taunt, or challenge another in a manner likely to provoke a disorderly response. If the person to whom such insult, taunt, or challenge is directed is a police officer, there is no violation of this section until the police officer requests the person to cease and discontinue the conduct, but the person repeats or continues the conduct[1].

5-3-7 Aggressive Begging Prohibited.

(a) No person shall beg or solicit aggressively for a gift of money or any thing of value on any public street, sidewalk, way, mall, park, building, or other public property, or on any private property open to the public while in close proximity to the individual addressed. "Aggressive begging" means begging or soliciting accompanied by or followed immediately by one or more of the following:

(1) Repeated requests after a refusal by the individual addressed;

[1]Van Meveren v. County Court, 551 P.2d 716 (1976).

(2) Blocking the passage of the individual addressed;

(3) Addressing fighting words to the individual addressed; or

(4) Touching the individual addressed.

(b) If one person acts in concert with another to beg aggressively, such that one person begs or solicits, and another commits one or more of the additional acts constituting aggressive begging, both have committed the crime.

(c) If one person begs or solicits, and a second person, who knew or reasonably should have known of a refusal by the individual addressed, begs or solicits from the same individual within one minute, the second person has committed the crime.

Ordinance Nos. 5955 (1997); 7259 (2003).

5-3-8 **Disrupting Quiet Enjoyment Of Home.**

Repealed.

Ordinance Nos. 5271 (1990); 5309 (1990); 7151 (2001); 7358 (2004).

5-3-9 **Brandishing A Weapon[1].**

No person not a police officer, or a peace officer of any state of the United States and acting in such capacity, shall display a deadly weapon in a public place in a manner calculated to alarm. It is an affirmative defense to a charge of violating this section that the display constituted legitimate self defense under state law.

5-3-10 **Harassment Near Health Care Facility.**

(a) No person shall knowingly obstruct, detain, hinder, impede, or block another person's entry to or exit from a health care facility.

(b) No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility.

(c) For the purposes of this section, "health care facility" means any entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment.

Ordinance Nos. 4982 (1986); 5037 (1987); 7129 (2001).

5-3-11 **Nuisance Party Prohibited.**

(a) No owner, occupant, tenant, or other person having possessory control, individually or jointly with others, of any premises shall sponsor, conduct, host, or permit a social gathering or party on the premises which is or becomes a public nuisance where such nuisance is either the intentional result of, or reasonably anticipated by, the person or persons having such

[1]See People v. Howard, 622 P.2d 568 (1981).

possessory control. Reasonable anticipation shall be adjudicated using a reasonable person standard.

(b) A social gathering shall be deemed to constitute a public nuisance when, by reason of the conduct of persons in attendance, it results in one or more of the following violations of this code and which violations occur at the site of the social gathering, or on neighboring public or private property:

Section 5-3-1, "Assault In The Third Degree," B.R.C. 1981;

Section 5-3-2, "Brawling," B.R.C. 1981;

Section 5-3-4, "Threatening Bodily Injury," B.R.C. 1981;

Section 5-3-5, "Obstructing Public Streets, Places, Or Buildings," B.R.C. 1981;

Section 5-3-6, "Use Of Fighting Words," B.R.C. 1981;

Section 5-4-1, "Damaging Property Of Another," B.R.C. 1981;

Section 5-4-2, "Damaging Public Property," B.R.C. 1981;

Section 5-4-3, "Trespass," B.R.C. 1981;

Section 5-4-10, "Fires On Public Property," B.R.C. 1981;

Section 5-4-13, "Littering," B.R.C. 1981;

Section 5-4-14, "Graffiti Prohibited," B.R.C. 1981;

Section 5-5-3, "Obstructing A Peace Officer Or Firefighter," B.R.C. 1981;

Section 5-5-10, "False Reports," B.R.C. 1981;

Section 5-6-6, "Fireworks," B.R.C. 1981;

Section 5-6-7, "Public Urination," B.R.C. 1981;

Section 5-7-2, "Possession And Consumption Of Alcoholic Beverages In Public Prohibited," B.R.C. 1981;

Section 5-7-3, "Unlawful To Sell Or Give To Or Procure For Minors," B.R.C. 1981;

Section 5-7-4, "Possession And Sale By Minors Unlawful," B.R.C. 1981;

Section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," B.R.C. 1981;

Section 5-9-5, "Disrupting Quiet Enjoyment Of Home," B.R.C. 1981;

Section 5-9-6, "Unreasonable Noise Prohibited Between The Hours Of 11:00 P.M. Through 7:00 A.M.," B.R.C. 1981;

A violation of any provision in chapter 6-3, "Trash," B.R.C. 1981, relating to the unlawful deposit of trash;

Section 7-4-61, "Obstructing Traffic Prohibited," B.R.C. 1981;

Paragraph 10-8-2(b)(12), B.R.C. 1981, concerning open burning.

(c) A social gathering shall be deemed to constitute a public nuisance when an open keg of beer is located in any yard adjacent to a street, on a front porch in a place visible to the public, or in any side yard of the premises upon which the social gathering takes place such that the open keg of beer is visible to members of the public standing on public streets, sidewalks, or on the grounds of other adjoining or nearby private properties.

(d) All participants in any party or social gathering declared to be a public nuisance by a police officer shall cease participating in that party or social gathering and disperse immediately upon the order of a police officer, and all persons not domiciled at the site of such party or social gathering shall leave the premises immediately. No person shall fail or refuse to obey and abide by such an order.

Ordinance No. 7126 (2001).

5-3-12 **Begging In Certain Places Prohibited.**

(a) No person shall beg or solicit for a gift of money or any thing of value while the person begging or soliciting is in any of the following places on public property:

(1) On the mall within ten feet of a building wall[1].

(2) In the downtown or the University Hill commercial district, as those areas are defined in subsection (b) of this section, within five feet of a building wall.

(3) Within ten feet of any outdoor patio where food or drink are served.

(4) Within ten feet of any vending cart operating pursuant to a permit from the city.

(b) This section applies only to the following parts of the city:

(1) The downtown, defined as the area included within the Downtown Boulder Business Improvement District established by Ordinance No. 6095. A map showing the downtown boundaries is appendix A of this section.

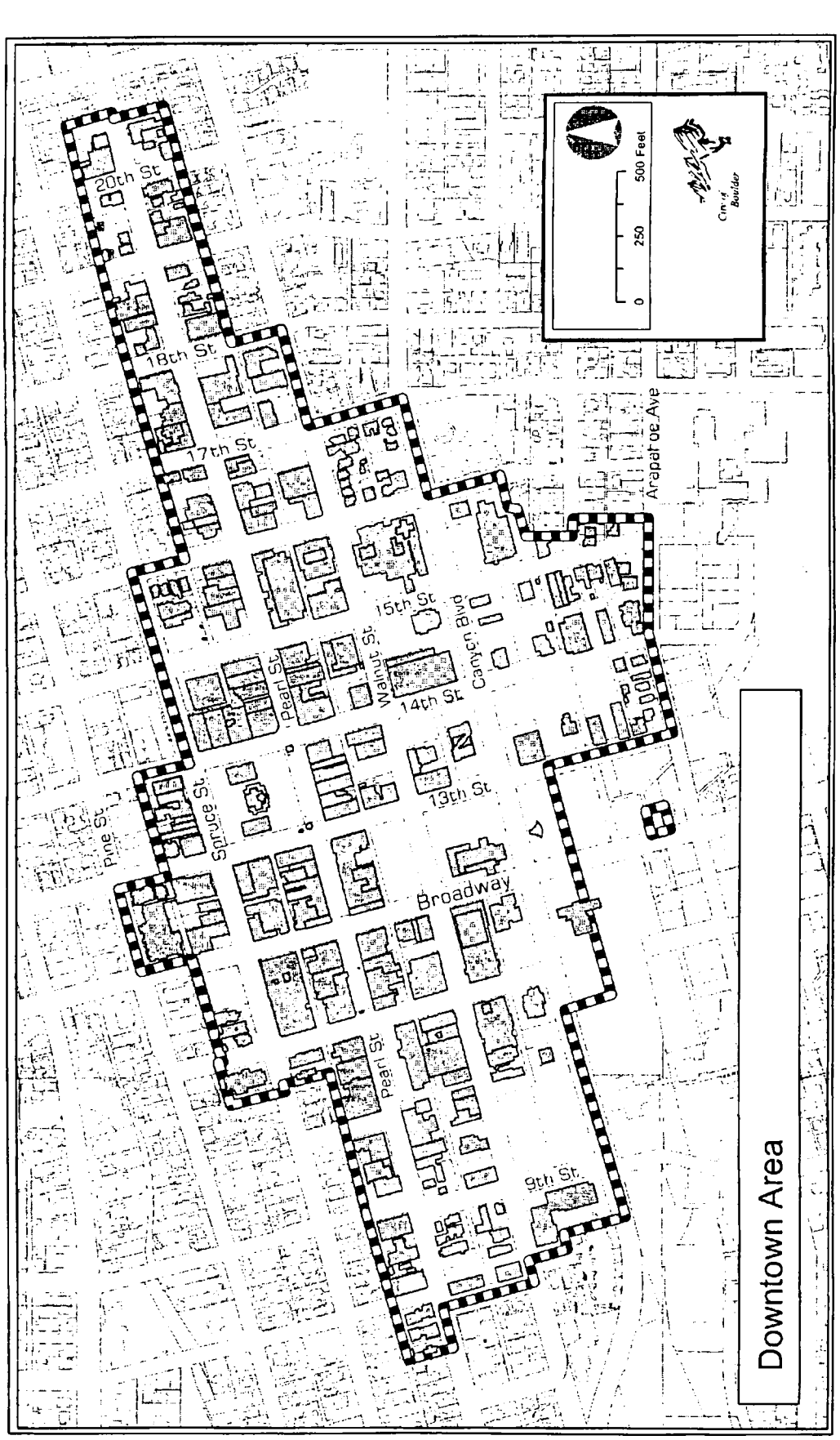
(2) The University Hill commercial district, defined as the west side of Broadway from University Avenue to College Avenue; Pennsylvania Avenue from Broadway to the alley west of Thirteenth Street and also including the right-of-way abutting the property on the north side of Pennsylvania just west of the alley; Thirteenth Street from Pleasant Street to College Avenue including the right-of-way abutting the two northern most properties south of College on the east and west sides of Thirteenth Street; Fourteenth Street south of College on the west side from College to the southern edge of the University Hill General Improvement District parking lot; and College Avenue from the alley west of Thirteenth Street to Fourteenth Street. A map showing the University Hill commercial district is appendix B of this section.

(c) This section does not apply to begging or solicitation solely by means of a sign carried by the person, so long as the sign is not extended within eighteen inches of the person solicited.

[1]There is a line in the decorative brick surface of the mall which is located ten feet into the mall on both the north and south sides of the mall.

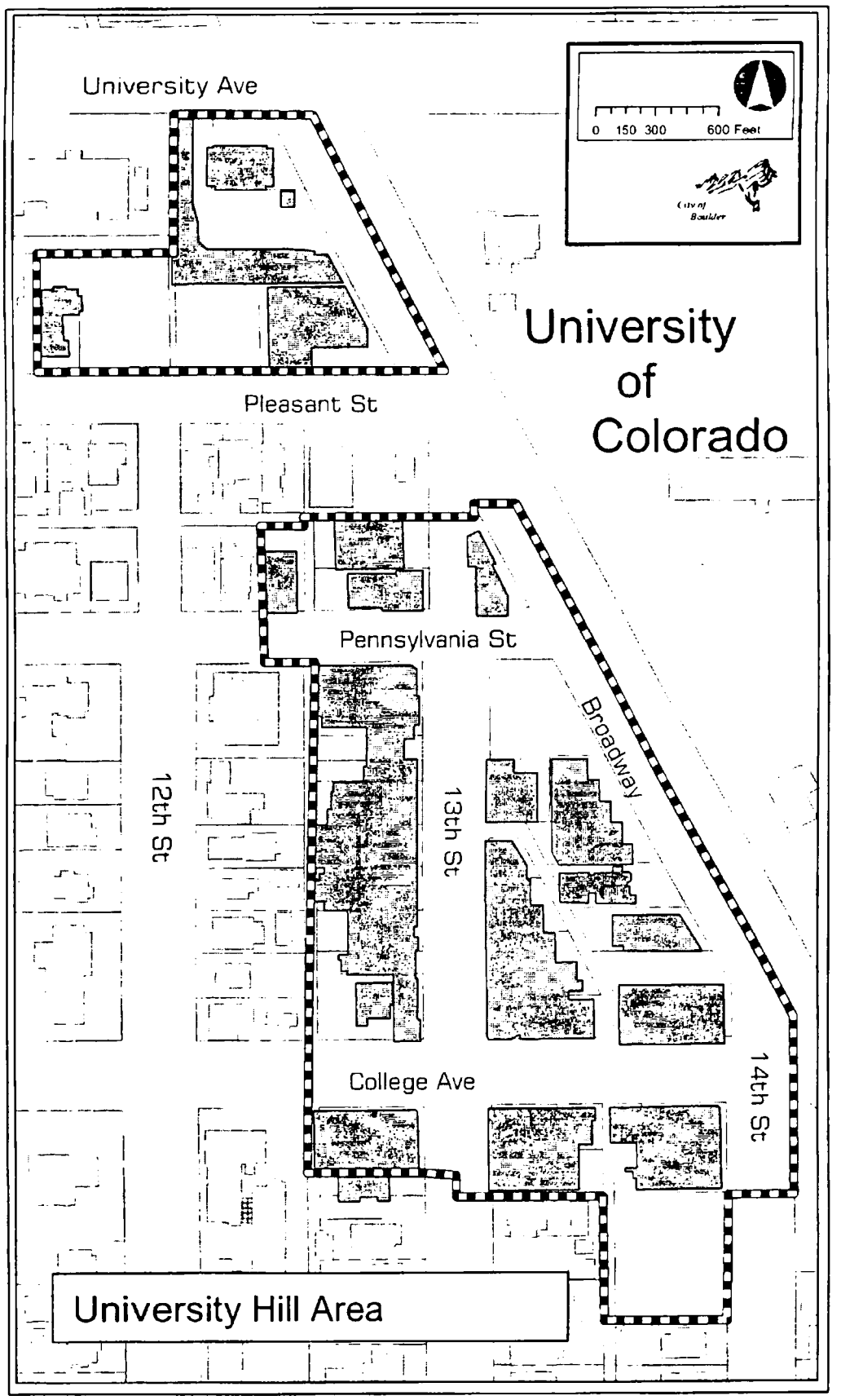
5-3-12

APPENDIX A



5-3-12

APPENDIX B



Ordinance No. 7259 (2003).

TITLE 5 GENERAL OFFENSES

Chapter 4 Offenses Against Property[1]

Section:

5-4-1 Damaging Property Of Another.

(a) No person shall knowingly damage the real or personal property of another.

(b) This section does not apply where the damage in the course of a single criminal episode is $500.00 or more, is effected by means of fire or explosives, or is otherwise feloniously caused.

Ordinance Nos. 5039 (1987); 7129 (2001).

5-4-2 Damaging Public Property.

(a) No person shall damage, move, remove, destroy, drill a hole in, dig, or injure in any manner whatsoever any grass, tree, shrub, plant, flower, soil, rock, or other natural object, railing, bridge, culvert, sign, building, equipment, bolt, archeological, historic, or cultural object, or any other property whatsoever belonging to the city or under the possession and control of the city, unless done pursuant to a written permit or contract from the city manager.

(b) This section does not apply where damage knowingly caused in the course of a single criminal episode is $500.00 or more, is effected by means of fire or explosives, or is otherwise feloniously caused.

Ordinance Nos. 5389 (1991); 7129 (2001).

5-4-3 Trespass.

No person shall:

(a) Enter or remain upon land or premises other than a dwelling of another in defiance of a legal request or order by the owner or some other authorized person; or

[1]Adopted by Ordinance No. 4611. Amended by Ordinance No. 4730.

(b) Enter into or upon land or a building other than a dwelling that is posted, locked, or otherwise fenced or enclosed in such a manner that a reasonably prudent person would understand that the owner does not want any such person on the land or in the building.

5-4-4 Trespass To A Motor Vehicle.

No person shall enter any motor vehicle of another without permission of the owner. It is a specific defense to a charge under this section that the defendant had permission of the owner's agent for the entry, that the entry was for a brief period of time to secure the vehicle from harm, or was directed or authorized by a public official. This section does not apply where the entry was made with the intent to steal anything of value or where the vehicle was parked on the property of the defendant or of the defendant's principal.

5-4-5 Trespass On Public Buildings.

(a) No person shall climb on any building or other structure belonging to the city or under the possession and control of the city or any portion thereof not designed for such activity, or on any shrub or tree growing on the mall.

(b) No person shall attach or secure any object to mall property not specifically designed for such purpose without first obtaining authorization from the city manager.

(c) No person shall climb on any structure on the mall belonging to the city or under the possession and control of the city or any portion thereof not specifically designed for such purpose without first obtaining authorization from the city manager.

Ordinance No. 4922 (1985).

5-4-6 Trespass On Public Property.

No person shall enter any property belonging to the city or under the possession and control of the city that is fenced or otherwise enclosed in a manner designed to exclude intruders or is posted with signs at intervals of not more than four hundred forty yards that forbid entry.

5-4-7 Grazing On Public Property.

No person shall knowingly cause or permit any domesticated animal that such person owns, possesses, or controls, including, without limitation, cows, goats, llamas, burros, mules, horses, pigs, or sheep, to graze, pasture, or run at large or to be driven or herded within any property belonging to the city or under the possession and control of the city, except pursuant to a written permit from the city manager.

5-4-8 Rolling Or Throwing Rocks On Public Property.

No person shall roll, throw, or otherwise move any rocks or boulders on any public property. But this section does not apply to city employees acting within the scope of their employment.

5-4-9 Unauthorized Research Projects.

No person shall conduct any research project that includes marking, tagging, sampling, trapping, or removing any soil, rock, fossil, tree, shrub, plant, flower, or wildlife or that includes the construction of a physical grid in or on any property belonging to the city or under the possession and control of the city, except pursuant to a written permit from the city manager.

5-4-10 Fires On Public Property.

No person shall start or maintain, or cause to be started or maintained any fire on any public property, park, parkway recreation area, open space, street, or public way, unless confined within a fire pit permanently erected by the city for such purpose. No person shall place, erect, build, or construct a fireplace, stove, or other fire container in any public property, park, parkway, recreation area, open space, or public way, except pursuant to a written permit from the city manager. For purposes of this section, "public property" means property belonging to the city or under the possession and control of the city.

Ordinance No. 5187 (1989).

5-4-11 Polluting Streams.

No person shall wash dishes, empty waste liquids, or in any other manner pollute the water of any fountain, pond, lake, stream, or ditch on property belonging to the city or under the possession and control of the city.

5-4-12 Depositing Trash On Property In Violation Of Sign.

(a) No person shall deposit or cause to be deposited, any trash, refuse, garbage, or rubble in any receptacle designated or designed for the deposit of such materials without the express or implied consent of the owner or a person in possession and control of the property on which the receptacle is located.

(b) For purposes of this section, there is no such consent when the deposit contravenes a sign that is posted on or near the receptacle, has a minimum area of one-half square foot, contains at least one-inch lettering, clearly indicates the limitation, and is located so that it can be seen by an ordinarily observant person.

(c) Nothing in this section shall be construed to exempt a person posting a sign from complying with the sign code, section 9-9-21, "Signs," B.R.C. 1981.

5-4-13 Littering.

(a) No person shall deposit, leave, dump or cause to be deposited, left, or dumped any trash, refuse, garbage, or rubble on any public or private property other than within those containers specifically designated for the deposit of such materials.

(b) No driver of any vehicle, other than a vehicle carrying passengers for hire, shall fail to prevent any passenger in the driver's vehicle from violating subsection (a) of this section.

(c) No owner of any private real property, no resident manager, local agent of any real property appointed by the owner pursuant to section 10-3-14, "Local Agent Required," B.R.C. 1981, as shown in the records of the city, and no private tenant of any real property shall fail to

prevent any trash, refuse, garbage, or rubble which had been deposited, left, or dumped outdoors upon such real property from being moved, whether by wind, water, animals, or any other cause, onto the property of another. It is a specific defense to a charge of violating this subsection that the trash, refuse, garbage, or rubble was placed upon the responsible person's property by persons who did not have implied or express permission to be on that property, and that the responsible person did not have a reasonable time to clean it up. This subsection does not apply to material subsequently moved onto property with the express prior permission of the owner of the recipient property.

(d) No person shall deposit, leave, dump, or cause to be deposited, left, or dumped any trash, refuse, garbage, or rubble in any designated container in any city park, recreation area, or open space unless such material originated from any lawful activity in such area.

(e) It is a specific defense to a violation of subsection (a) of this section that the owner of private property gave the defendant permission to perform the acts proscribed in this section.

(f) This section does not apply to the distribution of literature on private property in the exercise of First Amendment rights under the United States Constitution when such literature is placed in reasonable quantities at reasonable locations designed to reach the attention of the occupant of the property.

(g) This section does not apply to deposit of hazardous wastes in violation of section 18-13-112, C.R.S.

Ordinance No. 5660 (1994).

5-4-14 **Graffiti Prohibited.**

(a) Graffiti A Nuisance: Graffiti is hereby determined to be a nuisance because its continued existence constitutes a visual blight upon the area in which it is located and acts as a catalyst for other antisocial behavior. Prompt removal is the greatest disincentive to graffiti and minimizes the blight and related effects created by graffiti.

(b) Graffiti Defined: "Graffiti" means the intentional painting, scratching or coloring (with any contrast medium whatsoever) of any public or private property except by permission of the owner of private property, the city manager, in the case of city property, or the supervisory officer of any other public property.

(c) Graffiti Prohibited: No person shall place graffiti upon any property.

(d) Obligation Of Owner Of Commercial Property To Remove Graffiti: No person owning any vacant land or any structure or personal property (including, without limitation, dumpsters) used for commercial or industrial purposes or any rental housing shall fail to remove graffiti from such property within three working days of the time such person knows, or reasonably should have known, either directly or through such owner's agents, of such graffiti.

(e) Authority Of City To Enter And Remove Graffiti From Any Property:

(1) The city manager may enter onto private property and remove or paint over graffiti, if the manager first attempts to notify the affected property owner and provide such property owner with an opportunity to eradicate the graffiti. Such notice must be given or mailed no later than seventy-two hours prior to removing or painting over the graffiti.

(2) If a property owner does not eradicate the graffiti, or make arrangements satisfactory to the city manager for the eradication of such graffiti, within three working days of actual

notice or mailed notice, the city manager may enter and remove or paint over the graffiti. If, prior to such entry, the city manager determines that entry onto the property is opposed by the property owner or will be technically difficult or if the city manager wishes to clarify the appropriate nature and conditions of entry upon the land, the city manager may submit an affidavit to the municipal court in support of a request for an administrative warrant to authorize entry upon the property to remove graffiti. Such affidavit shall set forth probable cause to believe that graffiti exists on the property and shall specify that the owner of the property has not eradicated the graffiti following notice to do so. Upon receipt of such affidavit and determination of probable cause, the municipal court shall issue a warrant authorizing the manager or the manager's agents to enter upon the property as needed to eradicate graffiti.

(3) If, pursuant to the provisions of this subsection, the city manager removes graffiti from private property by painting over it, the manager shall not be required to use paint that matches preexisting paint in color or kind. In this regard, it is legislatively determined that the eradication of graffiti with contrasting paint does not damage private property more than does the continued presence of such graffiti on that property.

(4) No graffiti removal by the city manager authorized by this subsection shall, without property owner permission, extend to areas not visible to the public.

(5) Nothing in this section shall impose a duty upon the city manager to remove or eradicate graffiti. Nothing in this section shall prevent the manager from giving additional notice to agents of the property owner, should it appear to the manager that such extra notice is likely to produce prompt removal of the graffiti.

(f) Reimbursement To City For Removal Of Graffiti: Any person required by subsection (d) of this section to remove graffiti who fails to remove the graffiti may be charged the reasonable costs of such removal by the city manager if the city removes it pursuant to subsection (e) of this section. However, reimbursement of city expenses for graffiti removal shall not be required unless the following procedures are used:

(1) Notice of the obligation to remove graffiti, and of the possibility that reimbursement may be sought if the city manager removes the graffiti, shall be provided to the owner of the property upon which the graffiti is located personally or by the deposit of such notice in the United States mail, postage prepaid, and addressed to the owner thereof at the owner's address as the same appears on the most recent assessment roll of the Boulder County Assessor.

(2) In the event that a notice to remove is also given to the person in possession or control of the property, such notice shall be provided in the manner specified in this subsection with respect to giving notice to the owner of the property, and may be addressed to "occupant" or "to whom it may concern," if the name of such person is not known.

(3) Upon removal of graffiti by the city after the notice required by this subsection, if the city manager determines to seek reimbursement the manager shall deliver a demand for reimbursement to the owner of the property detailing:

(A) The reason that the removal was required;

(B) The date upon which the removal was accomplished; and

(C) The cost of doing such work.

The demand for reimbursement for the costs of graffiti removal shall be provided to the owner of the property upon which the graffiti was located personally or by the deposit of such

demand in the United States mail, postage prepaid, and addressed to the owner thereof at the owner's address as the same appears on the most recent assessment roll of the Boulder County Assessor.

(4) The owner of any property from which graffiti has been removed and who has received a demand for reimbursement pursuant to this section shall make such payment within forty-five days of date upon which the demand was deposited into the United States mail, or if it is shorter, within thirty days of the date upon which such owner received personal service of such report and demand. However, the city manager may enter into an agreement with a property owner for payment to be made on some other mutually agreed date or schedule.

(5) The owner of any property upon whom a demand for reimbursement has been made under this subsection may challenge the requirement of reimbursement or the amount demanded, or both, pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. However, a demand for such a quasi-judicial hearing must be made within forty-five days of date upon which the demand for reimbursement was deposited into the United States mail, or, if it is shorter, within thirty days of that date upon which such owner received personal service of such a demand.

(6) If any person fails or refuses to pay when due any charge for reimbursement imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance Nos. 5186 (1989); 7146 (2001).

5-4-15 Posting Signs On Property Of Another Prohibited.

(a) No person shall post a sign in the public right-of-way or on any other public property except on a kiosk or public bulletin board meant solely for posting signs. No beneficiary of any such sign shall fail to prevent the violation of this section. This prohibition does not extend to persons employed or authorized by the public property's owner and acting within the scope of their employment or authority.

(b) No person shall post a sign on private property without the express permission of the owner thereof. This prohibition does not extend to communications intended solely for the owner or occupant of the private property whose posting does not damage that property nor require a trespass.

(c) For the purposes of this section:

"Beneficiary of a sign" means a person who is the intended recipient of the benefit brought about by the posting of a sign in the downtown DT zone and in that portion of the P zone adjacent thereto, or in the University Hill BC-2 zone adjacent to Broadway and College, and includes, without limitation, any business whose premises are specified in such sign.

"Kiosk" means a freestanding structure located within a pedestrian circulation area used for posting of notices or advertisement of goods.

"Post" means to affix in any manner, including, without limitation, nailing, tacking, taping, tying, gluing, pasting, painting, staking, marking, or writing.

"Sign" has the meaning given in section 9-16-1, "General Definitions," B.R.C. 1981.

Ordinance Nos. 6017 (1998); 7522 (2007).

5-4-16 **Outdoor Furniture Restriction.**

(a) No person shall place, use, keep, store, or maintain any upholstered furniture not manufactured for outdoor use, including, without limitation, upholstered chairs, upholstered couches, and mattresses, in any outside areas located in the following places:

(1) In any front yard;

(2) In any side yard;

(3) In any rear yard or other yard that is adjacent to a public street. However, an alley shall not be considered a "public street" for the purpose of this subsection; or

(4) On any covered or uncovered porch located in or adjacent to any of the yards described in paragraphs (a)(1) through (a)(3) of this section.

(b) The provisions of this section shall apply within the following described area: Those portions of the University Hill neighborhood bordered by Baseline Road on the south, Arapahoe Road on the north, Broadway on the east, and, on the west by the western boundary lines of those properties located on the west side of Ninth Street.

(c) For the purpose of this section, yards are defined as follows:

(1) The terms "front yard," "rear yard," and "side yard" refer to the open space between buildings and property lines at the front, rear, and sides of a property, respectively.

(2) A side yard extends the full length of a lot as if a line running along the edge of a building was extended to intersect with the rear property line.

(3) On a corner lot, the open space adjacent to the shorter street right-of-way shall be considered the front yard.

(4) The rear yard is that yard located on the opposite side of the lot from the front yard.

(d) The interior of any fully enclosed porch (including, without limitation, a porch enclosed by screening material) that cannot be accessed from outside except through a door that can be locked shall not be considered an outside area for the purpose of this section.

(e) Placement of upholstered furniture on balconies or porches located on the second floor, or any floor above the second floor, of a building is not precluded by the provisions of this section.

(f) The following shall constitute specific defenses to any alleged violation of this provision:

(1) That such furniture was placed in an outside location in order to allow it to be moved during a move of a resident or residents or removed as part of a trash or recycling program on a day scheduled for such moving or removal.

(2) That such furniture was located in a yard other than a front yard and was placed in such a manner that it could not be seen from ground level by a person located on a public right-of-way (excluding public alleys) and that it was not visible by such a person unless that person took extraordinary steps such as climbing a ladder or peering over a screening fence in order to achieve a point of vantage.

(3) That such furniture was temporarily placed in an outside location in order that it be offered for sale at a yard or garage sale if each of the following conditions exists:

(A) The furniture is located in an outside location only during the hours of 8:00 a.m. and 6:00 p.m.

(B) The person attempting to sell the furniture, or that person's agent, is outside during the period of the yard or garage sale in order to monitor the sale.

(C) A sign is placed on or near the furniture indicating that it is for sale.

(D) This defense shall not apply if upholstered furniture is located in an outside location for more than two days in any six-month period.

(g) If the city manager finds that any upholstered furniture exists on any property in violation of this section, the manager may require that the owner and the lessee, agent, occupant, or other person in possession or control of the property correct the violation and bring the property into conformity with this section, using the following procedure:

(1) The manager shall notify the owner and the lessee, agent, occupant, or other person in possession or control of the property that such persons have seven days from the date of the notice to make such corrections. Notice under this subsection is sufficient if it is deposited in the mail, first class, to the last known owner of the property on the records of the Boulder County Assessor and to the last known address of the lessee, agent, occupant, or person in possession or control of the property.

(2) If the person notified fails to correct the violation as required by the notice prescribed by paragraph (g)(1) of this section, the manager may correct the violation by removing and disposing of the upholstered furniture and charge the costs thereof, plus an additional amount of $25.00 for administrative costs, to the owner and to the lessee, agent, occupant, or other person in possession and control of the property.

(3) If any property owner fails or refuses to pay when due any charge imposed under this section, the manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance Nos. 7125 (2002); 7360 (2004).

TITLE 5 GENERAL OFFENSES

Chapter 5 Offenses Against Government Operations[1]

Section:

5-5-1 Obstructing Government Operations.

(a) No person shall knowingly obstruct, impair, or hinder the performance of a governmental function by a public servant by using or threatening to use violence, force, or physical interference or obstacle.

(b) It is an affirmative defense to violation of this section that:

(1) The obstruction, impairment, or hindrance was of unlawful action by a public servant;

(2) The obstruction, impairment, or hindrance was of the making of an arrest; or

(3) The obstruction, impairment, or hindrance was by lawful activities in connection with a labor dispute with the government.

5-5-2 Resisting Arrest.

(a) No person shall knowingly prevent or attempt to prevent a police officer acting under color of 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;

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

[1]Adopted by Ordinance No. 4611. Amended by Ordinance Nos. 4679, 4719.

(3) Fleeing from the police officer after being ordered to stop in a manner that would indicate to a reasonable person that the police officer was ordering such person to stop.

(b) It is no defense to a prosecution under this section that the police officer was attempting to make an arrest that in fact was unlawful if the police officer was acting under color of official authority and in attempting to make the arrest such officer was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A police officer acts "under color of official authority" when, in the regular course of assigned duties, such officer is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made.

(c) The term "police officer" as used in this section means a police officer in uniform or, a police officer out of uniform who has identified himself or herself by exhibiting police officer credentials to the person whom such officer is attempting to arrest.

5-5-3 **Obstructing A Peace Officer Or Firefighter[1].**

(a) No person shall, by using or threatening to use violence, force, or physical interference or obstacle knowingly obstruct, impair, or hinder the enforcement of the law or the preservation of the peace by a peace officer, acting under color of official authority or knowingly obstruct, impair, or hinder the prevention, control, or abatement of fire or other emergency action by a firefighter, acting under color of official authority.

(b) No person, upon being ordered by a police officer to move to a distance of eight feet from the police officer, or to a specific place which is no more than eight feet from the officer, while the officer is investigating what the officer reasonably suspects is a crime or violation of this code, is interviewing a suspect or potential witness, or is making an arrest, shall fail to comply with such order.

(c) It is no defense to a prosecution under this section that the police officer was attempting to make an arrest that in fact was unlawful if the police officer was acting under color of official authority and in attempting to make the arrest such officer was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A police officer acts "under color of official authority" when, in the regular course of assigned duties, such officer is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made.

(d) The term "police officer" as used in this section means a police officer in uniform or a police officer out of uniform who has identified himself or herself by exhibiting police officer credentials to the person whom such officer is attempting to arrest.

Ordinance Nos. 4879 (1984); 7129 (2001).

5-5-4 **Refusal To Permit Inspections.**

(a) No person, knowing that a public servant is legally authorized to inspect property, shall:

(1) Refuse to produce or make available the property for inspection at a reasonable hour; or

(2) Refuse to permit the inspection at a reasonable hour if the property is available for inspection.

[1]See People v. Howard, 622 P.2d 568 (1981).

(b) For purposes of this section, "property" means any real or personal property, including, without limitation, books, records, and documents that are owned, possessed, or otherwise subject to the control of the defendant. A "legally authorized inspection" means any lawful search, sampling, testing, or other examination of property, in connection with the regulation of a specific business or occupation, that is authorized by an ordinance, statute, or lawful regulatory provision regulating such business or occupation or by a search warrant.

5-5-5 **Refusing To Aid A Police Officer.**

No person who is eighteen years of age or older, upon command by an individual known to such person to be a police officer, shall unreasonably refuse or fail to aid the police officer in effecting or securing an arrest or preventing the commission by another of any violation.

5-5-6 **Compounding.**

(a) No person shall accept or agree to accept any pecuniary benefit as consideration for:

(1) Refraining from seeking prosecution of a violator; or

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any violation or information relating to a violation.

(b) It is a specific defense to prosecution under this section that the benefit received by the accused did not exceed an amount that the accused reasonably believed to be due as restitution or indemnification to such accused for the damage caused by the violation.

5-5-7 **Impersonating A Peace Officer.**

No person shall falsely pretend to be a peace officer. "Pretending" to be a peace officer means:

(a) To wear or display the uniform, apparel, badge, or any other insignia of office like, similar to, or a colorable imitation of that used by city police officers; or

(b) To represent in any manner whatsoever to another that the person is a city peace officer.

5-5-8 **Impersonating A Public Servant.**

(a) No person shall falsely represent in any manner whatsoever to another that the actor is a public servant of the city and perform any act in that pretended capacity.

(b) It is no defense to a prosecution under this section that the office the actor pretended to hold did not in fact exist.

5-5-9 **Abuse Of Public Record.**

(a) No person shall:

(1) Knowingly make a false entry in or falsely alter any public record;

(2) Knowing that such person lacks the authority to do so, knowingly destroy, mutilate, conceal, remove, or impair the availability of any public record; or

(3) Knowing that such person lacks the authority to retain the record, refuse to deliver up a public record in such person's possession upon proper request of any individual lawfully entitled to receive such record.

(b) As used in this section, the term "public record" includes, without limitation, all official books, papers, or records created, received, or used by or in any city office or agency.

5-5-10 **False Reports.**

(a) No person shall:

(1) Make a report or knowingly cause the transmission of a report to any peace officer or other city official of a crime or other incident when such person knows that it did not occur; or

(2) Make a report or knowingly cause the transmission of a report to any peace officer or other city official pretending to furnish information relating to a violation or other incident when such person knows that he or she has no such information or knows that such information is false, including, without limitation, a false alarm of a fire.

(b) This section does not apply to false reports concerning explosives in violation of 18-8-110, C.R.S.

5-5-11 **Accessory To A Violation.**

(a) No person shall, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a violation, render assistance to such person.

(b) Render assistance means to:

(1) Harbor or conceal the other;

(2) Warn such person of impending discovery or apprehension, but this does not apply to a warning given in an effort to bring such person into compliance with the law;

(3) Provide such person with money, transportation, weapon, disguise, or other thing to be used in avoiding discovery or apprehension;

(4) Obstruct, by force, intimidation, or deception, anyone in the performance of any act if there is a reasonable probability that such act will aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person; or

(5) Conceal, destroy, or alter any physical evidence if there is a reasonable probability that such evidence will aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person[1].

Ordinance No. 5187 (1989).

[1]See People v. Pratt, 759 P.2d 676 (Colo. 1988).

5-5-12 Duty To Report Fires.

(a) No person, knowing or reasonably believing that a fire exists, shall fail to turn in an alarm of such fire without delay.

(b) It is a specific defense to a charge of violating this section that the person was acting pursuant to a written waiver from the city manager. The manager may waive the requirements of subsection (a) of this section if the manager finds that the person provides a satisfactory alternative fire control program that provides no less protection than the city fire control program.

5-5-13 Refusing To Aid Firefighter.

No person who is eighteen years of age or older, upon command by an individual known by such person to be a firefighter, shall unreasonably refuse or fail to aid the firefighter in suppressing or extinguishing a fire or in any other emergency.

5-5-14 Disobeying Order Of Firefighter.

No person shall disobey any lawful order of a firefighter or enter any restricted area lawfully delineated by a firefighter.

5-5-15 Breaking Into Animal Pound.

No person shall break or open any pound, pen, corral or other enclosure in which any animal is impounded under the provisions of this code or other ordinance of the city or take any animal from such place without permission from the city manager after payment of all applicable fees.

5-5-16 Tampering With Boot.

(a) No person other than the city manager or the manager's agent shall remove the boot described in section 2-6-8, "Booting," B.R.C. 1981, from any vehicle on which it has been installed.

(b) No person shall move any vehicle after it has been booted but before the boot has been removed by the city manager.

(c) In any prosecution for violation of this section, upon proof that the defendant owned the vehicle at the time the boot was installed and that the boot was removed or the vehicle moved before the vehicle was removed from the scofflaw list, it shall be a rebuttable presumption that the accused removed the boot or moved the vehicle or aided, abetted, or advised the person who did so.

Ordinance Nos. 5187 (1989); 5271 (1990).

5-5-17 Crossing Police Line.

(a) No person shall cross or unlawfully remain within a police line established under section 2-4-9, "Police Lines," B.R.C. 1981.

(b) It is a specific defense to a charge of violation of this section that the person was a person for whose protection the line was established, or a peace officer, firefighter, or other person whose assistance in dealing with an emergency has been requested by the public employee in command of the incident.

Ordinance Nos. 4980 (1986); 7129 (2001).

5-5-18 **Suspension Of Facility Privileges.**

(a) The city manager may suspend the privilege of any person to use any recreation, library, senior center, youth services, open space, or park facility owned or managed by the city who has violated any provision of this code, ordinance of the city, or other law, or a rule issued pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, or posted on the premises of the facility by the manager, if such person's conduct constitutes a hazard to the health, safety, or welfare of the users of the facility. Any person so suspended shall immediately leave the facility.

(b) The suspension period shall be reasonably related to the severity of the offense and its danger to public health, safety, and welfare, and shall not, except for sexual offenses, exceed one year. The manager may also consider any criminal convictions of the offender, and any prior suspensions under this code. If the suspension period does not begin and end on the day of violation, the manager shall provide the person with a written notice specifying the provision violated, the facility covered by the suspension, the period of suspension, and the opportunity for a hearing thereafter to contest the suspension or its duration, or both, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. If requested by the person, such hearing shall be held as soon as practical, but not later than five days, weekends and holidays excluded, of a request therefor. Unless stated otherwise in the order of suspension, suspensions are effective immediately whether or not appealed.

(c) A person suspended for only the remainder of the day of violation may appeal the suspension under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, if the appeal is filed with the manager within ten days of the date of suspension.

(d) As an additional restriction, the manager, after notice to the offender and an opportunity for a hearing under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may suspend the privilege of the person to use other similar facilities if the person's conduct, if engaged in those other facilities, would constitute grounds for suspension under subsection (a) of this section. If the manager offers the offender the opportunity for a hearing on the question of suspension from similar facilities immediately, or otherwise within a time less than ten days, and the offender requests a continuance of such hearing to a later date, such hearing may be continued in the sound exercise of the manager's discretion, but in the interim such person is suspended from use of the facilities specified in the manager's notice under this subsection.

(e) The following additional provisions apply to suspensions for sexual offenses:

(1) For the purposes of this section, "sexual offenses" means any offense defined in part 4, "Unlawful Sexual Behavior," of title 18, C.R.S., or any other crime defined in the statutes of the state which include sexual assault or attempted sexual assault as an element, and also includes any of the crimes defined as an "unlawful sexual offense" in sections 18-3-411 and 412, C.R.S., as those statutes now read and as they may be amended in the future.

(2) A suspension for more than a year may be imposed only after notice and an opportunity for a hearing under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, but the city manager may, after notice given within thirty days of a suspension for no more

than a year, hold a hearing on the question of extending the suspension for more than a year.

(3) Any person suspended for more than five years may, after five years, petition the manager to end the suspension on the grounds that the person has been fully rehabilitated and has been definitively cured of any mental or behavioral disorder associated with the relevant prior conduct. The manager shall hold a hearing on such petition under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Before such hearing the manager may require the petitioner to undergo an examination by a psychiatrist or clinical psychologist of the manager's choice, and may require that the examiner present the results at the hearing, all at the petitioner's expense. The manager may require the petitioner to advance the estimated cost of examination and professional testimony. The manager may direct the police chief or any other city employee not a supervisor of the hearing officer to investigate a petitioner's claim of rehabilitation and cure and to report and present evidence and testimony at the hearing. The manager shall also give notice, to the extent practical, to any victim and complaining witness related to the original suspension, and shall permit such persons to give testimony at the hearing concerning rehabilitation and cure. The burden is on the petitioner to show rehabilitation and cure. Denial of such a petition shall preclude any further petition for an additional five years.

(f) The city manager may, pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, make procedural rules governing the suspension process under this section, and may make substantive rules governing the conduct of patrons in the facilities subject to this section so long as such rules are reasonably related to the public purposes of the facility, the protection of the health, safety, or welfare of the public, patrons, or staff of the facility, or the public property in or used by the facility. In accordance with charter sections 132 and 134, substantive rules concerning library facilities shall not be effective without the approval of the library commission in addition to the approval of the city manager.

(g) No person shall violate any order of the city manager suspending the privilege of using a facility.

Ordinance No. 5757 (1995).

5-5-19 **False Application Prohibited.**

(a) No person who applies for a benefit, license, permit, grant, variance, special review, nonconforming use review, height review, solar access review, subdivision approval, planned unit development approval, zoning, rezoning, or for permission to do any other act or to alter any status for which approval by the city is required by this code or other law shall recklessly make any false statement in writing on such application or in support of it thereafter, or orally to any city employee, board, or city council on any matter material to such application or the disposition thereof, nor shall such person recklessly omit or fail to state any fact material to such application.

(b) The city manager may deem any approval of such application void.

Ordinance No. 7129 (2001).

TITLE 5 GENERAL OFFENSES

Chapter 6 Miscellaneous Offenses[1]

Section:

5-6-1 Unreasonable Noise.

Repealed.

Ordinance Nos. 5660 (1994); 7151 (2001); 7349 (2004); 7358 (2004).

5-6-2 Excessive Sound Levels.

Repealed.

Ordinance Nos. 4981 (1986); 5206 (1989); 5271 (1990); 5821 (1996); 5930 (1997); 7083 (2000); 7152 (2001); 7358 (2004).

5-6-3 Unlawful Use Of Vehicles As Residence.

No person shall occupy a vehicle upon any city street or streets or other public property if any of the purposes for such occupation is to use the vehicle as a permanent or temporary residence. Sleeping overnight upon any city street once in any seven-day period does not constitute use of the vehicle as a temporary residence.

Ordinance No. 5546 (1993).

5-6-4 Hotel And Motel Registration.

(a) No person who manages or keeps a hotel, motel, boarding house, rooming house, or lodging house in the city shall fail:

(1) To keep a book in which shall be registered shortly after arrival the name and residence address of each transient guest and, if the guest is traveling in a motor vehicle, the license number and owner of such motor vehicle;

[1]Adopted by Ordinance No. 4654. Derived from Ordinance Nos. 4543, 4611, 4627.

(2) To number the rooms available for transient guests;

(3) To record the number of the room occupied by any such guest in such register; and

(4) To maintain such register for three years and open it for inspection at all times to all federal, state, and local peace officers.

(b) No person shall register in other than such person's true name or by the name by which such person is generally known.

5-6-5 **Juvenile Curfew.**

(a) No person under sixteen years of age shall be or remain upon any public street, sidewalk, alley or any public place or right-of-way between 11:00 p.m. and 5:00 a.m., except as provided in subsection (b) of this section.

(b) In the following exceptional cases, a minor may be or remain in a public place beyond the hours set forth in subsection (a) of this section:

(1) When accompanied by a parent or legal guardian, a person between eighteen and twenty-one years of age with written parental authorization, or a person twenty-one years of age or older with parental authorization;

(2) For one-half hour before or after employment hours when commuting directly to and from such employment and when carrying an employer's certification of time and place of employment;

(3) When conducting an errand directed by the parent or legal guardian;

(4) When returning home from events such as movies, theater, or sporting events;

(5) Until 12:30 a.m. if the person is on the property or a sidewalk directly adjacent to a building in which such person resides or buildings immediately adjacent to the building in which such person resides; or

(6) When exercising First Amendment rights under the United States Constitution, such as the free exercise of religion, speech, and assembly.

(c) A police officer who has probable cause to believe that a child is in violation of this section shall take such child into custody and immediately contact the child's parent or guardian. If, after this contact, there is still probable cause to believe that the child was violating this section, the child shall be turned over to the custody of the juvenile authorities until a parent or guardian can take custody of the child.

(d) No parent or guardian shall permit or by inefficient control allow a violation of this section by a child in such person's custody or control.

5-6-6 **Fireworks.**

(a) For purposes of this section the term "fireworks" means any article, device, or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration, or detonation including, without limitation, the following articles and devices: toy cannons or toy canes in which explosives are used, blank cartridges, a balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, rockets, Roman

candles, dayglow bombs, aerial shells, trick matches, torches, fountains, sparklers, or other fireworks of like construction, and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. Excluded from this definition are fireworks used by railroads or other transportation agencies for signaling or illumination; blank cartridges used for theatrical performances, historical reenactments, signaling, or ceremonial purposes; and fireworks used by police officers, the armed forces of the United States, or the Colorado National Guard.

(b) No person shall take or carry any fireworks into any park, parkway, recreation area or open space or fire or explode any fireworks on any public or private property except after obtaining a permit for the supervised public display of fireworks as prescribed by the city fire prevention code, chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

(c) On residential property, each resident of such property who is present in the immediate vicinity when another person attempts to fire or explode fireworks has an affirmative duty to take reasonable measures under the circumstances to prevent the firing or exploding and, if those fail to prevent the offense, to cooperate with investigating law-enforcement officers to identify the perpetrator of such act. Failure to discharge this duty shall render such a person a complicitor to the offense of firing or exploding the fireworks.

Ordinance Nos. 4879 (1985); 7083 (2000); 7358 (2004).

5-6-7 **Public Urination.**

No person shall urinate or defecate while on the mall, in any city park within the city limits, on any property zoned for residential uses without the express permission of the owner, or within any portion of the city zoned for business, industrial, or public uses unless such voiding is made into a receptacle that has been provided for that purpose that stores or disposes of the wastes in a sanitary manner and that is enclosed from the view of the general public.

5-6-8 **Skateboards On Mall.**

No person on the mall shall ride upon the mall any skateboard, skates, coaster, or other similar device.

5-6-9 **Projectiles On Mall.**

(a) No person shall cast, throw, or propel any projectile on the mall. This prohibition includes, without limitation, throwing balls, boomerangs, bottles, darts, frisbees and other like devices, model airplanes, rocks, snowballs, and sticks.

(b) This section does not apply to a juggler if the juggler does not cast, throw, or propel a knife, including, without limitation, a knife with a blade three and one-half inches in length or less, or burning projectile or if the juggler is acting within the terms of a special entertainment permit issued under the provisions of chapter 4-11, "Mall Permits And Leases," B.R.C. 1981.

5-6-10 **Camping Or Lodging On Property Without Consent.**

(a) No person shall camp within any park, parkway, recreation area, open space, or other public or private property without first having obtained:

(1) A permit from the city manager, in the case of city property;

(2) Permission of the supervisory officer of other public property; or

(3) Permission of the owner of private property.

(b) This section does not apply to any "dwelling" in the city, as defined by section 5-1-1, "Definitions," B.R.C. 1981.

(c) For purposes of this section "camp" means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place. But the term does not include napping during the day or picnicking. The term "shelter" includes, without limitation, any cover or protection from the elements other than clothing. The phrase "during the day" means from one hour after "sunrise" until "sunset", as those terms are defined in chapter 7-1, "Definitions," B.R.C. 1981.

(d) Testimony by an agent of the persons specified in subsection (a) of this section that such agent is the person who issues permits or permission to camp or lodge upon property, that such agent has inspected the records concerning permits, or that in the course of such agent's duties such agent would be aware of permission and that no such permit was issued or permission given is prima facie evidence of that fact.

Ordinance No. 7129 (2001).

5-6-11 **Inhaling Toxic Vapors.**

(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 nervous system, or possess, buy, or use any such substance for the purpose of violating or aiding another to violate this section. But this section does not apply to the inhalation of anesthesia for medical or dental purposes.

(b) As used in this section the term "toxic vapors" means the following substances or products containing such substances: alcohols (methyl, isopropyl, propyl, or butyl), aliphatic acetates (ethyl, methyl, propyl, or methyl cellosolve acetate), acetone, allyl isothiocyanate, nitrous oxide, benzene, carbon tetrachloride, cyclohexane, freons (freon 11 and freon 12), hexane, methyl ethyl ketone, methyl isobutyl ketone, naphtha, perchlorethylene, toluene, trichloromethane, or xylene. Evidence that a container, or a similar container, if the label is missing, lists one or more of these substances is prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.

Ordinance No. 5209 (1989).

5-6-12 **Fraudulent Identification Prohibited.**

(a) No person shall possess any fraudulent identification.

(b) No person shall give any valid identification to another under circumstances where the person knows, or reasonably should know, that the identification is being given so that another will use it to identify him or herself as the person.

(c) An identification is a document or card issued for purposes of identification of the person, of the date and place of birth of the person, or of a license issued to the person, by any national, state, or local government and which gives the name and date of birth of a person, and

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includes, without limitation, a birth certificate, a driver's license, or an official identification card. An identification is fraudulent if it was validly issued, but for a person other than the possessor, or if it was validly issued, but has been altered, or if it is forged or counterfeited.

(d) A liquor licensee, or an employee of a liquor licensee, may seize and hold for evidence any fraudulent identification, if acting in good faith and upon probable cause to believe that the identification is fraudulent.

Ordinance No. 7129 (2001).

TITLE 5 GENERAL OFFENSES

Chapter 7 Alcohol Offenses[1]

Section:

5-7-1 Definitions.

(a) For purposes of this code, "fermented malt beverage" has the same meaning as its meaning under the Colorado Beer Code[2].

(b) For purposes of this code, "malt, vinous, and spirituous liquor" has the same meaning as its meaning under the Colorado Liquor Code[3].

5-7-2 Possession And Consumption Of Alcoholic Beverages In Public Prohibited.

(a) No person within the city limits shall possess an opened container of or consume any malt, vinous, or spirituous liquor or fermented malt beverage in public, except upon premises licensed for consumption of the liquor or beverage involved.

(b) For purposes of this section "opened container" means any container other than an original closed container as sealed or closed for sale to the public by the manufacturer or bottler of the liquor or beverage. If an original container has been unsealed, undone, or opened in any manner, it is an opened container for purposes of this section.

(c) For purposes of this section "in public" means:

(1) In or upon any public highway, street, alley, walk, parking lot, building, park, or other public property or place, whether in a vehicle or not;

(2) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain; or

(3) In or upon any other private property without the express or implied permission of the owner or person in possession and control of such property or such person's agent.

[1]Adopted by Ordinance No. 4651. Derived from Ordinance Nos. 3316, 3321, 4130, 3417, 3280, 3418.
[2]12-46-103, C.R.S.
[3]12-47-103, C.R.S.

(d) The following property owned or managed by the city is excluded from the coverage of this section during the hours of 8:00 a.m. to 11:00 p.m.: Coot Lake, Boulder Reservoir, Flatirons Golf Course, East Mapleton Ball Fields, and Stazio Recreation Complex, but if a special event permit for the sale of liquor or fermented malt beverages has been issued for all or a portion of such property pursuant to section 12-48-101 et seq., C.R.S., then no person shall take or consume any malt, vinous, or spirituous liquor or fermented malt beverage onto or in the area designated in such permit except in accordance with such permit if a sign has been posted giving notice of the time and location of the area so restricted.

(e) It is an affirmative defense to a charge of violating this section that the premises were licensed by the city or by the State of Colorado for the consumption of the liquor or beverage involved, and any judge shall take judicial notice of the official records of such license and dismiss forthwith any charge to which this defense applies. If such dismissal is ex parte, the judge shall notify the city attorney, who may petition the court for permission to refile the charge.

(f) It is a specific defense to a charge of violating this section that:

(1) The owner of the property involved or the owner's agent gave express permission to the accused or to members of the accused's class to perform the acts complained of[1]; or

(2) Accused was transporting the liquor or beverage from one place where it could be lawfully consumed directly and without delay to another such place, and the container was at all times during the transportation capped, corked, or otherwise reclosed with a firmly affixed waterproof lid. When the liquor or beverage was being transported in a motor vehicle, this defense is only available if the container was in the trunk or was not otherwise immediately accessible to the driver or any passenger.

(g) No person shall drive or sit in the driver's seat of any motor vehicle, other than one carrying passengers for hire, in which a violation of subsection (a) of this section is occurring.

Ordinance No. 5003 (1986).

5-7-3 **Unlawful To Sell Or Give To Or Procure For Minors.**

No person shall sell, serve, deliver, or give away any malt, vinous, spirituous liquor, or fermented malt beverage to any person then under the age of twenty-one years or purchase such liquor for such minor.

Ordinance Nos. 5077 (1987); 5377 (1991).

5-7-4 **Possession And Sale By Minors Unlawful.**

(a) No person under the age of twenty-one years shall possess or have under such person's control or request that any other person purchase for such minor person or sell, serve, give away, or offer for sale any malt, vinous, or spirituous liquor or fermented malt beverage in any container of any kind, whether opened or unopened.

(b) No person under the age of twenty-one years shall possess or have under such person's control or request that any other person purchase for such minor person or sell, serve, give away, or offer for sale any malt, vinous, or spirituous liquor in any container of any kind, whether opened or unopened. It is a specific defense to a charge of violating this subsection

[1]See section 5-7-5, "City Manager Authority To Grant Permission To Consume Alcoholic Beverages On City-Owned Property," B.R.C. 1981.

that the acts complained of were performed by a person eighteen years of age or older in the course of such person's employment in an establishment holding a beer and wine license.

Ordinance Nos. 5077 (1987); 5377 (1991).

5-7-5 City Manager Authority To Grant Permission To Consume Alcoholic Beverages On City-Owned Property.

(a) The city manager may grant express permission, as provided in subsection (b) of this section, to persons to consume any malt, vinous, or spirituous liquor or fermented malt beverage on city-owned property for the following special functions: athletic events, artistic events, cultural events, receptions, street closure events, or civic events.

(b) The city manager shall grant such permission to persons applying therefor if, considering the type of function and the type of alcohol to be served, the manager finds that:

(1) The time, location, route, and duration of the function are not likely significantly to interfere with public traffic, fire, or police services;

(2) The number and concentration of participants at the function are not likely to result in crowds exceeding limitations in the city fire code, chapter 10-8, "Fire Prevention Code," B.R.C. 1981, or noise prohibited by chapter 5-9, "Noise," B.R.C. 1981, or other significant inconvenience to the residents of the surrounding neighborhood;

(3) Underage persons are not likely to obtain malt, vinous, or spirituous liquors or fermented malt beverages served at the function;

(4) Precautions are proposed that are likely to secure and supervise the area and the participants during the function; and

(5) The applicant meets other reasonable requirements to implement the provisions of paragraphs (b)(1) through (b)(4) of this section.

(c) The city manager may adopt legislative and procedural rules for granting such permission, consistent with the criteria set forth in subsection (b) of this section.

5-7-6 Alcoholic Beverage Consumption In Massage Parlors Prohibited.

Repealed.

Ordinance No. 5347 (1990).

5-7-7 Preservation Of Evidence Seized For Violation Of This Chapter.

(a) Any police officer who seizes any malt, vinous, or spirituous liquors or any fermented malt beverages as evidence for trial of a violation of this code shall keep such seized items in a secure place until trial according to the regulations of the chief of police.

(b) The chief of police shall destroy such evidence after the expiration of fourteen days after trial if:

(1) There was a conviction at the trial; or

(2) There was an acquittal at trial and no person has claimed the evidence in writing and produced proof of ownership.

(c) Failure to comply with the requirements of subsection (a) of this section does not constitute a ground for dismissal of charges under this code or suppression of evidence at trial.

5-7-8 Taking Fermented Malt Beverage From Premises Licensed For On-Premises Consumption Only Prohibited.

No person shall transport or remove from premises licensed for on-premises consumption only of fermented malt beverages any fermented malt beverage. This prohibition applies to premises licensed pursuant to paragraph 4-2-3(b)(9), B.R.C. 1981, or pursuant to a fermented malt beverage special event permit issued under section 12-48-101 et seq., C.R.S. This prohibition does not apply to employees or agents of the licensee acting in accordance with lawful directions of the licensee.

Ordinance No. 5003 (1986).

5-7-9 Alcoholic Beverage On Mall On Halloween Prohibited.

(a) No person shall possess any malt, vinous, or spirituous liquor or fermented malt beverage in or upon any public highway, street, alley, walk, parking lot, the Downtown Boulder Mall or any other public property or place, or in or upon those portions of any private property upon which the public has an express or implied license to enter or remain, within the area bounded by the north curbline of Spruce Street, the east curbline of 15th Street, the south curbline of Walnut Street, and the west curbline of 10th Street between 6:00 p.m. October 31 and 6:00 a.m. November 1 of each year.

(b) The city manager may, by publishing a notice in a newspaper of general circulation within the city, extend the evenings on which this section is in effect to include one or more of the seven evenings immediately preceding and succeeding October 31, if the manager reasonably believes that large crowds of Halloween celebrants will appear on the mall on such evenings.

(c) Any peace officer is authorized to seize any malt, vinous, or spirituous liquor or fermented malt beverage possessed in violation of this section. If no summons or complaint is issued for the violation and if the circumstances reasonably permit, the officer may require the possessor to leave the prohibited area with the alcoholic beverage or to abandon the beverage to the officer for destruction, at such person's option.

(d) The defenses at subsections 5-7-2(e) and (f), B.R.C. 1981, are applicable to this section.

Ordinance Nos. 5078 (1987); 5334 (1990).

5-8-1

TITLE 5 GENERAL OFFENSES

Chapter 8 Weapons[1]

Section:

5-8-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by regulating the possession, storage, and use of weapons.

Ordinance No. 7299 (2003).

[1]Adopted by Ordinance No. 4654. Amended by Ordinance No. 7115. Derived from Ordinance Nos. 1734, 3316, 3459, 3681, 3760.

5-8-2 **Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

"About the person" means sufficiently close to the person to be readily accessible for immediate use[1].

"Assault weapon" means all firearms with any of the following characteristics:

(a) All semiautomatic action rifles with a detachable magazine with a capacity of twenty-one or more rounds.

(b) All semiautomatic shotguns with a folding stock or a magazine capacity of more than six rounds or both.

(c) All semiautomatic pistols that are modifications of rifles having the same make, caliber and action design but a short barrel or modifications of automatic weapons originally designed to accept magazines with a capacity of twenty-one or more rounds.

(d) Any firearm which has been modified to be operable as an assault weapon as defined herein.

(e) Any part or combination of parts designed or intended to convert a firearm into an assault weapon, including a detachable magazine with a capacity of twenty-one or more rounds, or any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.

"Constructive knowledge" means knowledge of facts or circumstances sufficient to cause a reasonable person to be aware of the fact in question.

"Locked container" means a secure container which is enclosed on all sides and locked by a padlock, key lock, combination lock, or similar device.

"Minor" means a person under eighteen years of age.

"Provide" means to give, lend, sell or otherwise place in an unsecured location where a minor or other unauthorized or incompetent person could foreseeably gain access to a firearm.

5-8-3 **Discharge Of Firearms.**

No person shall discharge any projectile from a firearm or gas or mechanically operated gun. For purposes of this section, any person who was the proximate cause of the discharge shall be deemed to have discharged the firearm or gun. It is a violation of this section if the discharge occurs within the jurisdiction of the city, or if the projectile travels over such jurisdiction.

Ordinance No. 5497 (1992).

5-8-4 **Possessing And Discharging Firearm Or Bow In Park Or Open Space.**

(a) No person shall possess any firearm or gas or mechanically operated gun in any park or open space.

[1]People in the interest of RJA, 556 P.2d 491 (Colo. App. 1976).

(b) No person shall discharge a missile from, into or over or possess any bow, slingshot, or crossbow in any park or open space.

Ordinance No. 5497 (1992).

5-8-5 Negligently Shooting Bow Or Slingshot.

No person shall shoot a bow and arrow, crossbow, or slingshot in a negligent manner.

5-8-6 Aiming Weapon At Another.

No person shall knowingly aim a loaded or unloaded firearm or gas or mechanically operated gun at another person.

5-8-7 Flourishing Deadly Weapon In Alarming Manner.

No person shall display or flourish a deadly weapon in a manner calculated to alarm another person.

5-8-8 Possession Of Loaded Firearms.

(a) Except as set forth in this chapter, no person shall possess a loaded firearm or a loaded gas or mechanically operated gun.

(b) For the purposes of this section, a firearm is loaded if there is a projectile, with charge[1], in the chamber, in the cylinder, or in the clip in the firearm.

(c) A peace officer shall not undertake an arrest under this section without first giving due consideration to the city's burden of proof with regard to the affirmative defenses set forth in section 5-8-22, "Defenses," B.R.C. 1981.

5-8-9 Carrying A Concealed Weapon.

No person shall have a knife or firearm concealed on or about such person's body.

5-8-10 Possession Of Illegal Weapons.

(a) No person shall knowingly possess an illegal weapon.

(b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.

5-8-11 Possessing Firearm While Intoxicated.

No person shall possess a firearm while such person's ability is impaired by intoxicating liquor, as defined by state law[2], or a controlled substance, as defined by state law[3].

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[1]See chapter 10-8, "Fire Prevention Code," B.R.C. 1981, prohibiting discharge of fireworks.
[2]42-4-1301, C.R.S.
[3]12-22-303(7), C.R.S.

5-8-12 **Providing Firearm To Intoxicated Persons Or Minors.**

No person shall provide any firearm to any person whose ability is impaired by intoxicating liquor, as defined by state law[1], or any controlled substance, as defined by state law[2]; or to any person in a condition of agitation and excitability; or to any minor unless the person providing the firearm has obtained the consent of the minor's parent or legal guardian. Knowledge of the minor's age shall not be an element of this offense.

5-8-13 **False Information On Weapons Application.**

Repealed.

Ordinance No. 7299 (2003).

5-8-14 **Setting Spring Gun.**

No person shall knowingly set a loaded gun, trap, or device designed to cause an explosion upon being tripped or approached and leave it unattended by a competent person immediately present.

5-8-15 **Deadly Weapons In City Buildings Prohibited.**

(a) No person, other than a peace officer, shall carry, bring, or possess a deadly weapon in the city council chambers while the council is in session.

(b) No person, other than a peace officer, shall carry, bring, or possess a deadly weapon in any public building owned by the city and open to the public if the city manager has posted a sign to that effect at every public entrance to the building.

Ordinance No. 7299 (2003).

5-8-16 **Possession Of Firearm By Minor Prohibited[3].**

(a) No minor shall knowingly possess a firearm.

(b) This section does not apply to a second or subsequent offense by the minor if the firearm in both instances was a handgun, or if the possession is otherwise a felony under state law.

(c) It is a specific defense to a charge of violating this section that the minor was, with the consent of his or her parent or legal guardian:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting in an area designated as a target range by the city manager under section 5-8-26, "City Manager May Designate Target Ranges," B.R.C. 1981, for the type of weapon involved;

(3) Engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group exempt from payment of income tax

[1]42-4-1202(b), C.R.S.
[2]12-22-303(7), C.R.S.
[3]Second offense handgun possession by a minor is a felony under section 18-12-108.5, C.R.S.

under 26 U.S.C. 501(c)(3) as determined by the federal internal revenue service which uses firearms as a part of such performance;

(4) Hunting or trapping pursuant to a valid license issued to such person pursuant to article 4 of title 33, C.R.S.;

(5) Traveling with an unloaded firearm in such minor's possession to or from any activity described in paragraph (c)(1), (c)(2), (c)(3), or (c)(4) of this section or to or from an established range authorized by the governing body of the jurisdiction in which such range is located or any other area outside the city where target practice is legal and the minor has permission from the landowner for such practice;

(6) Possessing a firearm at such minor's residence for the purpose of exercising the rights contained in section 18-1-704 or 18-1-704.5, C.R.S.; and

(7) For the purposes of paragraph (c)(5) of this section, a firearm is "loaded" if:

(A) There is a cartridge in the chamber or cylinder of the firearm or in a clip in the firearm; or

(B) The firearm, and the ammunition for such firearm, is carried on the person of the minor or is in such close proximity to the minor that the minor could readily gain access to the firearm and the ammunition and load the firearm.

5-8-17 **Providing Rifle Or Shotgun To Minor Prohibited[1].**

(a) No person shall provide a rifle or shotgun with or without remuneration to any minor under circumstances which cause the minor to be in violation of section 5-8-16, "Possession Of Firearm By Minor Prohibited," B.R.C. 1981. Knowledge of the minor's age shall not be an element of this offense.

(b) No parent or legal guardian of a minor shall provide a rifle or shotgun to the minor for any purpose or shall permit the minor to possess a rifle or shotgun for any purpose if the parent or guardian has actual or constructive knowledge of a substantial risk that the minor will use the rifle or shotgun to violate a federal, state, or local law.

(c) No parent or legal guardian of a minor shall provide a rifle or shotgun to, or permit the minor to possess a rifle or shotgun, for any purpose, if the minor has been convicted of a crime of violence, as defined in section 16-11-309, C.R.S., or if the minor has been adjudicated a juvenile delinquent for an act which would have constituted a crime of violence, as so defined, if committed by an adult.

(d) It is a specific defense to a charge of violating this section by providing a firearm that had been stolen from the defendant either by the minor or by another person who subsequently provided the firearm to the minor.

5-8-18 **Unlawful Storage Of Assault Weapons.**

(a) No person shall store, control, or possess any assault weapon within any premises of which that person has an ownership interest, custody, or control, in such a manner that the person knows, or has constructive knowledge, that a minor is likely to gain possession of the assault weapon and in fact does obtain possession of the assault weapon.

[1]The acts prohibited in this section, if they involve a handgun, are felonies under section 18-12-108.7, C.R.S.

(b) It is a specific defense to a charge or violation of this section that:

(1) The assault weapon was located within a room or closet from which all minors were excluded by locks; or

(2) The assault weapon was stored in a locked container.

(c) It is an affirmative defense to civil negligence liability that the assault weapon was stored in a locked container.

5-8-19 **Unlawful Storage Of Firearms Where There Is Personal Injury.**

(a) No person shall store, control, or possess any firearm within any premises of which that person has an ownership interest, custody, or control, in such manner that the person knows, or has constructive knowledge, that a minor is likely to gain possession of the firearm and in fact does obtain control of the firearm and either injures or kills himself or herself or another person with the firearm or uses the firearm in violation of federal, state or local law.

(b) It is a specific defense to a charge of violation of this section that:

(1) The firearm was located within a room or closet from which all minors were excluded by locks; or

(2) The firearm was stored in a locked container.

(c) It is an affirmative defense to civil negligence liability that the firearm was stored in a locked container.

(d) It is an affirmative defense that the firearm was used by a minor at such minor's residence with the permission of the minor's parent or legal guardian, for the purpose of exercising the rights contained in section 18-1-704 or 18-1-704.5, C.R.S.

5-8-20 **Parent Or Legal Guardian Liability For Illegal Possession Of Firearms By A Minor.**

(a) No parent or legal guardian, having actual or constructive knowledge of illegal possession of a firearm by a minor shall fail to either:

(1) Immediately take possession of the firearm; or

(2) Immediately notify law enforcement authorities of the details of the illegal possession so that law enforcement authorities can act to take possession of the firearm.

(b) This section does not create a duty on a parent or legal guardian to search the bedroom of a minor for firearms.

(c) As used in this section, illegal possession of a firearm by a minor means possession in violation of section 5-8-16, "Possession Of Firearm By Minor Prohibited," B.R.C. 1981, or any provision of state or federal law concerning possession of a firearm by a minor.

5-8-21 **Open Carriage Of Firearms In Carrying Cases Required.**

Any person carrying a firearm off of the person's property or outside of the person's business or vehicle shall carry the firearm in a carrying case. The carrying case must be recognizable as a gun carrying case by a reasonable person. A plain-shaped case must be clearly marked to be deemed recognizable under this standard. The carrying case must be openly carried and must not be concealed on or about the person. This section shall not apply to individuals who have a permit to carry a concealed weapon issued pursuant to state law.

5-8-22 **Defenses.**

(a) It is an affirmative defense to a charge of violating sections 5-8-3, "Discharge Of Firearms," 5-8-4, "Possessing And Discharging Firearm Or Bow In Park Or Open Space," 5-8-5, "Negligently Shooting Bow Or Slingshot," 5-8-6, "Aiming Weapon At Another," 5-8-7, "Flourishing Deadly Weapon In Alarming Manner," and 5-8-8, "Possession Of Loaded Firearms," B.R.C. 1981, that the defendant was:

(1) Reasonably engaged in lawful self-defense under the statutes of the State of Colorado; or

(2) Reasonably exercising the right to keep and bear arms in defense of the defendant's or another's home, person, and property, or in aid of the civil power when legally thereto summoned.

(b) It is a specific defense to a charge of violating sections 5-8-3, "Discharge Of Firearms," 5-8-4, "Possessing And Discharging Firearm Or Bow In Park Or Open Space," and 5-8-8, "Possession Of Loaded Firearms," B.R.C. 1981, that the events occurred in an area designated as a target range by the city manager under section 5-8-26, "City Manager May Designate Target Ranges," B.R.C. 1981, for the type of weapon involved. It is a specific defense to a charge of violating section 5-8-4, "Possessing And Discharging Firearm Or Bow In Park Or Open Space," B.R.C. 1981, by possession that the defendant was going directly to or returning directly from such a target range.

(c) It is an affirmative defense to a charge of violating sections 5-8-8, "Possession Of Loaded Firearms," 5-8-9, "Carrying A Concealed Weapon," and 5-8-11, "Possessing Firearm While Intoxicated," B.R.C. 1981, that the defendant was:

(1) In the defendant's own dwelling or place of business or on property owned or under the defendant's control at the time; or

(2) In a private automobile or other private means of conveyance at the time and was carrying the weapon for lawful protection of the defendant's or another's person or property while traveling; or[1]

(3) Charged with carrying a knife that was a hunting or fishing knife carried by the defendant for sport use.

(d) It is a specific defense to a charge of violating sections 5-8-8, "Possession Of Loaded Firearms," and 5-8-9, "Carrying A Concealed Weapon," B.R.C. 1981, that the defendant was carrying the weapon pursuant to a concealed weapons permit valid under the statutes of the State of Colorado.

(e) It is a specific defense to a charge of violating sections 5-8-3, "Discharge Of Firearms," and 5-8-8, "Possession Of Loaded Firearms," B.R.C. 1981, that the loaded gas or mechanically

[1] 18-12-105(2)(b), C.R.S.

operated gun was possessed or discharged in a building with the permission of the property owner and the projectile did not leave the building.

(f) It is a specific defense to a charge of violating section 5-8-10, "Possession Of Illegal Weapons," B.R.C. 1981, that the person had a valid permit for such weapon pursuant to federal law at the time of the offense.

(g) It is a specific defense to a charge of violating section 5-8-4, "Possessing And Discharging Firearm Or Bow In Park Or Open Space," B.R.C. 1981, that the firearm, gas or mechanically operated gun, bow, slingshot, or crossbow possessed by the person was being transported in a motor vehicle. This defense does not apply to a charge of violation involving discharge of a missile.

Ordinance No. 5497 (1992).

5-8-23 **Seizure Of Weapons.**

Any peace officer who has probable cause to believe that a violation of this chapter has occurred may, in addition to taking any other action, seize the weapons or items used in said violation. Any weapon or items so seized shall be secured by the peace officer in accordance with the rules of the chief of police.

5-8-24 **Forfeiture And Disposition Of Deadly Weapons.**

After final conviction, every person convicted of any violation of any provision of this code, another ordinance of the city, or a state statute involving a deadly weapon shall forfeit to the city the weapon involved. After conviction, it shall be the duty of the chief of police to dispose of the weapon or item, as the chief deems appropriate.

5-8-25 **Exemptions From Chapter.**

Nothing in this chapter shall be construed to forbid United States marshals, sheriffs, constables and their deputies; any regular or ex-officio police officer; any other peace officers; or members of the United States Armed Forces, Colorado National Guard, or Reserve Officer Training Corps from having in their possession, displaying, concealing, or discharging such weapons as are necessary in the authorized and proper performance of their official duties.

Ordinance No. 5462 (1992).

5-8-26 **City Manager May Designate Target Ranges.**

(a) The city manager may designate and establish areas within any property owned by the city as target ranges.

(b) The city manager shall issue a permit for a private or commercial target range upon application therefor, if the manager finds that:

(1) The range is so located and constructed as to protect the health and safety of range users and residents of the city;

(2) Use of the range will not violate chapter 5-9, "Noise," B.R.C. 1981; and

(3) Operation of the range will not violate any provision of this code or an ordinance of the city or state or federal law.

(c) The city manager may adopt reasonable regulations to implement the provisions of subsection (b) of this section and prescribe the form and content of the permit application.

(d) Permits issued under subsection (b) of this section are valid for five years, if issued to the owner of the land upon which the range is located, or for the period of the lease or permission to use the land, if issued to any other person, but for no more than five years.

(e) The city manager may revoke a permit issued under subsection (b) of this section if the target range under the permit ceases to meet the requirements of that subsection. Before revoking a permit issued under this section, the manager shall afford the permittee an opportunity for a hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

5-8-27 **Firearms Dealers; Display Of Weapons.**

No secondhand dealer, pawnbroker, or any other person engaged in the wholesale or retail sale, rental, or exchange of any firearms shall display or place on exhibition any firearm in any show window or other window facing upon any street of the city.

Ordinance No. 7299 (2003).

5-8-28 **Firearms Permit.**

Repealed.

Ordinance No. 7299 (2003).

5-8-29 **Application For Permits And Fees.**

Repealed.

Ordinance No. 7299 (2003).

5-8-30 **Investigation, Approval, And Issuance Of Permits.**

Repealed.

Ordinance No. 7299 (2003).

5-8-31 **Term Of Permit, Renewal Procedures.**

Repealed.

Ordinance No. 7299 (2003).

5-8-32 **Change Of Firearms, Address, Or Employment.**

Repealed.

Ordinance No. 7299 (2003).

5-8-33 **Permit Not Transferable.**

Repealed.

Ordinance No. 7299 (2003).

5-8-34 **Exhibition Of Permit.**

Repealed.

Ordinance No. 7299 (2003).

5-8-35 **Revocation And Suspension Of Permits.**

Repealed.

Ordinance No. 7299 (2003).

5-8-36 **Surrender Of Permit.**

Repealed.

Ordinance No. 7299 (2003).

5-8-37 **No City Liability For Issuing Permit.**

Repealed.

Ordinance No. 7299 (2003).

5-8-38 **State Preemption.**

It is an affirmative defense to any charge of a violation of this chapter relating to carrying firearms that the defendant was carrying the firearm in a private automobile or other private means of conveyance for lawful protection of such person's or another's person or property or for hunting while traveling in, into, or through the city, as permitted by section 18-12-105.6, C.R.S.

Ordinance Nos. 7134 (2001); 7299 (2003).

TITLE 5 GENERAL OFFENSES

Chapter 9 Noise[1]

Section:

5-9-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by defining those noises and sounds which by their volume or other physical characteristics, and, depending on their time, place, and manner, disturb people of normal sensitivity, and to regulate such noises and sounds to the extent that can be done without detrimentally affecting necessary residential, commercial, and governmental activities[2]. It is not the intention of the council to differentiate on the basis of the content, if there be any, of the prohibited sounds. However, in certain instances the council finds that there is a compelling governmental interest in making an exception for the loudness of certain sounds, such as warnings of imminent hazard.

5-9-2 Definitions.

As used in this chapter, the following words are defined to mean:

"Commercial district" or "commercial zone" or "commercial" means any area zoned A, BCS, BMS, BC, MU, P, BT, BR, or DT.

"Group living arrangement" means those group residencies in which the individual or family lives in a room or rooms of their own, but which contains common dining facilities and where decisions concerning the use of common areas for social events are shared among the individual residents. These include, without limitation, cooperative housing units, congregate or residential care facilities, rooming houses, dormitories, fraternities, and sororities, as those terms are used in title 9, "Land Use Code," B.R.C. 1981. These exclude buildings where people only reside temporarily such as hotels, motels, or bed and breakfasts, and buildings where each person resides in and controls a complete dwelling unit, including, without limitation, duplexes, triplexes, fourplexes, apartment buildings, and condominiums.

"Industrial district" or "industrial zone" or "industrial" means any area zoned IG, IM, IS, or IMS.

[1]Adopted by Ordinance No. 7358.

[2]For other provisions involving noise, see sections 6-1-19, "Barking, Howling, Or Other Unreasonable Animal Noise Prohibited," 7-3-4, and "Adequate Muffling Of Noise Required," B.R.C. 1981.

"Light construction work" means work which uses only hand tools and power tools of no more than five horsepower, but not including power actuated fastening devices (e.g., nail guns).

"Residential district" or "residential zone" or "residential" means any area zoned RE, RH-1, RH-2, RH-3, RH-4, RH-5, RL, MH, RM, RMX, RR-1, or RR-2.

"Zoned" means classified into one of the zoning districts specified in section 9-5-2, "Zoning Districts," B.R.C. 1981, as shown on the zoning map adopted by section 9-5-3, "Zoning Map," B.R.C. 1981. Each district includes all areas zoned under the same prefix (i.e., RL includes RL-1 and RL-2). If new districts are established without amendment to this section, it is intended that the new district be governed under this chapter as if in the existing district which it most closely resembles, and if it could as easily be in one category or another, that it be in the category with the lower allowable decibel levels.

Ordinance No. 7522 (2007).

5-9-3 **Exceeding Decibel Sound Levels Prohibited.**

(a) No person shall:

(1) Operate any type of vehicle, machine, or device;

(2) Carry on any activity; or

(3) Promote or facilitate the carrying on of any activity, which makes sound in excess of the level specified in this section.

(b) Sound from any source, other than a moving vehicular source located within the public right-of-way, shall not exceed any of the following limits for its appropriate zone:

(1) The sound limits prescribed by this section are set forth in the following table for the zoning district within the following use classifications in section 9-5-2, "Zoning Districts," B.R.C. 1981:

Zoning District of the Property on Which the Sound is Received	Maximum Number of Decibels Permitted from 7:00 a.m. until 11:00 p.m. of the Same Day	Maximum Number of Decibels Permitted from 11:00 p.m. until 7:00 a.m. of the Following Day
Residential	55 dBA	50 dBA
Mixed use and other	65 dBA	60 dBA
Industrial	80 dBA	75 dBA

(2) Sound from construction work for which a building permit has been issued:

(A) During the hours of 7:00 a.m. to 5:00 p.m., sound for work of any type shall be deemed received in an industrial zoning district;

(B) During the hours of 5:00 p.m. until 9:00 p.m., sound from light construction work received in a residential zone shall be deemed received in a commercial zoning district; and

(C) Under no circumstances shall amplified sound be considered as construction work activity.

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(3) Sound from a source regulated by this subsection:

(A) Sound from a source on private property shall be measured at or inside the property line of property other than that on which the sound source is located;

(B) Sound from a source on public property may be measured on that receiving property so long as the measurement is taken at least twenty-five feet from the source, or it may be measured at or inside the property line of receiving property other than the public property on which the sound source is located;

(C) For the purposes of this paragraph, a leasehold shall be deemed a property of the lessee, and its boundary, other than a boundary with adjacent property owned by the lessee, shall be deemed a property line.

(c) All sound measurements shall be made on a sound level meter that meets ANSI specification S1.4-1974 for Type I or Type II equipment. The manufacturer's published indication of compliance with such specifications is prima facie evidence of compliance with this subsection.

(d) It shall be a defense to a charge of violating this section that:

(1) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;

(2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(3) The sound was made within the terms of a fireworks display or temporary street closure permit issued by the city manager, or was made by the rendering of military honors at a funeral by a military funeral honors detail;

(4) The sound was made by an animal[1];

(5) The sound was made within the terms and conditions of a sound level variance granted by the city manager;

(6) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;

(7) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;

(8) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow; or

(9) The sound was made between the hours of 7:00 a.m. and 9:00 p.m. by a lawn mower or gardening equipment equipped with a standard muffling system in good repair.

(e) This section shall not be construed to conflict with the right of any person to maintain an action in equity to abate a noise nuisance under the laws of the state.

Ordinance No. 7522 (2007).

[1]Animal noises are covered in chapter 6-1, "Animals," B.R.C. 1981.

5-9-4 Exceeding Decibel Sound Levels From A Motor Vehicle Prohibited.

(a) Sound from a motor vehicle located within the public right-of-way shall not exceed eighty decibels on the "A" weighting scale (dBA), except that sound from a vehicle with a manufacturer's gross weight rating of ten thousand pounds and above may exceed eighty dBA but shall not exceed eighty-eight dBA. Such sound shall be measured at a distance of at least twenty-five feet from a vehicle located within the public right-of-way.

(b) Such sound measurements shall be made on a sound level meter that meets the requirements of subsection 5-9-3(c), B.R.C. 1981.

(c) It shall be an affirmative defense to a charge of violating this section that:

(1) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;

(2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(3) The sound was made within the terms and conditions of a sound level variance granted by the city manager;

(4) The sound was made by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes; or

(5) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow.

5-9-5 Disrupting Quiet Enjoyment Of Home.

(a) No person shall engage in, or be responsible for, a course of conduct which is so loud that it materially interferes with or disrupts another individual in the conduct of activities at such individual's home.

(b) The following standards and definitions shall be used in the application of this section:

(1) The person engaging in such conduct must be at a location other than the complainant's home.

(2) "Home" includes the physical residence as well as the outside premises.

(3) "Another individual" includes all members of the household as well as others rightfully in the residence or on the premises.

(4) No person shall be convicted of a violation of this section unless that person has been warned that conduct violating this section is occurring or has recently occurred and, following such warning, the conduct is repeated or continued.

(A) No additional warning need be issued as a precondition to enforcement of this provision if similar conduct occurred within the previous ninety days and if a warning was communicated to an individual regarding his or her role in that past conduct.

(B) A prior warning shall be sufficient with respect to each of the residents of an individual dwelling unit at which a prior noise incident occurred (including any resident in a

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group living arrangement), if, after a personal communication was made to a person who engaged in conduct subject to the provisions of this section, the city manager caused a warning letter to be sent by first class mail addressed to "residents" of the dwelling unit in which the person who received the prior warning resided at the time of the issuance of the prior warning and at which the prior noise incident occurred. If a warning was attempted but could not be personally communicated because no one would answer the door or the person engaged in the conduct could not be identified, a warning letter under this subparagraph shall be sufficient.

(C) No warning under this paragraph is required if the conduct would violate subsection 5-9-6(b), B.R.C. 1981, concerning unreasonable unamplified sound, and it originated on private property.

(5) If conduct violative of this section:

(A) Originates upon private property;

(B) The owner or some other person with authority to control that property is present at the time that such occurs; and

(C) The owner or authorized person has received a communication requesting cessation or reduction in the level;

then the owner or authorized person is also responsible for the repeated or continued conduct under this section, even though not directly engaged in the conduct.

(6) Whether or not noise is "so loud that it materially interferes with or disrupts" shall be measured against the objective standard of a reasonable person of normal sensitivity.

(7) It shall be an affirmative defense to a charge of violating this section that:

(A) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;

(B) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(C) The sound was made within the terms of a parade, fireworks display, or temporary street closure permit issued by the city manager, or was made by the rendering of military honors at a funeral by a military funeral honors detail;

(D) The sound was made by an animal[1];

(E) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;

(F) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;

(G) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow;

[1]Animal noises are covered in chapter 6-1, "Animals," B.R.C. 1981.

(H) The sound was made between the hours of 7:00 a.m. and 9:00 p.m. by a lawn mower or gardening equipment equipped with a standard muffling system in good repair; or

(I) The loud conduct consisted solely of natural speech or communication by or between people, unless such conduct was used as a guise materially to interfere with or disrupt another individual in the conduct of activities at the individual's home and that was the result.

(8) It is not a defense to a charge of violation of this section that the sound levels complied with the requirements of section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," B.R.C. 1981.

5-9-6 Unreasonable Noise Prohibited Between The Hours Of 11:00 P.M. Through 7:00 A.M.

Between the hours of 11:00 p.m. through 7:00 a.m., no person shall:

(a) Amplified Sound: Electronically amplify any sound, or make any noise by means of any electronic amplifier, which is loud enough to be audible to a person of normal hearing:

(1) One hundred or more feet beyond the property line of the property upon which the loudspeakers are located where they are located in a residential district; or

(2) One hundred fifty or more feet beyond the property line of the property upon which the loudspeakers are located where they are located in a commercial or industrial district.

(3) Each resident or person in control of an activity or event in or on the premises of a dwelling unit who is present within that dwelling unit or upon the premises of that dwelling unit when sound in violation of this section is amplified or generated upon the premises shall be responsible for the generation of that sound or noise.

(4) Each owner, manager, or person in control of an activity or event in or on the premises of a commercial or industrial property upon which sound in violation of this subsection is generated shall be responsible for the generation of that sound or noise.

(5) It shall be an affirmative defense to a charge of violating this subsection that:

(A) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency or by an emergency warning device operated by a government;

(B) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(C) The sound was made within the terms of a parade or temporary street closure permit issued by the city manager;

(D) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;

(E) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;

(F) For a charge of violation based on paragraph (a)(3) or (a)(4) of this section, the defendant did all that a reasonable person could have done under the circumstances of the creation of the noise to prevent the offense, and, if requested to do so, cooperated with law enforcement officers to identify accurately the offender or offenders; or

(G) For a charge of violation based on paragraph (a)(4) of this section, the sound was made by a trespasser.

(b) Unreasonable Unamplified Sound:

(1) While on public property within a residential district, no person shall yell, scream, shout, cheer, sing, or otherwise make noise with the human voice louder than that which is reasonably necessary for normal conversational speech.

(2) It shall be an affirmative defense to a charge of violating this subsection that the sound was reasonably necessary to gain assistance to prevent a crime, catch a criminal, warn of fire or other danger, or to seek assistance for a health problem or injury or for assistance in dealing with an accident.

(c) Trash Pickup: No person shall make any trash pickup with a truck which has a compactor or the capacity to raise and dump dumpsters in any residential or commercial district, and no employer shall fail to prevent its employee from violating this subsection while the employee is driving a trash truck owned by or under the control of the employer. For the purposes of this subsection, testimony that the name of a business which holds itself out as being in the business of trash hauling was written on the trash truck shall be prima facie evidence that the trash truck was owned by or was under the control of the employer so identified.

5-9-7 Unreasonable Noise Prohibited Between The Hours Of 9:00 P.M. Through 7:00 A.M. - Lawn Mowers, Leaf Blowers, And Construction.

Between the hours of 9:00 p.m. through 7:00 a.m., no person shall:

(a) Lawn Mowers And Leaf Blowers: Operate any lawn mower, leaf blower, or other power lawn or gardening tool on any private property within, or within one hundred feet of the boundary of, any residential district.

(b) Construction In A Residential Zone: In a residential zone, use power tools which are audible off the property upon which they are being used as part of construction work for which a building permit has been issued or is required for the work.

5-9-8 Unreasonable Noise Prohibited At Any Time - Motor Vehicle Amplified Sound.

(a) No person shall operate any electronic amplifier in or attached to any motor vehicle so that the sound is audible at a distance of twenty-five feet or more from the motor vehicle, or which emits vibrations which can be felt by persons outside of that vehicle. This prohibition does not apply to sound made on private property with the permission of the property owner and not audible or palpable beyond the property line.

(b) It shall be an affirmative defense to a charge of violating this section that:

(1) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency or by an emergency warning device operated by a government;

(2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

(3) The sound was made within the terms of a parade or temporary street closure permit issued by the city manager; or

(4) The sound was made by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes.

5-9-9 Certain Musical Instruments Prohibited On The Mall Between 12:00 Midnight And 7:00 A.M.

No person shall play any percussive or amplified musical instrument on the mall between the hours of 12:00 midnight and 7:00 a.m.

5-9-10 Sound Variances.

(a) Decibel Variance: A variance shall be granted for the decibel limits of section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," or 5-9-4, "Exceeding Decibel Sound Levels From A Motor Vehicle Prohibited," B.R.C. 1981, after application is made if the city manager finds that compliance will cause an undue hardship and further finds that:

(1) Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or

(2) The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply with this section.

In either case, the manager must also find that no reasonable alternative is available to the applicant. If the manager grants a variance, the manager shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(b) Trash Variance: Trash haulers may apply to the city manager for a variance of the provisions of subsection 5-9-6(c), B.R.C. 1981, for locations within a commercial district. Possession of a valid variance shall be a specific defense to any charge under subsection 5-9-6(c), B.R.C. 1981, if the act complained of was within the variance granted. The manager may grant all or a part of any requested variance, and may place such conditions upon any variance granted as are reasonably suited to limit the harmful effects of the variance. Such variances shall be granted only if the applicant can demonstrate to the manager's satisfaction:

(1) That the location in question is sufficiently removed from any residential use that the noise of trash removal will not disturb anyone in their residence, including, without limitation, hotel and motel accommodations; or

(2) That the location cannot feasibly be serviced during permitted hours, and that the variance is the least necessary to permit trash removal while still assuring nearby residents reasonable nocturnal quiet.

TITLE 6

HEALTH, SAFETY, AND SANITATION

6-1

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 1 Animals[1]

Section:

[1]Adopted by Ordinance No. 4719. Amended by Ordinance Nos. 4730, 7062. Derived from Ordinance Nos. 1734, 1941, 2208, 2257, 2843, 2866, 3080, 3467, 3679, 4040, 4242, 4350, 4387, 4656, 1925 Code.

6-1-1 Legislative Intent And Purpose.

(a) The purpose of this chapter is to protect the public health, safety, and welfare of the residents of the city by prescribing the types of animals that can be kept in the city and the conditions under which they can be kept, limitations on keeping animals that create a nuisance by being safety or health hazards, and the procedures by which the city manager or an authorized agent may impound and dispose of animals kept in violation of the chapter.

(b) The city council intends to protect persons and property in the city from animals running at large and to abrogate the requirements of the Colorado fence law[1].

(c) Notwithstanding the use of words such as "guardian," "keeper," "owner" or "title" in this chapter, the city council intends to reflect the common law view that the property rights of owners in their animals are qualified by the city's exercise of its police power over such animals, and that summary impoundments and dispositions of animals are two such qualifications of such rights[2].

(d) Further purposes of this chapter are to:

(1) Protect unique elements of the local environment;

(2) Protect bio-diversity and overall health of natural ecosystems within this community;

(3) Recognize the important contribution of wildlife to the local environment;

(4) Advance local community values by encouraging humane means of wildlife control;

(5) Avoid collateral harm to wildlife that is protected under state, federal and local law;

(6) Manage conflicts between wildlife and human land uses;

(7) Foster preservation of animal and bird species native to the local community; and

(8) Legislate in a manner that satisfies important issues of local concern while also being consistent with applicable state and federal regulations.

(e) The following priorities shall guide the city's policies and regulations with regard to the interface between people and wildlife:

(1) Efforts should be made to minimize conflicts between human beings and wildlife;

(2) When unsustainable conflicts between wildlife and human beings exist on a particular property, efforts should be made, where appropriate, to maintain wildlife on portions of such property in order to minimize such conflicts;

(3) Where resolution of conflicts between human uses and wildlife habitat cannot be achieved on a particular property, relocation alternatives should be explored and encouraged;

(4) Where relocation alternatives are not feasible, capture and transportation of wildlife for use in animal recovery programs should be explored and encouraged;

[1]35-46-101, 102, C.R.S. See SaBell's, Inc. v. Flens, 599 P.2d 950 (Colo. App. 1979) Berman, J., dissenting, aff'd, 627 P.2d 750 (1980).
[2]Thiele v. City and County of Denver, 312 P.2d 786 (Colo. 1957).

(5) Where lethal control measures for wildlife are required, the use of live trapping and individual euthanization should be considered and encouraged in order to minimize suffering;

(6) When lethal control measures are employed, action should be taken to mitigate the negative community-wide impacts associated with the loss of local wildlife and wildlife habitat; and

(7) When lethal control measures are utilized, notice should be provided to the city manager so that habitat preservation and environmental impacts can be monitored.

(f) The city intends to exercise its legislative authority and power to require action in compliance with this chapter by landowners, residents, visitors, employers and employees pursuant to its local home rule authority. To the extent any landowner is a person permitted by the State of Colorado to use pesticides, this chapter shall not be construed to regulate that person's handling, mixing, loading, application, administration, control or disposal of a pesticide or its container, and shall be construed only to regulate land use and the management of wildlife on local land.

(g) The city council finds that the regulation of local wildlife, wildlife habitat and any conflicts between human land uses and local wildlife constitutes an area of valid local concern and regulation and is therefore subject to the valid exercise of the city's police power. The various provisions of this chapter bearing upon those subjects reflect an appropriate exercise of the city's police powers, except to the extent that any such provision may be contradicted and overridden by a controlling provision of state law.

(h) The city council finds that the use of poison to control wildlife is having an adverse and cumulative effect upon the local environment, and upon the health and safety of human beings and local wildlife. Residents and visitors to the city are urged to avoid using poisons as a mechanism for wildlife control, especially when other less ecologically damaging control strategies are available.

Ordinance Nos. 4935 (1985); 7321 (2005).

6-1-2 **Definitions.**

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Guardian" means owner.

"Keeper" means a person who has custodial or supervisory authority or control over an animal.

"Landowner" means the owner or manager of land, or any other person who has control over the management of the land.

"Leash" means a chain, rope, cord, or strap with a clip or snap for rapid attachment to a choke chain, collar, or harness, all the parts of which are of sufficient strength to hold at least four times the weight of the dog and are suitable for walking the dog and controlling it.

"Leg-hold trap" means a spring-powered device or trap that captures or holds an animal by exerting a lateral force with fix-mounted steel or other metal jaws on the leg, toe, paw, or any other part of the animal's body.

"Lethal control" means methods of wildlife control that rely for their effectiveness upon the killing of individual animals or upon the extermination of groups of animals.

"Mall" has the meaning prescribed by section 5-1-1, "Definitions," B.R.C. 1981.

"Owner" means each person who owns an animal. If an animal has more than one owner, all such persons are jointly and severally liable for the acts or omissions of an animal owner under this chapter, even if the animal was in possession and control of a keeper at the time of an offense.

"Peace officer" has the meaning prescribed by section 5-1-1, "Definitions," B.R.C. 1981.

"Prairie dog burrow" means any burrow actually occupied by one or more prairie dogs and any burrow of which any entrance is surrounded by a mound.

"Premises" of the guardian or keeper of an animal means only that property over which the guardian or keeper has full possession and control, and from which the guardian or keeper has the authority to exclude, and does exclude, the public.

(a) Private property which is fenced or otherwise enclosed so that dogs within it cannot escape, and which is set aside by the owner of the property for use as a dog exercise or play area, and through which persons who are authorized to use the property are not required to pass in order to get to their destination, shall be deemed the premises of any guardian or keeper who has the express permission of the owner of such area to use it with the dog for such purposes.

(b) Places which are not "premises of the guardian or keeper of an animal" within the meaning of this definition include, without limitation, the following:

(1) All public property; or

(2) On private property:

(A) Any common sidewalk or walkway, any common unenclosed yard, or any other common unenclosed exterior space;

(B) Any common parking facility (whether or not spaces are reserved); or

(C) Any common interior room, hallway, stair, or passageway.

(D) For the purposes of this definition, "common" means any part of a residential condominium, townhouse development, apartment building, shopping center, business condominium, office building, business center, or industrial park which residents, owners, tenants, employees, customers, or visitors of more than one unit or space may use.

"Protected birds" includes any bird protected by the Migratory Bird Treaty Act, 16 U.S.C. sections 703-712. Protected birds do not include members of bird species listed in a United States treaty, law or Executive Order as an invasive species.

"Service animal" means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to sounds, pulling a wheelchair, or fetching dropped items.

"Unnecessary suffering" means suffering resulting from reckless or negligent practices causing avoidable lacerations, suffocation, broken bones, amputations or the infliction of pain on animals that could have been avoided by the use of reasonable, practical, and humane practices.

"Voice control" means control of the behavior of a dog which is not leashed or otherwise physically restrained by its guardian or keeper sufficient that the dog does not, without regard to circumstances or distractions:

(a) Charge, chase, or otherwise display aggression toward any person or behave toward any person in a manner that a reasonable person would find harassing or disturbing;

(b) Charge, chase or otherwise display aggression toward any dog;

(c) Chase, harass, or disturb wildlife or livestock; or

(d) Fail to come to and stay with the guardian or keeper immediately upon command by such person;

and voice control does not exist unless the guardian or keeper exercises this command authority at all times to keep the dog within the requirements of this definition.

"Wild birds" means birds that are living in a state of nature and that are not tame or domesticated.

Ordinance Nos. 5377 (1991); 5393 (1991); 5858 (1997); 7133 (2001); 7321 (2005).

6-1-3 Limitation On Keeping Of Domesticated Animals.

(a) No person shall own or keep a domesticated cat over four months of age unless such cat is currently inoculated against rabies.

(b) No person shall own or keep any swine, hogs, or pigs.

(c) No person shall own or keep any horse, goat, sheep, cow, llama, burro, or other equine or bovine animal unless such person has a total lot area on the lot of one-half acre per animal plus its young under six months of age.

6-1-4 Limitation On Possession Of Exotic Animals.

(a) No person shall own or keep any animal for which a state license is required[1] unless such person possesses the appropriate license from the Colorado Division of Wildlife.

(b) No person shall place on public display, own, or keep any of the following animals:

(1) Ursids (e.g., bears);

(2) Felids other than ordinary domesticated house cats;

(3) Mustalids other than ferrets (e.g., skunks, weasels, otters or badgers);

(4) Venomous reptiles;

(5) Procyonides (e.g., raccoons or coatis);

(6) Elephants;

(7) Marine mammals (e.g., seals, sea lions, dolphins or sea otters);

[1] 33-6-114, C.R.S.

(8) Hyenas;

(9) Edentates (e.g., anteaters, sloths, or armadillos);

(10) Viverrids (e.g., mongooses, civets, or genets);

(11) Canids, but not including ordinary domesticated dogs, wolves, or wolf hybrids;

(12) Marsupials (e.g., kangaroo or opossum);

(13) Ungulates (e.g., deer, hippopotamus, rhinoceros, giraffe, camel, zebra, but not including any domesticated species);

(14) Any species of non-human primate or prosimian (e.g., monkey or chimpanzee), but excluding animals imported under authority of state or federal law so long as they are not displayed; or

(15) Crocodilians (e.g., alligators and crocodiles).

(c) No person shall feed any wild animal. For the purposes of this subsection, to feed shall mean all provision of edible or drinkable material, including, without limitation:

(1) Bones;

(2) Salt licks; and

(3) Water.

(d) It is a specific defense to a charge of violating subsection (c) of this section that a person is feeding only wild squirrels or birds or fish.

(e) It is a specific defense to a charge of violating subsection (b) of this section that the person is a governmental agency or a non-profit corporation or an employee or agent of such agency or corporation acting within the course and scope of the employment or agency, and is displaying an animal prohibited from display under this chapter, lawfully in such entity's or person's custody without charge for educational purposes.

(f) It is a specific defense to a charge of violating subsection (b) of this section that the person holds a state wildlife rehabilitation license for the animal and is acting in accordance with the license.

Ordinance Nos. 4884 (1985); 7133 (2001).

6-1-5 **Animal Fighting Prohibited.**

(a) No person shall cause, sponsor, arrange, hold, or encourage a fight between animals other than dogs[1] for the purpose of monetary gain or entertainment.

(b) For the purposes of this section, a person encourages a fight between such animals if the person:

(1) Is knowingly present at such fight;

[1]Dog fighting is a felony, 18-9-204, C.R.S.

(2) Owns, trains, transports, possesses, or equips such an animal with the intent that the animal will be engaged in such a fight; or

(3) Knowingly allows such a fight to occur on any property owned or controlled by such person.

Ordinance No. 4935 (1985).

6-1-6 **Subjecting Animals To Unnecessary Suffering.**

(a) No person shall:

(1) Overdrive, overload, drive when overloaded, or overwork any animal;

(2) Cause unnecessary suffering to any animal or take actions likely to cause unnecessary suffering to any animal;

(3) Needlessly shoot at, wound, capture, or in any other manner needlessly molest, injure, or kill any animal; or

(4) Carry or transport or keep any animal in a manner that causes the animal to endure unnecessary suffering.

(b) It is specific defense to a charge of violating paragraph (a)(3) of this section, that the action was necessary to avoid injury to a person or that the animal was not a domesticated animal and the action was necessary to avoid injury to a person or property.

(c) This section shall not apply to injuries suffered by prairie dogs as a result of trapping or relocation practices. Regulation of such conduct will be pursuant to sections 6-1-11, "Limitation On Lethal Means Of Control For Prairie Dogs And Birds," and 6-1-37, "Procedures Affecting The Relocation Of Prairie Dogs," B.R.C. 1981.

Ordinance No. 7321 (2005).

6-1-7 **Improper Care Of Animals Prohibited.**

No person owning or keeping an animal shall fail to provide it with minimum care and to keep it under conditions under which its enclosure is not overcrowded, unclean, or unhealthy.

(a) An animal is deprived of minimum care if it is not provided with care sufficient to preserve the health and well-being of the animal considering the species, breed, and type of animal and, except for emergencies or circumstances beyond the reasonable control of the guardian, minimum care includes, but is not limited to, the following requirements:

(1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(2) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source. Fowl shall at all times be provided receptacles kept constantly filled with clean water.

(3) In the case of pet or other domestic animals other than livestock or poultry, access to a barn, doghouse, or other enclosed structure sufficient to protect the animal from wind, rain, snow, or sun and which has adequate bedding to protect against cold and dampness.

(4) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect, or disease.

(b) An enclosure is overcrowded unless its area is at least the square of the following sum for each animal confined therein: the sum of the length of the animal in inches (tip of nose to base of tail) plus six inches.

(c) An enclosure is unclean when it contains more than one day's elimination of each animal enclosed therein.

(d) An enclosure is unhealthy when it is likely to cause illness of the animal.

Ordinance No. 5866 (1997).

6-1-8 **Abandoning Animals Prohibited.**

No person shall abandon any animal.

6-1-9 **Use Of Certain Traps Prohibited.**

(a) No person shall use, set, place, maintain, or tend any leg-hold trap. The city manager shall confiscate any leg-hold trap found in violation of this subsection and dispose of it as the manager deems appropriate.

(b) No person shall use, set, place, maintain, or tend any mechanical trap which is designed or used to capture or kill any animal and does not require the presence of a human operator to so capture or kill. It is a specific defense to a charge of violating this subsection that the person had the express permission of the owner of the land on which the trap was set. This subsection does not apply to public officials in the exercise of their duties.

Ordinance Nos. 4821 (1984); 7019 (2000).

6-1-10 **Poisoning Domestic Animals Prohibited.**

No person shall knowingly poison any domestic animal. It is a specific defense to this section that the person was the guardian of the animal or a veterinarian acting at the direction of the guardian or an employee of an animal shelter and the poison was administered directly to the animal to euthanize it.

6-1-11 **Limitation On Lethal Means Of Control For Prairie Dogs And Birds.**

(a) Except as authorized by other provisions of this chapter, no person shall utilize lethal means of control for prairie dogs or wild birds or remove prairie dogs from the ground with the intent to kill them.

(b) It shall be an affirmative defense to a violation of this section that behaviors described in subsection (a) of this section:

(1) Were undertaken by a person who owns, or is responsible for operating, an airport facility or a person who acted at the direction of the owner of an airport facility, where such action is necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;

(2) Were undertaken by a person who owns or is responsible for operating a dam or other existing structure where structural integrity or safety is threatened by the activities of prairie dogs or birds;

(3) Resulted from public or utility-related projects conducted in conformity with management practices designed to minimize avoidable harm to animals located within an area containing prairie dog habitat;

(4) Were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;

(5) Were required in order to resolve immediate and verified health or safety hazards pursuant to a permit issued in conformity with section 6-1-39, "Special Permit," B.R.C. 1981; or

(6) Were undertaken as part of an ongoing and continuous program approved and permitted by the city manager that was designed to prevent re-colonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

Ordinance Nos. 7133 (2001); 7321 (2005).

6-1-11.5 **Causing Death Of A Prairie Dog Or Wild Bird For Humanitarian Reasons.**

Notwithstanding any other provision of this chapter, the following persons are authorized to cause the death of a prairie dog or wild bird for humanitarian reasons: Humane Society of Boulder Valley employees, veterinarians, Colorado Division of Wildlife employees, City Park Rangers, City Wildlife Managers, or persons permitted under state or federal law as wildlife rehabilitators.

Ordinance No. 7321 (2005).

6-1-12 **Damaging Prairie Dog Burrows Prohibited.**

(a) Except as authorized by other provisions of this chapter, no person shall damage any prairie dog burrow.

(b) It shall be an affirmative defense to a violation of this section that:

(1) The burrow was uninhabited when it was damaged;

(2) A state permitted relocator had, within the twelve previous months, attempted to relocate all prairie dogs utilizing that burrow, whether or not all those prairie dogs were successfully captured and relocated;

(3) The burrow was damaged by a person who owned, or was responsible for operating, an airport facility or by a person who was acting at the direction of the owner of an airport facility and the activity that damaged the burrow was necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;

(4) The burrow was damaged in connection with temporary disturbances caused by public or utility-related projects where such activities were conducted in conformity with best management practices within an area containing prairie dog habitat;

(5) The burrow was damaged by a person who owned, or was responsible for operating, a dam or other existing structure where the structural integrity or the safety of the dam or structure was threatened by the burrow or by burrowing;

(6) The burrow was on the property of a single-family residence in which the person who destroyed the burrow, or authorized its destruction, was residing;

(7) Activities were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;

(8) The burrow was damaged during the process of utilizing lethal means of control in conformity with the provisions of this chapter; or

(9) The burrow was damaged in connection with an ongoing and continuous program approved by the city manager that was designed to prevent re-colonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

(c) If the manager has reason to believe that work pursuant to any permit or other approval will damage any prairie dog burrow not subject to the defenses set forth in this chapter, the manager shall deny the permit or approval or condition its exercise on lawful relocation of the animals. Appeal from such a denial or conditional approval shall be in accordance with the provisions for denials of such permits or approvals.

Ordinance Nos. 7133 (2001); 7321 (2005).

6-1-12.5 Limitation On Lethal Means Of Control For Prairie Dogs And Birds, And Requirement For Use Of Humane Methods Of Relocation For Prairie Dogs.

Repealed.

Ordinance Nos. 7379 (2004); 7424 (2005).

6-1-13 Killing Wild Animals Prohibited.

No person shall knowingly kill any wild animal protected by federal or state constitution (e.g., article XVII, section 12(b) of the Colorado Constitution), law, or regulation. This prohibition shall not apply where the applicable state law makes such killing a felony. "Protected" in this section means those animals which may not be killed under applicable law, and also means killing animals in a time, place, or manner prohibited under such law, or by a person not authorized to do so.

6-1-14 Dyeing Fowl And Rabbits Prohibited; Selling Dogs, Cats, And Fowl Limited.

(a) No person shall dye or color live fowl, rabbits, or any other animals or have in possession, display, sell, or give away such dyed or colored animals.

(b) No person shall sell, offer for sale, or give away dogs or cats under eight weeks old or any other warm-blooded animals under the normal weaning period for the animal.

(c) No person shall sell, offer for sale, or give away any fowl under six weeks old. It is a specific defense to a charge of violating this subsection that the fowl are sold or given away in lots of ten or more for commercial, agricultural, or scientific purposes.

6-1-15 **Animals Running At Large Prohibited.**

(a) No person owning or keeping any animal in the city, except a dog or domestic cat, shall fail to prevent the animal from being off the premises of the guardian or keeper and beyond such person's supervision and control.

(b) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of $500.00. For a third and each subsequent conviction, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

6-1-16 **Dogs Running At Large Prohibited.**

(a) No person owning or keeping any dog shall fail to keep the dog on the premises of the guardian or keeper unless the dog is:

(1) On a leash held by a person, or

(2) Within a vehicle or similarly physically confined and without access to passers-by.

(b) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of $500.00. For a third and each subsequent conviction within two years based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply. The maximum penalty for a first conviction occurring on land owned by the city and constituting park land or open space land is a fine of $50.00. For a second conviction within two years, based upon the date of violation, the maximum penalty shall be a fine of $100.00. For a third and each subsequent conviction, the maximum penalty shall be a fine of not less than $200.00.

(c) It is a specific defense to a charge of violation of this section that the dog was[1]:

(1) (A) Outside of the corporate limits of the city; or

(B) Inside the city limits within any of the following areas on land owned by the city and constituting park land or open space land: The areas annexed by Ordinance Nos. 4166, 4167, 4177, 4178, 4179, 4180, 4181, 4182, 4183, 4184, and 4577; and also on the following portions of open space land lying along the North Foothills Trail, as that trail is shown on the city's most recent official trails map, which runs north from Lee Hill Road from approximately one mile west of Broadway and turns east to cross U.S. 36: the entire width between the trail fences from Lee Hill Road north and west along the eastern and northern boundary of the area annexed by Ordinance Nos. 4143 and 4163, and, at the end of the trail fencing, the area starting one hundred feet west of the trail and extending east across it to the eastern boundary fence of the land annexed by Ordinance Nos. 4143, 4147, 4163, and 4164, also including the area within one hundred feet northerly of the trail as it goes east toward its juncture with U.S. 36; and also the part of Heuston Park constituting roughly the eastern one-third of the park and lying west of the base of the slope north and west of the path along

[1]As with other similar provisions of the B.R.C., compliance with each of paragraphs (c)(1) through (c)(5) of this section must be established in order for the defense to be established, because the paragraphs are in the conjunctive. Defense (c)(1)(B) was authorized by Ordinance No. 5811, adopted by the voters on November 5, 1996, and covers the strip of land generally running east from U.S. 36 through Boulder Valley Ranch and the Boulder Reservoir and Coot Lake to 63rd Street which constitutes park land on the east, and open space land on the west, as well as a strip of open space land along the North Foothills Trail as described, and the portion of Heuston Park as described.

the north side of the ditch, as defined by signs and markers erected by the city manager delineating it as a voice (as defined in Section 6-1-2 "Definitions," B.R.C. 1981) and sight control area; and a parcel of land containing one hundred twenty acres, more or less, in Section 12, T1S R71W of the 6th P.M., as described in the deed recorded February 28, 1973 at reception number 055946, Boulder County records. Said parcel is commonly known as "NCAR Park" and lies north of Bear Creek, east of the North-South centerline of said Section 12, and west of the western boundary of the National Center for Atmospheric Research property; and a portion of the parcel commonly known as "Batchelder" described as: the E $^1/_2$ the NE $^1/_4$ of Section 1, T1S R71W of the 6th P.M. lying outside the boundary of Chautauqua Park. Said parcel is described in the deed recorded May 5, 1898 at Book 206 Page 24, Boulder County records along with a portion of the parcel commonly known as "Austin-Russell" described as the eastern portion of the W $^1/_2$ of the NE $^1/_4$ of Section 1, T1S R71W of the 6th P.M., described in the deed recorded April 21, 1903 at Book 270 Page 40, Boulder County records, located within the city limits of Boulder, Colorado; and a parcel of land located in the SE $^1/_4$ of the NW $^1/_4$ of Section 25, T1S R71W of the 6th P.M., as described in the deed recorded October 11, 1995 at reception number 01554297, Boulder County records. Said parcel is commonly known as "Seventh Day Adventist" along with a parcel of land located in the SE $^1/_4$ of the NW $^1/_4$ of Section 25, T1S R71W of the 6th P.M., as described in the deed recorded March 9, 2001 at reception number 2126152, Boulder County records. Said parcel is commonly known as "Community Hospital" along with a portion of a parcel commonly known as "Boulder Memorial Hospital" described as that part of the N $^1/_2$ of the NW $^1/_4$ of the SW $^1/_4$ of Section 25, T1S R71W of the 6th P.M., located N of County Road 52 (Sunshine Road) and including Lot 15, Block 11, Mount Sanitas Heights subdivision, as recorded in the Boulder County records; and Outlot D, Shanahan Ridge Six, a part of the NW $^1/_4$ of Section 17, T1S R70W of the 6th P.M., as shown on plat recorded July 13, 1977 as Plan File P-6-F-1-21, at reception number 232114, film 969, Boulder County records; and a parcel of land located in the SE $^1/_4$ of the NE $^1/_4$ of the NW $^1/_4$ of Section 36, T1N R71W of the 6th P.M., as described in the deed recorded September 13, 1990 at reception number 01063953, Boulder County records. Said parcel is commonly known as "St. Germain" along with a portion of a parcel commonly known as "Moore, Ann & Donald" described as: the northern portion of a parcel in the NE $^1/_4$ of Section 36, T1N R71W of the 6th P.M., described in the deed recorded April 17, 1987 at reception number 00842349, Boulder County records, located within the city limits of Boulder, Colorado. Said parcel is referred to as "Parcel 8" along with a portion of a parcel commonly known as "Moore, Ann & Donald" described as: the eastern portion of a parcel located in the NE $^1/_4$ of Section 36, T1N R71W of the 6th P.M., described in the deed recorded April 8, 1986 at reception number 00751339, Boulder County records, located within the city limits of Boulder, Colorado. Said parcel is referred to as "Parcel 7" along with a portion of a parcel commonly known as "Overlook" described as: the eastern portion of Tracts 437 and 438 as shown on the Boulder County Assessor parcel map for Section 36, T1N R71W of the 6th P.M., located within the city limits of Boulder, Colorado;

(2) In an area which had not been posted by the city manager to require a leash; and

(3) Accompanied by a guardian or keeper, provided that the dog is:

(A) Within voice and sight control of such person; and

(B) Visibly wearing a Voice and Sight Control Evidence Tag that has been lawfully obtained pursuant to chapter 6-13, "Voice And Sight Control Evidence Tags," B.R.C. 1981.

(4) The accompanying guardian or keeper had a leash in such person's immediate possession in a condition to be attached to the dog without undue delay; and

(5) This specific defense is not applicable if the accompanying guardian or keeper has more than two dogs simultaneously unleashed or unrestrained.

Ordinance Nos. 4862 (1984); 4879 (1985); 5497 (1992); 5858 (1997); 5890 (1997); 5926 (1997); 5988 (1998); 7443 (2006).

6-1-17 **Animals On Mall Prohibited.**

(a) No person shall bring an animal onto the mall or possess an animal on the mall, regardless of whether the animal is on a leash or is confined. But a person with an animal may cross the mall in a northbound or southbound direction at 11th Street, Broadway, 13th Street, 14th Street, or 15th Street.

(b) It is a specific defense to a charge of violating this section that the person is blind or deaf or otherwise has a significant physical disability and the animal is a service animal specifically trained to aid the mobility of such person.

(c) Notwithstanding the provisions of subsection (a) of this section, an animal may be present on the mall in accordance with the terms of a permit issued under this subsection.

(1) Upon application in accordance with the procedure prescribed in section 4-11-19, "Application Procedures," B.R.C. 1981, the city manager may issue such a permit, not exceeding three days in length, if the manager finds that:

(A) The animal will be kept under control at all times so as not to endanger persons or property;

(B) The proposed activity of the animal will not unreasonably interfere with pedestrian movement on the mall nor with other permitted activities;

(C) Neither the animal nor any enclosure for it will physically damage the mall in a manner that cannot be immediately repaired by the permittee;

(D) The animal will be present on the mall only during the daylight hours;

(E) The animal will be provided with food, water, shade, and space in any enclosure in which it might be contained that are sufficient in light of the anticipated weather conditions and duration of the animal's appearance on the mall to assure the animal's welfare;

(F) The animal's appearance will occur in connection with a public special event or other event of community-wide interest;

(G) The applicant provides a certificate of public liability and public property damage insurance meeting the requirements of section 4-1-8, "Insurance Required," B.R.C. 1981;

(H) The applicant shall pay the permit fee prescribed by section 4-20-11, "Mall License And Permit Fees," B.R.C. 1981; and

(I) None of the grounds for denial of a license under section 4-1-9, "Authority To Deny Issuance Of Licenses," B.R.C. 1981, exists.

(2) The city manager shall prescribe the form of the application and may require such information as is reasonably necessary to make the required findings. The manager may waive the insurance requirement of subparagraph (c)(1)(G) of this section if the manager finds that the animal would not present a risk of injury to persons or property. The manager shall place in the permit such restrictions on time, place, and manner as the manager finds are reasonably necessary to meet the requirements of this subsection and to protect the

public interest, the welfare of the animal, and the physical integrity of the mall. Permittees are in any case restricted to operating within the terms of their own application.

(3) A permittee shall pay, and by its acceptance of a permit specifically agrees to pay, any and all damages or penalties that the city incurs itself or may be legally required to pay as a result of the presence of the permittee's animal on the mall, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the city and including, without limitation, repair of physical damage to the mall.

(4) A permittee shall also pay all expenses incurred by the city in defending itself with regard to any and all damages and penalties mentioned in paragraph (c)(3) of this section. These expenses include all out-of-pocket expenses, including reasonable attorney's fees and the reasonable value of services rendered by any employee of the city.

(5) A permittee shall comply with all applicable health and sanitation laws and regulations of the city, county, and state, and further shall meet at least the following specific sanitation conditions:

(A) The permittee immediately removes any excrement that falls on the mall at the permittee's expense; and

(B) All animal waste for disposal is promptly transported to sites or facilities legally empowered to accept it for treatment or disposal.

(6) A permit may be revoked by the city manager for a breach of any of its conditions under the procedure prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981.

(7) A person wishing to use any of the following very small birds: dove, love bird, cockatiel, conure, parakeet, or finch, as part of an entertainment act on the mall may obtain a permit to do so under this subsection without having to comply with subparagraphs (c)(1)(D), (c)(1)(F), and (c)(1)(H) of this section. A permit issued under this paragraph shall be on a calendar-year basis. The city manager is authorized to designate, by regulation, additional species of very small animals whose guardians may be issued a permit under this paragraph if the manager determines that the likelihood of such animals causing injury or annoyance to persons, damage to property, or interruption of the mall's function as a primarily pedestrian place is, in the manager's reasonable opinion, insignificant, but such a regulation may not designate dogs, cats, any animal for which a state license from the Colorado Division of Wildlife or a federal license from the United States government is required, or any wild or exotic animal prohibited by section 6-1-4, "Limitation On Possession Of Exotic Animals," B.R.C. 1981.

(d) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of $500.00. For a third and each subsequent conviction, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

Ordinance Nos. 5313 (1990); 5913 (1997); 7133 (2001).

6-1-18 **Removal Of Animal Excrement Required.**

(a) No person owning or keeping any animal shall fail to prevent such animal from defecating upon any property other than the premises of the guardian or keeper.

(b) It is a specific defense to a charge of violating this section that the defecation occurred on private property with express permission of the owner or all tenants thereof.

(c) It is a specific defense to a charge of violating this section that the defecation was from an ungulate or camelid within any park, recreation area, or open space.

(d) It is a specific defense to a charge of violating this section that the guardian or keeper immediately removed or cleaned up such deposit and disposed thereof by depositing it in a toilet or a receptacle ordinarily used for garbage and covered by a lid or in an otherwise lawful and sanitary manner.

(e) The maximum penalty for a first conviction is a fine of $500.00. For a second conviction within three years, based upon date of violation, the maximum penalty shall be a fine of $500.00, with the municipal court strongly urged to impose community service hours cleaning up dog waste in public areas as a condition of a suspended sentence or probation pursuant to paragraph 2-6-37(f)(4), B.R.C. 1981, where appropriate in the judgment of the court. For a third and each subsequent conviction within three years, based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

Ordinance Nos. 5858 (1997); 7102 (2000); 7443 (2006).

6-1-19 **Barking, Howling, Or Other Unreasonable Animal Noise Prohibited.**

(a) No person owning or keeping any animal shall fail to prevent such animal from disturbing the peace of any other person by loud and persistent or loud and habitual barking, howling, yelping, braying, whinnying, crowing, calling, or making any other loud and persistent or loud and habitual noise, whether the animal is on or off the guardian's or keeper's premises.

(b) No person shall be charged with violating this section unless a written warning was given to the person by an agent or employee of the city within twelve months preceding the first date alleged as a date of violation in the complaint. Such warning is sufficient if it recites subsection (a) of this section and states that a complaint has been received that an animal of which the defendant is a guardian or keeper is disturbing the peace of an individual. A warning is given under this subsection if it is personally given to the person owning or keeping the animal or if it is mailed first class to such person. The city manager shall keep records of all warnings given, and such records are prima facie evidence that such warnings were given.

(c) No person shall be convicted at trial of violating this section unless two or more witnesses testify to the loud and persistent or loud and habitual nature of the noise, or unless there is other evidence corroborating the testimony of a single witness on this element.

(d) The provisions of subsections (b) and (c) of this section do not apply when the animal is a cat and it is proven beyond a reasonable doubt that the cat was off the premises of its guardian or keeper at the time of the disturbance.

6-1-20 **Aggressive Animals Prohibited.**

(a) No person shall own or keep any vicious animal. A vicious animal is one that bites, claws, or attempts to bite or claw any person; bites or injures another animal; or in a vicious or terrorizing manner approaches any person in an apparent attitude of attack, whether or not the attack is consummated or capable of being consummated.

(b) It is a specific defense to the charge of owning or keeping a vicious animal that the person or animal that was bitten, clawed, injured, or approached by the vicious animal or another person was:

(1) Other than in self-defense or defense of its young attacking the animal or engaged in conduct reasonably calculated to provoke the animal to attack, bite, or injure;

(2) Unlawfully engaging in entry into or upon a fenced or enclosed portion of the premises upon which the animal was lawfully kept or upon a portion of the premises where the animal was lawfully chained;

(3) Engaging in unlawful entry into or unlawfully in or upon a vehicle in which the animal was confined;

(4) Attempting to assault another person;

(5) Attempting to stop a fight between the animal and any other animal; or

(6) Attempting to aid the animal when it was injured.

(c) For the purposes of this section, a person is lawfully upon the premises of a guardian or keeper when such person is on said premises in the performance of any duty imposed by law or by the express or implied invitation of the owner of such premises or the owner's agent.

Ordinance No. 5374 (1991).

6-1-21 **Animals As Nuisance Prohibited.**

(a) No person shall own or keep any animal that constitutes a nuisance by violating any of sections 6-1-5, "Animal Fighting Prohibited," 6-1-6, "Subjecting Animals To Unnecessary Suffering," and 6-1-7, "Improper Care Of Animals Prohibited," B.R.C. 1981, being a safety or health hazard, damaging the property of another, or creating offensive odors, any of which materially interferes with or disrupts another individual in the conduct of lawful activities at such individual's home.

(b) No person shall be charged with violating this section unless a written warning was given to the person by an agent or employee of the city within twelve months preceding the first date alleged as a date of violation in the complaint. Such warning is sufficient if it recites subsection (a) of this section and states that a complaint has been received that an animal of which the defendant is the guardian or keeper is disturbing the peace of another individual. A warning is given under this subsection if it is personally given to a person owning or keeping an animal or if it is mailed first class to such person. The city manager shall keep records of all warnings given, and such records are prima facie evidence that such warnings were given.

(c) If the city manager finds that a nuisance exists in violation of this chapter, in addition to any other remedies available under this code the manager may request that the guardian or keeper of the animal correct the violation by notifying the guardian or keeper, or both the guardian and keeper, that such person has twenty-four hours from the date of the notice to correct the violation or such longer period as the manager determines is reasonably necessary to correct the violation. Notice under this subsection is sufficient if it is delivered to the guardian or keeper or mailed first class to the address of the owner of property on which the animal is kept on the records of the Boulder County Assessor.

(1) If the person notified fails to correct the violation as required by the notice, the manager may correct the violation by taking any necessary and reasonable means to do so and charge the costs thereof, plus an additional amount of $25.00 for administrative costs, to the owner of the property and jointly and severally to the guardian and keeper of the animal.

(2) If any property owner fails or refuses to pay when due any charge imposed under this subsection, the manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

6-1-22 **Nuisance Cat Prohibited.**

No person owning or keeping any domestic house cat shall fail to prevent the cat from damaging the property of another.

6-1-23 **Disposition Of Dead Animals.**

When any animal dies in the city, no person owning or keeping it shall fail to remove the body of such animal from the city or dispose of it in a lawful and sanitary manner.

6-1-24 **Impoundment And Confinement Of Animals.**

(a) The city manager shall seek to impound or confine to a veterinary hospital, for a period of at least ten days for rabies observation, any dog or cat that has bitten any person. Any dog or cat licensed by the city and inoculated against rabies may, in the alternative, be confined to the premises of the guardian or keeper for a period of ten days unless discovered off such premises during such time or unless the records of the city show that the animal has been found within the city unattended and off the premises of its guardian or keeper within the preceding year. The city manager shall seek to impound or order confined any other animal that has bitten any person for a period of time determined by the Boulder County Health Department to be necessary for rabies observation for the particular animal.

(b) A peace officer, if probable cause exists to believe that a violation of any provision of this chapter other than section 6-1-17, "Animals On Mall Prohibited," 6-1-18, "Removal Of Animal Excrement Required," or 6-1-23, "Disposition Of Dead Animals," B.R.C. 1981, has occurred, may impound any animal involved in such violation.

(c) A peace officer may impound for its own protection any animal which is under the control of a person at the time of that person's incarceration if it reasonably appears to the peace officer that such person is unable to provide immediately a responsible alternative keeper for the animal.

(d) A peace officer may impound any domestic animal on city mountain park or open space property which is outside the supervision and control of its guardian or keeper.

Ordinance No. 4935 (1985).

6-1-25 **Disposition Of Impounded Animals.**

(a) As soon as practicable after the date of impoundment of an animal pursuant to this chapter, the city manager shall notify the animal's guardian or keeper, if such person is known to the manager, of the fact and place of impoundment. The notification shall be given by a method calculated to reach the guardian or keeper promptly, and may be made in person, by telephone, by facsimile, by electronic mail, or by regular or certified mail if more direct methods are unavailable or have failed. If the guardian or keeper of an impounded animal is

not known, or if such person's address cannot be determined, the manager shall promptly place a description of the animal on its website or on a website linked to the city's website.

(b) The guardian or keeper of any animal impounded under this chapter shall pay the impoundment and feeding and keeping fees prescribed by section 4-20-39, "Animal Impoundment Fee," B.R.C. 1981, and no person may reclaim any animal until such fees are paid. If the guardian or keeper fails or refuses to pay when due any charge imposed under this subsection, the manager may, without limitation, certify the charge to the Boulder County Treasurer as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(c) If an animal was impounded solely on the basis of a violation of any provision of sections 6-1-5, "Animal Fighting Prohibited," 6-1-6, "Subjecting Animals To Unnecessary Suffering," 6-1-7, "Improper Care Of Animals Prohibited," and 6-1-8, "Abandoning Animals Prohibited," B.R.C. 1981, then the notice required by subsection (a) of this section shall also include a statement that, if the guardian or keeper does not request a hearing within five days of the date of the notice, the animal will be disposed of by the manager. If a hearing is requested, the manager shall schedule it to occur within three city business days and shall give notice of same to the person requesting the hearing. Such hearing shall be conducted in accordance with section 1-3-5, "Hearings And Determinations," B.R.C. 1981. If the manager determines that the animal was being kept in violation of any provision of sections 6-1-5, "Animal Fighting Prohibited," 6-1-6, "Subjecting Animals To Unnecessary Suffering," 6-1-7, "Improper Care Of Animals Prohibited," and 6-1-8, "Abandoning Animals Prohibited," B.R.C. 1981, the manager may dispose of the animal in the manner provided in subsection (d) of this section and not return it to its guardian or keeper, or may order it returned to its guardian or keeper upon payment of impoundment and shelter fees if the manager determines that, due to changed circumstances, the animal's health and the public health, safety, or welfare will not be endangered thereby. If the manager determines that the animal was wrongfully impounded, the manager shall order the animal returned without payment of accrued impoundment and shelter fees. If no hearing is requested, the manager may dispose of the animal in the manner provided in subsection (d) of this section.

(d) The city manager is authorized to dispose of any impounded animal by selling it at auction under the procedures prescribed by section 2-4-6, "Disposition Of Property Other Than Motor Vehicles," B.R.C. 1981, or otherwise as the city manager may direct, putting it up for adoption through an animal adoption agency, or destroying it, if the guardian or keeper of the animal has not reclaimed it within:

(1) One day of the end of bite confinement pursuant to subsection 6-1-24(a), B.R.C. 1981;

(2) Two days of notification of the guardian or keeper as provided in subsection (a) of this section, or after holding the animal for at least the minimum period required by the state laws governing licensed animal shelters[1] if the animal's owner is unknown or cannot be notified;

(3) Three days of notification to the person incarcerated and the guardian or keeper, if known to the manager, that the animal has been impounded solely pursuant to subsection 6-1-24(c), B.R.C. 1981;

(4) One day of an order returning the animal after a hearing conducted pursuant to subsection (c) of this section; or

(5) Five days of notification of the guardian or keeper as provided in subsection (c) of this section.

[1]Section 35-80-106.3, C.R.S.

(e) An animal adoption agency shall spay or neuter an unneutered dog or cat before releasing the animal to a person adopting the animal and shall require such person to pay for such procedure. If the adoption agency determines that it is medically inadvisable to spay or neuter the dog or cat before the time of adoption, the adoption agency shall enter into a conditional contract of sale, on a form approved by the city manager, which shall provide, without limitation, that the adopter is given temporary custody of the animal, but title to the animal remains in the city until a date certain. If the affidavit of a veterinarian that the animal has been spayed or neutered is not delivered to the adoption agency on or before such date, the adopter shall surrender the animal to the adoption agency on or before such date and shall be subject to prosecution for failure to do so.

(f) If, in the opinion of a veterinarian, or the animal shelter supervisor, if a veterinarian is not available, a pet animal is experiencing extreme pain or suffering, the city manager may euthanize the animal as soon as the manager has exhausted reasonable efforts to contact the owner, but if the animal has identification, the animal shall not be euthanized for twenty-four hours[1].

Ordinance Nos. 4935 (1985); 5377 (1991); 7326 (2003).

6-1-26 Court May Order Forfeiture Of Animal Pursuant To Criminal Conviction.

(a) Forfeiture Of Animal As Consequence Of Conviction Of Specified Violations:

(1) The provisions of this section shall apply in addition to all other penalty provisions applicable to violations of section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, or neglected or abused pursuant to section 6-1-6, "Subjecting Animals To Unnecessary Suffering," or 6-1-7, "Improper Care Of Animals Prohibited," B.R.C. 1981.

(2) Upon conviction of any of the provisions listed in paragraph (a)(1) of this section, and as a part of the sentencing process, the court shall have authority to order the forfeiture of any animal involved in the violation or violations proven if the animal has not already been forfeited pursuant to some other provision of this chapter. Any such forfeiture shall be accomplished by transfer of the animal involved in the incident for which a defendant is being sentenced to the city manager, and no guardian or keeper of the animal shall fail to comply with the court's order.

(3) Upon receipt of a forfeited animal, the city manager may dispose of the animal in any manner other than by return to its former guardian. Such disposition may include, without limitation, placement of the animal with a new guardian, or destruction of the animal.

(b) Standards For Forfeiture Of Animal Pursuant To Criminal Prosecution: In determining whether an animal shall be forfeited pursuant to the provisions of this section, the court shall balance and evaluate factors relating to the health and safety of the community and the best interests of the involved animal.

(1) In making forfeiture determinations based upon convictions of violations of section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, the court may consider, without limitation, the following factors:

(A) Whether or not the animal attacked a human being;

(B) Whether or not there existed any provocation or other extenuating circumstances relevant to animal's behavior;

[1]Section 35-80-106.3, C.R.S.

(C) Any aggravating factors relating to the violation for which a defendant is being sentenced;

(D) The number and severity of any prior attacks on human beings committed by the animal;

(E) Any factors relating to probability of future attacks by the animal;

(F) The nature and number of prior incidents of aggressive behavior other than attacks on human beings which involved the animal;

(G) The existence or non-existence of prior animal at large incidents involving the animal;

(H) Evidence that corrective action on the part of the guardian of the animal will lessen the chances of future violations of the law involving the animal; and

(I) Any expert evaluation of the animal which is placed before the court for evaluation.

(2) In making forfeiture determinations based upon convictions of violations of section 6-1-6, "Subjecting Animals To Unnecessary Suffering," or 6-1-7, "Improper Care Of Animals Prohibited," B.R.C. 1981, the court may consider, without limitation, the following factors:

(A) Any past convictions or other evidence establishing that the animal was subject to cruelty or improper care;

(B) Any evidence that corrective action on the part of the guardian of the animal will prevent inadequate treatment of the animal in the future, and the probability that such action will occur;

(C) Any evidence concerning the capacity of the guardian to prevent cruelty or inadequate treatment of the animal in the future, and the probability that the guardian will change past behaviors;

(D) The contents of any expert evaluation of the animal which is placed before the court for evaluation; and

(E) Any other evidence relevant to the probability that the animal will continue to be mistreated in the future if not forfeited.

(c) Procedures Applicable To Forfeiture Of Animal Pursuant To Criminal Prosecution:

(1) Following conviction for any of the provisions listed in paragraph (a)(1) of this section, the court shall announce whether or not it will consider forfeiture of the involved animal.

(A) Such determination shall be based upon the evidence received by the court in conjunction with the conviction or upon any other evidence or argument which may have been placed before the court at any stage of the criminal proceedings in the matter.

(B) Neither a forfeiture nor a forfeiture hearing shall occur based upon the entry of a plea of guilty or no contest to any of the provisions listed in paragraph (a)(1) of this section, unless, as a part of the plea proceedings, the court has informed the defendant that forfeiture of an animal is a potential consequence of the entry of plea.

(2) If the court determines that forfeiture should be considered, the defendant (and the guardian of the animal, if different than the defendant), the victim (if the offense was

owning an aggressive animal) and the prosecuting attorney shall have the right to request an evidentiary hearing regarding whether or not the animal involved in the incident should be forfeited.

(3) The court shall grant a continuance of no less than three days following conviction of any of the provisions listed in paragraph (a)(1) of this section, if such continuance is requested by any party for the purpose of marshaling evidence relevant to the issue of forfeiture of an animal.

(4) The subpoena power of the court shall be available to a defendant, guardian, and prosecuting attorney in order to facilitate the presentation of evidence at an animal forfeiture hearing. The court may accept evidence at such hearing in any form which is properly considered at a sentencing hearing.

(5) If the court feels a need for the presentation of particular evidence at the forfeiture hearing, it may issue its own subpoenas for the production of such evidence. The court may also order a convicted defendant or guardian to have the affected animal evaluated by an expert selected from a list maintained by the court for that purpose. Such an evaluation shall be conducted at the defendant's or guardian's expense. The failure of a defendant or guardian to obtain such an expert evaluation may be considered adversely to the defendant or guardian by the court when it makes its forfeiture determination.

(6) At an animal forfeiture hearing held pursuant to this section, the defendant, guardian, victim, or the prosecuting attorney may present evidence relevant to forfeiture in addition to that which was presented at the trial or plea stage of the proceedings concerning the facts of the offense. However, neither the prosecution, the defendant, nor the victim, if any, shall be required to present such additional evidence. Following the receipt of any such additional evidence, the court shall make its decision based upon the facts of the violation as proven or admitted at trial or plea stage of the proceedings, any additional evidence which may have been presented at the forfeiture stage of the proceedings, and any relevant information contained in the court's records relating to the affected animal.

(7) At a forfeiture proceeding held pursuant to the provisions of this section, the prosecuting attorney may urge the court to order forfeiture of an animal, urge the court to avoid forfeiting an animal or take no position with regard to such forfeiture.

6-1-27 Administrative Forfeiture Of Animal Deemed To Constitute A Nuisance Or To Be Abused.

(a) The provisions of this section constitute an independent method of forfeiture of aggressive or abused animals in addition to other methods of forfeiture and impounding.

(b) Whenever the city manager determines that any animal is vicious as provided in section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, or neglected or abused pursuant to section 6-1-6, "Subjecting Animals To Unnecessary Suffering," or 6-1-7, "Improper Care Of Animals Prohibited," B.R.C. 1981, the manager, through the city attorney, may apply to the municipal court for an order to impound the animal and remove it permanently from its guardian. Such application shall:

(1) Identify the animal;

(2) Identify the guardian and keeper, if known, or the residence of the animal if the guardian or keeper is not known;

(3) Identify the date and location of occurrence of one or more acts of viciousness, neglect, or abuse; and

(4) Request that the guardian and keeper be required to show cause why the animal should not be permanently removed from its guardian and forfeit to the city.

(c) Upon receipt of such an application, the court shall set a date for a hearing thereon, and in the manner provided in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, cause to be served on the guardian and keeper, if known, and if not known, delivered to or posted on the residence of the animal, a copy of the application and a notice of the hearing.

(d) If the city can show by a preponderance of evidence at the hearing, conducted under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, that the animal was vicious within the meaning of section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, or was treated or used in a manner prohibited by section 6-1-6, "Subjecting Animals To Unnecessary Suffering," or 6-1-7, "Improper Care Of Animals Prohibited," B.R.C. 1981, the judge may order the animal forfeit to the city. The judge shall use the standards of subsection 6-1-26(b), B.R.C. 1981, in exercising this discretion. Any such forfeiture shall be accomplished by transfer of the animal involved to the city manager, and no guardian or keeper of the animal shall fail to comply with the court's order.

6-1-28 **Emergency Impoundment Of Animal.**

(a) When, in the opinion of the city manager, an animal constitutes an immediate danger to the community, or an animal is itself in immediate danger due to improper care or treatment, the city manager may cause that animal to be impounded subject to the following conditions:

(1) If at the time of impoundment, there exists a pending criminal case or a pending administrative forfeiture action pursuant to the provisions of this chapter involving the impounded animal, the city manager shall, within seventy-two hours, attempt to notify the parties in such actions by written notice or other means of the interim internment of the animal.

(2) If, at the time of emergency impoundment, there does not exist a pending criminal case or a pending administrative forfeiture action pursuant to the provisions of this chapter involving the impounded animal, such action shall be filed within seventy-two hours of the emergency impoundment of the animal.

(3) Within seventy-two hours of emergency impoundment, the city manager shall submit written reports to the court and the court shall review those reports to determine whether interim impoundment is appropriate. However, the city manager may submit such reports prior to impounding an animal in order to obtain a court determination.

(4) After evaluation of all reports and information submitted to it in support of interim impoundment, the court shall order the animal released unless it makes both of the following findings:

(A) There is probable cause to believe that following trial or hearing pursuant to the provisions of this chapter, forfeiture of the animal will be justified; and

(B) There is probable cause to believe that the impounded animal constitutes an immediate danger to the community, or is itself in immediate danger due to improper care or treatment.

(5) Upon making findings justifying interim impoundment, the court shall order the animal detained by the city manager pending outcome of a pending criminal case or a pending administrative forfeiture action, or may order the animal released to any person upon such conditions as may satisfy the court that the safety of the community and of the animal will be adequately protected.

(6) Interim impoundment shall be terminated upon the completion of a pending criminal case or a pending administrative forfeiture action at such point as an order for the disposition of the animal is made pursuant to the orders entered in such action.

6-1-29 **Procedure Upon Entry Of Judgment For Forfeiture Of An Animal.**

(a) Whenever, pursuant to the provisions of this chapter, the court determines that forfeiture of an animal is warranted, the court shall order that the animal be delivered to the city manager on a date certain.

(b) In entering an order of forfeiture, the court shall ensure that the record includes the following information and that such information is made available to the city manager:

(1) A sufficient identification of the animal to be forfeited such as to allow the city manager to identify the animal accurately;

(2) Identifying information regarding the guardian and any keeper of the animal, if known, or the residence of the animal if the guardian or keeper is not known;

(3) A description of the date and circumstances of acts of viciousness, neglect, or abuse which gave rise to the order of forfeiture; and

(4) A copy of all reports, documentary evidence, or other information which was introduced at trial or at the forfeiture hearing which might assist the city manager in determining the appropriate disposition of the animal.

(c) No person shall fail to deliver possession of an animal ordered forfeited pursuant to the provisions of this section. However, the existence of this provision shall not restrict the court from using all lawful enforcement procedures to ensure compliance with a duly entered order of forfeiture.

6-1-30 **Peace Officer May Destroy Dog.**

A peace officer or other duly authorized agent of the manager may destroy any dog observed by such person to be in violation of section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981, and running, worrying, menacing, threatening, or endangering persons, domestic livestock, or wildlife if the dog is a threat to the safety of any person, domestic livestock, or wildlife.

Ordinance No. 5497 (1992).

6-1-31 **Police Dogs.**

The provisions of this chapter do not apply to police officers using dogs as part of official police business.

6-1-32 **Enforcement Of Chapter.**

The city manager shall enforce the provisions of this chapter and operate an animal pound for the city. The manager may delegate all or part of one or both of these duties to a private person or organization by contract. But all peace officers may enforce the provisions of this chapter[1].

6-1-33 **Bird Protection Sanctuary Created.**

(a) The following are legislative findings of fact:

(1) Protected birds are essential to the city's local ecosystem and their presence contributes to the quality of life of city residents and visitors;

(2) The city's open space and parks programs are enriched by the presence of protected birds;

(3) The humane treatment of wild birds and other wildlife reflects a core value for city residents;

(4) Utilization of some methods of lethal control for wild birds can have adverse impacts upon non-target species of birds, upon bird species protected by federal, state and local regulations and upon other non-target wildlife species; and

(5) Lethal control methods are often ineffective because birds tend to perch or nest at sites at which such measures have been previously utilized. The use of mechanical and structural methods of control to make perching or nesting sites unattractive is often more effective and causes less ecological damage.

(b) The area within the city is declared to be a sanctuary for the refuge of protected birds. All persons are urged to safeguard protected birds and their refuges within such sanctuary and to take reasonable steps to prevent unnecessary molestation of any wild birds within the city. Wildlife management practices and other activities conducted within the city should be designed to avoid unnecessary suffering on the part of wild birds.

Ordinance Nos. 7227 (2002); 7321 (2005).

6-1-34 **Use Of Poison Restricted For Lethal Control Of Birds.**

No person shall poison any wild bird or distribute poison with the intent to poison any wild bird.

Ordinance Nos. 7227 (2002); 7321 (2005).

6-1-35 **Injuring Or Capturing Wild Birds Restricted.**

(a) Except as authorized by provisions of this chapter, it shall be unlawful for any person in the city knowingly to shoot at, wound, kill, capture, ensnare, net, trap or injure any wild bird, or for any person to damage the eggs or nest of any protected bird. It shall also be unlawful for any landowner within the city knowingly to permit another to engage in any of the actions forbidden by this subsection.

(b) It shall be an affirmative defense to a charge of violating this section that the following circumstances existed:

[1]30-15-105, C.R.S.

(1) The capture of, or injury to, a bird was incidental to removing that bird or its nest from a structure, including, without limitation, any covering over a sidewalk;

(2) The capture of, or injury to, a bird was required in order to protect the safety of existing structures, or to deal with a verified health or safety hazard pursuant to a permit issued in conformity with section 6-1-39, "Special Permit," B.R.C. 1981;

(3) The capture and release of the bird was accomplished for purely humanitarian purposes;

(4) The capture of, or injury to, a bird occurred in conjunction with official activities of any of the following persons while engaged in professional activities of animal treatment, rehabilitation or removal: Humane Society of Boulder Valley employees, veterinarians, Colorado Division of Wildlife employees, City Park Rangers, City Wildlife Managers, or persons permitted under state or federal law as wildlife rehabilitators;

(5) The capture of, or injury to, a bird occurred in conjunction with authorized activities of a city employee, Humane Society of Boulder Valley employee, veterinarian, or any person permitted by state or federal law to act in the capacity of a wildlife rehabilitator or of a permitted researcher engaged in the capture and banding of birds; or

(6) The capture of, or injury to, a bird occurred in conjunction with activities authorized by a depredation permit issued by the United States Fish and Wildlife Service.

Ordinance Nos. 7227 (2002); 7321 (2005).

6-1-36 **Procedures For Obtaining Prairie Dog Lethal Control Permits.**

(a) Except as otherwise provided in this chapter, no person shall utilize lethal control measures for prairie dogs without first having obtained a lethal control permit from the city manager.

(b) An applicant for a lethal control permit shall file an application with the manager on forms supplied by the manager for that purpose.

(c) Each lethal control application shall include or be accompanied by:

(1) Proof that the applicant is the landowner on which the lethal means of control will be employed;

(2) Payment of a processing fee as prescribed by section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981;

(3) The name, address and telecommunications numbers of:

(A) The applicant;

(B) The property manager of such property (if any);

(C) Any consultants retained or consulted with regard to proposed lethal control measures; and

(4) All information required by the forms supplied by the city manager in subsection (b) of this section;

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(5) A description of:

(A) The reasons why lethal control measures are required;

(B) A description of any projected development that makes use of lethal control necessary;

(C) The proposed lethal control measures;

(D) The date and time on which the lethal control measures will be initiated; and

(E) The steps that will be taken in order to preclude re-colonization following the utilization of lethal control methods;

(6) Authorization to the city manager or to a designee to be present during all extermination activities;

(7) Documentation that the following options were considered and the reason that they were not utilized:

(A) Non-lethal control measures;

(B) Minimizing on-site conflicts between desired land uses and wildlife;

(C) Relocation alternatives;

(D) Where no reasonable relocation options exist, participation in an animal recovery program for the preservation of endangered species; and

(E) Trapping and individual euthanization as a method of lethal control;

(8) A description of steps considered in order to minimize potential negative impacts upon non-target species;

(9) A map of the property on which lethal control measures will be employed that includes the address or legal description of the property, and the general location of prairie dog burrows on that property;

(10) The number of acres of prairie dog habitat on the property;

(11) An estimate of the number of live prairie dogs inhabiting the site and an explanation of the methodology utilized for developing that estimate; and

(12) Demonstration, to a high degree of probability, that:

(A) The land on which the prairie dogs are located will be developed within fifteen months of the date of the application and the continued presence of prairie dogs would make such development impractical or impossible;

(B) A principal use of the land will be adversely impacted in a significant manner by the presence of prairie dogs on the site; or

(C) Established landscaping or an open space feature established and installed prior to any prairie dog colonization will be adversely impacted by the establishment of new prairie dog colonies;

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(13) The application shall establish that the applicant has adopted an adequate plan to protect, to the extent possible, non-prairie dog wildlife during the process of utilizing lethal control measures for prairie dogs;

(14) If pesticides are going to be used, the application shall establish that the applicant will utilize any measures required by state or federal regulations to protect, to the extent possible, non-prairie dog wildlife during the process of utilizing lethal control measures;

(15) The application shall establish an adequate plan designed to prevent the reentry of prairie dogs onto the land on which lethal control measures are to be utilized. No person shall fail to comply with the provisions of such a plan after having utilized lethal control measures based upon an application containing it;

(16) The application shall establish that reasonable efforts will be made to avoid utilizing lethal means of control for prairie dogs during prairie dog birthing periods;

(17) If the applicant is proposing to poison prairie dogs, the application shall establish that the applicant has:

(A) Identified and employed a person approved for that purpose by the State of Colorado; and

(B) Submitted a plan to comply with chapter 6-10, "Pesticide Use," B.R.C. 1981, relating to the regulation of pesticide use and required notice.

(d) The city manager shall, within sixty days, review any application for completeness and shall accept the application upon determination that it is complete. An application shall only be deemed complete if it includes an adequate showing that the applicant has demonstrated reasonable efforts to identify and use relocation alternatives in lieu of lethal control measures. Factors to be considered by the manager in determining whether the showing is adequate shall include, without limitation, the following:

(1) Whether or not the manager has determined that city lands are available for relocation. Such determination shall be based upon the wildlife carrying capacity of city lands and upon the manager's consideration of the policies set forth in the Boulder Valley Comprehensive Plan bearing upon natural ecosystem management and the management of wildlife-human conflicts. The manager's determination in this regard shall be final and not subject to appeal or review;

(2) Whether or not there are non-city lands available or feasible for relocation; and

(3) Additional information relied upon by an applicant to determine that relocation is unavailable, not feasible or otherwise inappropriate.

(e) A property owner of a site on which burrow fumigation measures will be utilized shall post signs on the affected property designed to give reasonable notice to neighbors and passers by. Such signs shall be posted within one day of submission of an application and shall remain posted until two days after the use of lethal control measures is completed.

(f) Not less than fifteen days after accepting an application as complete, the manager shall commence a sixty day public comment period on the application, soliciting public comment on relocation alternatives for prairie dogs that would otherwise be lethally controlled under the permit application. The only information from the permit that the city manager shall make available to the public for purposes of this subsection shall be information that is submitted by the applicant pursuant to paragraphs (c)(7), (c)(10) and (c)(11) of this section.

(g) Not less than fifteen days after the close of the public comment period, the city manager shall determine whether or not to issue the permit.

(1) If the city manager determines that relocation alternatives exist, the city manager shall delay issuing the permit for an additional twelve months to allow for relocation to occur.

(2) If the city manager determines that relocation alternatives do not exist, the city manager may issue the permit.

(h) Owners or occupants of residential lots containing a single residence may, at any time, obtain a lethal control permit to exterminate prairie dogs on their property. No fee shall be charged for such a lethal control permit and no waiting period longer than that period of time reasonably required to process an application shall be required.

(1) The intent of the permit process for such residential lots is to provide a mechanism for the city to monitor prairie dog populations and related ecological issues within its boundaries while allowing owners or occupants of small residential lots to respond to the presence of unwanted wildlife.

(2) Applications for a lethal control permit for such residential lots shall be approved upon receipt of the following information:

(A) Address of the subject property;

(B) The name and telephone number of the applicant;

(C) The date of application;

(D) A demonstration of compliance with any applicable state and federal regulations pertaining to the utilization of lethal control measures; and

(E) Such other information as the manager may require to adequately evaluate such requests, their purposes, and the expected outcomes of the use of lethal control measures.

(3) Lots containing multi-family residential structures shall not qualify for treatment under this subsection.

(i) The city manager may impose upon the exercise of the permit any conditions reasonably related to the purposes of this chapter.

(j) A permit issued under this chapter is specific to the property for which application is made and is not transferable.

(k) The requirements of this section apply to all private lands within the city limits of Boulder, all lands owned or managed by the city, and all city activities affecting prairie dogs inside or outside of the city limits.

(l) Any applicant for a lethal control permit aggrieved by a decision of the city manager concerning an application may appeal such decision to a hearing officer appointed by the manager by filing an appeal with the manager within fourteen days of the issuance or final denial of a permit. After giving notice to all interested parties, the hearing officer shall hear the appeal within thirty days of the notice of appeal, or at such other time to which the applicant and the city may agree, and the hearing shall be held pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The hearing officer shall determine whether the permit meets the requirements of this chapter and shall grant or deny the application with conditions, as appropriate.

(m) The manager shall specify the term of each permit, which shall be a reasonable amount of time under the circumstances.

(n) The manager may revoke a permit issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation Of Licenses," B.R.C. 1981, and also for failure to abide by any provision of this chapter or condition of the permit.

(o) The manager may suspend any portion of this chapter in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or to the city's planning area or to the city's environment.

Ordinance Nos. 7227 (2002); 7321 (2005).

6-1-37 **Procedures Affecting The Relocation Of Prairie Dogs.**

(a) The landowner from whose land any relocation of prairie dogs is to be made shall provide the manager with at least twenty days' advance written notice of the initiation of relocation of prairie dogs, which notice shall include:

(1) The name, address and telecommunications numbers of the applicant;

(2) The name, address and telecommunications numbers of the owner of the property from which prairie dogs will be relocated and the name, address and telecommunications numbers of the owner of the property to which the prairie dogs will be relocated;

(3) The name, address and telecommunications numbers of the property manager of property from which prairie dogs will be relocated, if any, and the name, address and telecommunications numbers of the property manager of property to which the prairie dogs will be relocated, if any;

(4) The name, address and telecommunications numbers of any consultants retained or consulted with regard to the proposed relocation measures;

(5) A description of the reasons why relocation measures are required;

(6) The date and time on which the physical relocation measures will be initiated;

(7) A plan detailing those steps that will be taken in order to prevent or discourage the reentry of prairie dogs onto the land from which relocation is to take place. No person shall fail to comply with the provisions of such a plan after having conducted relocation activities based upon an application containing it;

(8) Seven days' written additional notice if relocation is not initiated on the date provided pursuant to the terms of a preceding notice; and

(9) Copies of all required state and federal permits, including any required permits from the Colorado Division of Wildlife.

(b) The city manager or a designee shall be allowed to be present on the land from which relocation is being made and on the land to which relocation is being made during the relocation procedure.

(c) No person shall relocate prairie dogs unless the property owner of the land from which relocation is to take place, or that person's agent, has obtained all required state and federal permits, including any required permits from the Colorado Division of Wildlife.

(d) Relocation shall not be permitted during the birthing, nursing and early rearing period of March 1 through June 1.

(e) No person shall trap or relocate prairie dogs in a way that results in unnecessary suffering to the animals.

(f) No person engaged in the relocation of prairie dogs shall maintain such prairie dogs in his or her possession for more than forty-eight hours, unless such animals are sick or injured, in which case the animals shall be turned over to a state permitted animal rehabilitator.

Ordinance No. 7321 (2005).

6-1-38 Fees And Requirements For Issuance Of Prairie Dog Lethal Control Permits.

Private landowners seeking lethal control permits shall be required to pay a fee to mitigate the loss of prairie dog habitat as a consequence of the use of lethal control measures.

(a) The fee as prescribed in section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981, shall be required on a prorated basis for each acre of active prairie dog habitat lost as a consequence of the use of lethal control measures. There shall be an offset against this fee for any costs incurred by a property owner in connection with the lawful relocation of prairie dogs from the property on which lethal control measures are to be utilized in order to avoid subjecting the relocated animals to lethal control measures.

(b) A processing fee shall be paid by an applicant for a lethal control permit for birds or prairie dogs in an amount prescribed by section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981.

(c) No fee, other than processing fees, shall be charged to the city or its departments which obtain lethal control permits made necessary by city projects or programs.

(d) No fee, other than processing fees, shall be charged to any property owner who captures prairie dogs for the purpose of supplying them, either after euthanization or live, to wildlife recovery programs.

(e) The manager may adopt regulations allowing for the waiver of fees, or any portion of such fees, in situations in which a landowner establishes to the manager's satisfaction that the landowner would be entitled to utilize pesticides to poison prairie dogs but chooses instead to capture individual animals and subject them to euthanasia in order to minimize their suffering.

(f) Fees collected pursuant to this section may be utilized for the following purposes:

(1) Offsetting administrative costs associated with operating the lethal control permit system;

(2) Acquiring additional public land to accommodate uses displaced by relocation of prairie dogs;

(3) Conducting relocation activities of wildlife;

(4) Creating new habitat for wildlife by converting selected parcels of public lands to conditions suitable for future relocation or habitat development;

(5) Enhancing the habitat quality of public land prior to relocation of prairie dogs, such as through weed management and supplemental seeding programs;

(6) Monitoring the success of wildlife relocation programs;

(7) Constructing and maintaining wildlife areas, such as by erecting fences and establishing natural barriers, to minimize impacts of existing or future wildlife on city residents, and monitoring the effectiveness of such barriers;

(8) Producing educational signs, brochures, or other materials related to wildlife conservation and management;

(9) Retaining consultant services to assist with wildlife management and to monitor prairie dog or bird population sizes that might be affected by city or private development projects;

(10) Offsetting ecological losses associated with the use of lethal control measures by enabling the city to provide new or enhanced habitat elsewhere or by allowing the city to preserve wildlife through relocation or other activities;

(11) Funding prairie dog-related research; or

(12) Funding other programs that are determined by the manager to be consistent with the wildlife protection policy objectives set forth in this chapter.

Ordinance No. 7321 (2005).

6-1-39 **Special Permit.**

(a) The city manager may grant or deny a special permit for the killing or the capturing and releasing of birds or prairie dogs when it is shown in writing that:

(1) The birds or prairie dogs constitute a health hazard in a particular location in the city and that the specific actions are needed in order to eliminate the health hazard; or

(2) The birds or prairie dogs must be removed in order to permit completion or maintenance of a public improvement project approved by the city council, but only after the city council has been provided with notice that bird or prairie dog removal will be required.

An applicant for special permit pursuant to this subsection must show in writing that he or she has taken reasonable steps to control the situation by exclusion devices, non-injurious repellants or other non-lethal means. Where such steps are not feasible, the applicant shall provide the reasons why such alternative measures are not feasible.

(b) The city manager may grant or deny a special permit to allow a landowner to damage prairie dog burrows on that landowner's property where that landowner produces proof satisfactory to the manager that the following conditions exist:

(1) The legal parcel or lot on which burrows may be damaged had no prairie dog habitation for a period of at least three hundred sixty five consecutive days;

(2) Following the period without prairie dog habitation, at least one but not more than five new burrows were established;

(3) The landowner wants to be allowed to damage the new prairie dog burrows as part of an ongoing program to halt new colonization; and

(4) No permit shall be issued pursuant to this subsection between March 1 and June 1.

Ordinance No. 7321 (2005).

6-1-40 City Manager May Issue Regulations.

The city manager may adopt reasonable interpretive and administrative rules and regulations as deemed necessary to administer and enforce the provisions of this chapter.

Ordinance Nos. 7133 (2001); 7227 (2002); 7321 (2005).

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 2 Weed Control[1]

Section:

6-2-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare and preserve neighborhood environments by regulating the type and height of weeds and brush that are allowed in the city and to exempt certain areas of the city from the restrictions of this chapter, particularly mountain parks, streams, and watercourses, open space, and stream rights-of-way, that should be allowed to remain in a natural-appearing state.

6-2-2 Definitions.

(a) For purposes of this chapter, "weeds" means grass and herbaceous plants, but does not include plants in flower or vegetable gardens; small plots of wheat, barley, oats, or rye; and planned and maintained shrubs and woody plants.

(b) For purposes of this chapter, "brush" means woody shrubs not part of a planned and maintained landscape of either a highly structured manicured type or a natural appearance.

6-2-3 Growth Or Accumulation Of Weeds Prohibited.

No owner, lessee, agent, occupant, or person in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the city shall permit or maintain on any such lot or tract of land or along the sidewalk, street, or alley adjacent thereto any growth of weeds to a height greater than twelve inches.

6-2-4 Growth And Accumulation Of Brush Prohibited.

No owner, lessee, agent, occupant, or person in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the city shall permit or maintain on any such lot or tract of land or along the sidewalk, street, or alley adjacent thereto any growth of brush.

[1]Adopted by Ordinance No. 4683. Derived from Ordinance Nos. 678, 1935, 3253.

6-2-5 Growth Of Weeds Or Brush As Nuisance Prohibited.

No owner, lessee, agent, occupant, or person in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the city shall permit any growth of brush or weeds that does any of the following things:

(a) Constitutes a nuisance by collecting trash, debris, or rubble;

(b) Creates a fire hazard;

(c) Harbors wildlife or pests that are hazards to public health or safety;

(d) Contains Canadian Thistle or Russian Knapweed; or

(e) Contains any other weed adopted pursuant to section 6-2-9, "City Manager Authorized To Issue Rules," B.R.C. 1981.

Ordinance Nos. 5036 (1987); 7081 (2000).

6-2-6 City Manager May Cut And Remove Weeds Or Brush.

(a) If the city manager finds that any weeds or brush exist on any property in violation of this chapter, the manager shall request that the owner and the lessee, agent, occupant, or other person in possession or control of the property correct the violation and bring the property into conformity with the standards of this chapter.

(b) The city manager shall notify the owner and the lessee, agent, occupant, or other person in possession or control of the property that such persons have seven days from the date of the notice to make such corrections, or such longer time as the manager finds appropriate in view of the nature and extent of the violation. Notice under this subsection is sufficient if it is deposited in the mail first class to the last known owner of property on the records of the Boulder County Assessor and to the last known address of the lessee, agent, occupant, or person in possession or control of the property.

(c) If the person notified fails to correct the violation as required by the notice prescribed by subsection (b) of this section, the city manager may correct the violation by cutting or removing the weeds or brush and charge the costs thereof, plus an additional amount of $25.00 for administrative costs, to the owner and to the lessee, agent, occupant, or other person in possession and control of the property.

(d) If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

6-2-7 Defenses.

(a) It is a specific defense to a charge of violating section 6-2-3, "Growth Or Accumulation Of Weeds Prohibited," or 6-2-4, "Growth And Accumulation Of Brush Prohibited," B.R.C. 1981, that the lots on which the growth occurs is one-half acre or more in size and is a non-buildable outlot designed and restricted to remain as open space.

(b) It is a specific defense to a charge of violating section 6-2-3, "Growth Or Accumulation Of Weeds Prohibited," B.R.C. 1981, that the part of the weed exceeding twelve inches is a seed head, the seeds have not yet matured, and the weed is a part of a maintained landscape.

6-2-8 **Exceptions To Chapter.**

(a) In order to retain certain city properties in their natural states, city-owned parks, open space, street rights-of-way, and stream beds or banks are exempt from the requirements of sections 6-2-3, "Growth Or Accumulation Of Weeds Prohibited," and 6-2-4, "Growth And Accumulation Of Brush Prohibited," B.R.C. 1981.

(b) Wetlands are exempt from the requirements of this chapter.

Ordinance No. 5036 (1987).

6-2-9 **City Manager Authorized To Issue Rules.**

The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

6-2-10 **Advisory Board.**

City council shall be the local advisory board for all state and local noxious weed statutes, ordinances and regulations. The mayor shall be the chair and the deputy mayor shall be the secretary. A majority of the members of the board shall constitute a quorum.

Ordinance No. 7081 (2000).

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 3 Trash[1]

Section:

6-3-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by regulating the accumulation and storage of trash and to prevent conditions that may create fire, health, or other safety hazards; harbor undesirable pests; or impair the aesthetic appearance of neighborhoods. The provisions of this chapter are intended to help ensure that trash is disposed of in an appropriate and timely manner, that accumulated trash materials are properly screened, and to encourage the recycling of recyclable materials by prohibiting the accumulation of such materials on properties within the city in a manner that effectively turns them into trash.

6-3-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Recyclable materials" means recyclable materials as defined in section 6-12-2, "Definitions," B.R.C. 1981.

"Recycling agent" means a person that charges no separate fee to collect recyclable materials and collects such materials as they appear on such scheduled routes.

"Trash" means:

(a) Putrescible organic material, including, without limitation, animal or vegetable waste resulting from the preparation, cooking, and serving of food;

(b) Non-putrescible solid wastes, whether combustible or non-combustible, including, without limitation, paper, ashes, cardboard, cans, yard clippings, wood, branches, twigs, glass, rags, discarded clothes or wearing apparel of any kind;

(c) If not stored in a manner reasonably calculated to conserve materials for use on the premises, and with the minimum possible impact on nearby properties, any outdoor storage of brush, fence posts, crates, vehicle tires, vehicle bodies or parts, scrap metal, bed mattress-

[1]Adopted by Ordinance No. 4686. Amended by Ordinance No. 7145. Derived from Ordinance No. 3015.

es or springs, water heaters or other household appliances, damaged or stored or discarded furniture and other household goods or items, materials recovered from demolition, and other stored or discarded objects three feet or more in length, width, or breadth;

(d) Piles of soil or rocks, if not stored in a manner reasonably calculated to conserve such materials for use on the premises and with the minimum possible impact on nearby properties and if not maintained in a place that is not conspicuously visible from a public street, and if maintained for a period of thirty days or more following notice to the property owner or any occupant of the property;

(e) Any accumulation of gasoline or other petroleum products or liquids other than water, unless stored in a manner that prevents leakage and that is not conspicuously visible from a public street;

(f) Any materials intended to be discarded or recycled that are located in a place visible to the public, other than materials contained within appropriate trash or recycling containers; or

(g) Any accumulation of individual pieces of discarded debris, including, without limitation, bottles, cans, broken glass, cups, pieces of paper, plastic, and cardboard, visible to the public[1].

"Trash container" means a metal or other non-absorbent container equipped with a tightly fitting metal or non-absorbent lid or sealed, plastic bags, but does not include incinerators or ash pits.

"Visible to the public" means that which can be viewed from ground level by a person located on public property without taking extraordinary steps such as climbing a ladder or peering over a screening fence in order to achieve a point of vantage.

Ordinance Nos. 5293 (1990); 7078 (2000); 7172 (2001).

6-3-3 **Trash Accumulation Prohibited.**

(a) No owner of any vacant land; occupant, owner or manager of any single-family residence; owner, manager, or operator of any multiple-family residence or private club; or owner, operator, manager, or employee of any commercial or industrial establishment shall fail to:

(1) Prevent the accumulation of trash on such property and on the public right-of-way adjacent to the property;

(2) Remove trash located on such property and on the public right-of-way adjacent to the property;

(3) Remove or repair broken or damaged windows located on such property. However, it shall be a specific defense to a violation of this provision that a person is a tenant who, under the terms of the tenancy, is not responsible for the maintenance of that property and who failed to address a particular maintenance issue for that reason;

(4) Dispose of trash frequently enough so that it does not cause any odor on the property;

(5) Remove accumulated newspapers or other periodical publications from such property when such accumulated newspapers or publications are visible to the public and remain so for a period of more than twenty-four hours. It shall be a specific defense to any alleged violation of this provision that no more than three such newspapers or periodicals were

[1]See section 5-4-13, "Littering," B.R.C. 1981, for additional provisions relating to litter and littering.

accumulated for each residential unit or each business entity located on the property and that no newspaper or periodical more than three days old is located on the property; and

(6) Sufficiently bundle or contain recyclable materials so that those materials are not scattered onto the public right-of-way or onto other properties.

(b) No owner of any property containing one or more rental dwelling units shall fail to maintain in effect a current and valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property, which contract provides for trash hauling no less frequently than on a weekly basis (and that is sufficient to ensure that all trash generated during peak trash generation periods for that property is collected on at least a weekly basis).

(c) No property owner or contractor in charge of any construction site or responsible for any construction activity shall fail to:

(1) Prevent trash from being scattered onto the public right-of-way or onto other properties; and

(2) Ensure that all trash generated by construction and related activities or located on the site of construction projects is picked up at the end of each workday and placed in containers sufficient to prevent such trash from being scattered onto the public right-of-way or onto other properties.

6-3-4 **Trash Containers Required.**

(a) No owner or occupant of any single-family dwelling; owner or manager of any multiple-family dwelling or private club; or owner, operator, manager, or employee of any commercial or industrial establishment shall fail to provide at all times one or more trash containers on such property, of a size sufficient to accommodate the regular accumulation of trash from the property.

(b) No owner or occupant of any single-family dwelling; owner or manager of any multiple-family dwelling or private club; or owner, operator, manager, or employee of any commercial or industrial establishment shall fail to secure trash containers on the property so that they are not spilled by animals or wind or other elements.

6-3-5 **Storage, Disposal And Screening Of Trash.**

(a) No person shall store trash except in trash containers.

(b) No person shall store or locate trash in plastic bags in alleys.

(c) No person shall store putrescible waste in plastic bags.

(d) No person shall place a trash or recycling container on the sidewalk or in the city right-of-way in such a manner as to impair or obstruct pedestrian, bicycle, or vehicular traffic. However, this provision shall not apply to trash or recycling containers placed in a public alley with the written authorization of the city manager in order to accommodate efficient collection of trash or recyclable materials.

(e) No person shall place a trash or recycling container in a front yard setback or in the public right-of-way on any day other than one on which the collection of such trash or recyclable materials is scheduled.

(f) No person shall place any refrigerator, freezer, or other unused appliance in or upon non-secured portions of a property, including, without limitation, a location awaiting trash or recycling pickup, unless all doors of such appliances are secured or removed so that children cannot be trapped within.

(g) No owner, manager, or occupant of any single-family dwelling; owner or manager of any multiple-family dwelling or private club; or owner, operator, manager, or employee of any commercial or industrial establishment shall fail to prevent any trash container on a property, or in the public right-of-way adjacent to the property from overflowing, or from becoming so full that its cover will no longer fit the container tightly.

(h) No person shall store trash in such a manner as to constitute or create a fire, health, or other safety hazard or harborage for rodents, insects or other animals.

(i) No owner or occupant of any dwelling in a MR or HR zone shall fail to screen from view from the street any trash, trash container, or recyclable materials stored on the property that such person owns or occupies. However, it shall not be a violation of this provision that a trash or recyclable materials container located in an alley is visible from a street at the point at which that street intersects the alley.

(j) Nothing in this section shall be deemed to prohibit any person from keeping building materials on any premises before or during the period of active construction pursuant to a city building permit under chapter 10-5, "Building Code," B.R.C. 1981, nor to prohibit any person from storing any materials used in the operation of a business located in a zone allowing such use, nor shall this section prohibit any person from maintaining building or landscaping materials on any premises during the period of active use of those materials for a building or landscaping project that does not require a building permit so long as such materials are secured or contained during periods when they are not in use and the building or landscaping project for which such materials are being utilized is completed within fourteen days.

6-3-6 Compost Piles Permitted If Not Nuisance.

(a) The occupant or owner of any single-family residence and the owner, manager, or operator of any multiple-family residence or private club may maintain compost piles that are separated areas containing alternate layers of plant refuse materials and soil maintained to facilitate decomposition and produce organic material to be used as a soil conditioner.

(b) No occupant or owner of any single-family residence or owner, manager, or operator of any multiple-family residence or private club shall fail to prevent a compost pile from becoming a nuisance by putrefying or attracting mammals.

6-3-7 City Manager May Require Property Occupant Or Owner To Remove Trash Or Compost.

(a) If the city manager finds that any trash or compost exists on any property in violation of this chapter, the manager may, in addition to any other action permitted under this code, request that an owner, occupant, manager, operator, or employee responsible for compliance comply with the requirements of this chapter.

(b) The city manager may notify the owner and the occupant, manager, operator, employee or other person responsible for compliance that a violation of the provisions of this chapter is occurring on property for which that person has responsibility. Such notice shall specify a time within which corrections shall be made. Notice under this subsection is sufficient if it is

hand delivered or deposited in the mail first class to the last known owner of the property on the records of the Boulder County Assessor and to the last known address of the occupant, manager, operator, or employee responsible for compliance.

(c) If the violation is not corrected as required by the notice prescribed by subsection (b) of this section, the city manager may correct the violation by removing the trash or compost and thereafter charge the cost thereof, plus additional administrative costs not to exceed $100.00, to the property owner. A copy of such charge shall be mailed to any other person given notice pursuant to subsection (b) of this section.

(d) If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(e) It is a specific defense to a charge of violating any of the provisions of this chapter relating to the accumulation of trash that such accumulation existed for twelve hours or less and that the person asserting the specific defense took affirmative steps to eliminate the accumulated trash as soon as he or she became aware of the existence of the accumulation.

6-3-8 Special Trash Service Requirements On Certain Residential Rental Properties At Certain Times.

(a) The city manager may, by regulation, designate a period of times of up to sixteen consecutive days in the second quarter of the calendar year, and up to thirty-five consecutive days in the third quarter of the calendar year, as the periods during which this section is in effect in the special trash service zone.

(b) The special trash service zone constitutes the area included within Ninth Street, Baseline Road, Broadway, and Arapahoe Avenue, and the area included within Fifteenth Street, Folsom Avenue, Arapahoe Avenue, and Canyon Boulevard.

(c) Within the special trash service zone and during a designated period, no owner of property required to be licensed by section 10-3-2, "Rental License Required Prior To Occupancy And License Exemptions," B.R.C. 1981, shall fail to maintain in effect a current and valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property, which contract provides for trash hauling:

(1) The hauler will check the regular trash containers for the property every day, excluding Sundays and holidays.

(2) Any trash container which is full Monday through Friday will be emptied by the hauler. On Saturdays, containers will be emptied if more than half full.

(3) Any trash which is on the ground or otherwise near the container is picked up by the hauler.

(d) Compliance with this section shall constitute a specific defense to a charge of violation of paragraph 6-3-3(a)(1) or (a)(2), and/or subsection 6-3-5(a) or (g), B.R.C. 1981, concerning the storage of trash.

(e) It shall be a specific defense to a charge of violation of this section that trash hauling service meeting the requirements of this section was not commercially available. This defense shall

not apply if the asserted unavailability was due to refusal by a commercial hauler to deal based on legitimate business reasons concerning the property owner, including, without limitation, being in arrears on payments or refusing to sign a commercially reasonable contract.

Ordinance Nos. 7078 (2000); 7273 (2003).

6-3-9 **Defenses.**

(a) It is a specific defense to a charge of violating section 6-3-4, "Trash Containers Required," B.R.C. 1981, that the materials were recyclable materials set out in the vicinity of the curb for collection by a recycling agent and that they were securely bundled or otherwise securely contained so that they would not be scattered by the wind.

(b) It is a specific defense to a charge of violating subsection 6-3-5(b), B.R.C. 1981, that the trash or recyclables were stored for a period of no more than twelve hours on the day of a regularly scheduled collection from the premises or that the trash was grass clippings stored for a period of no more than one week preceding the time of the regularly scheduled collection from the premises.

(c) It is a specific defense to a charge of violating section 6-3-5, "Storage, Disposal And Screening Of Trash," B.R.C. 1981, that the trash was set out for collection by the city during an annual or other specially scheduled refuse collection program, and that the trash was of the sort eligible for such collection in accordance with the city's publicized standards for such collection, but only if the trash is set out in the vicinity of the curb for no more than one week before the scheduled collection date and is so contained such that it cannot be, and is not, carried onto other properties by the elements or by animals.

6-3-10 **Hazardous Waste Disposal.**

No person exempt from regulation of hazardous waste disposal under state law[1] shall bury any hazardous waste (as defined by state law[2]) upon property in the city or owned by the city.

6-3-11 **City Manager Authorized To Issue Rules.**

The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

[1]25-15-101(3), C.R.S.
[2]25-15-101(6), C.R.S.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 4 Regulation Of Smoking[1]

Section:

6-4-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by prohibiting smoking in buildings open to the public or serving as places of work, except in certain buildings or parts of buildings where the council has determined that smoking should not be prohibited, and fixing the requirements of property owners in this regard. In addition, this chapter regulates access of minors to tobacco products.

6-4-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Building" means any structure enclosed for protection from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest as well.

"Dwelling" means any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a hotel or motel room or suite or a hospital, hospice or nursing home room, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.

"Independently ventilated" shall mean that the ventilation system for the area in which smoking is permitted and the ventilation system for any non-smoking area do not have a connection which allows the mixing of air into the smoking and non-smoking areas.

"Physically separated" means that there are physical barriers such as walls and doors extending from floor to ceiling that prohibit smoke from entering a non-smoking area.

"Public conveyance" means any motor vehicle or other means of conveyance licensed by the Public Utilities Commission of the state for the transportation of passengers for hire, and includes, without limitation, busses, taxicabs, limousine services, and airport passenger services.

"Restaurant" means an establishment licensed as a hotel/restaurant under the liquor laws of the state, or an establishment whose principal business is the retail sale of prepared food and beverages and has seating for on-premises consumption of food.

[1]Adopted by Ordinance No. 5754. Derived from Ordinance Nos. 4023, 4661, 4898, 4969, 4994, 5176, 5248.

"Smoke" or "smoking" means the lighting of any cigarette, cigar, or pipe or the possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

"Tavern" means an establishment licensed as a tavern under the liquor laws of the state.

"Tobacco product" means cigarettes, cigars, cheroots, stogies, periques, and other products containing any measurable amount of tobacco, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco.

"Tobacco store" means a retail business open to the public if more than eighty-five percent of its gross revenue from that location is from the retail sale of cigarettes and tobacco products, or products related to the use of cigarettes and tobacco products.

Ordinance No. 6088 (1999).

6-4-3 **Smoking Prohibited Within Buildings.**

(a) No person shall smoke within any building except in one of the following locations:

(1) In any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel rooms, or motel rooms, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent;

(2) In a room or hall being used by a person or group for a private social function that is not open to the public, in any room used for psychological treatment of nicotine addiction by a licensed health care professional, or in a physically separate and independently ventilated room in a hospital, hospice, or nursing home open to all residents as a smoking room and for no other purpose;

(3) In a tobacco store;

(4) In a designated smoking area in a restaurant or tavern as provided in section 6-4-5, "Smoking Areas In Restaurants And Taverns," B.R.C. 1981;

(5) In a building or on property which is occupied by the State of Colorado, the United States government, Boulder County, or the Boulder Valley School District which was not designated as a no-smoking area by the manager of such area. The city council urges such governmental entities to designate no-smoking areas in order to promote full access by the public and protect the health of employees; or

(6) By a performer as part of a theatrical production, so long as the following additional conditions are met:

(A) A sign with letters no less than one inch high is posted conspicuously at each public entrance to the place of performance informing the audience that performers will be smoking as part of the performance; and

(B) The producer of the performance has used reasonable efforts to inform the potential audience for the performance, in advance of their arrival at the place of performance, of the fact that performers will be smoking as part of the performance. This shall be accomplished by giving the information at the time advance reservations are made or advance tickets are

sold, or seats are confirmed, or by including in all advertising and publicity specific to the performance over whose content the producer has control the information that actors will be smoking as part of the performance, or by any other means reasonably likely to convey the information in a timely manner.

(b) Unless excepted under subsection (a) of this section, the prohibitions of this chapter apply to all buildings which serve as places of work, but this subsection (b) neither enlarges nor diminishes the meaning of subsection (a) of this section.

(c) Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

Ordinance No. 5797 (1996).

6-4-4 **Smoking Prohibited In Public Conveyances.**

No person shall smoke in any public conveyance.

6-4-5 **Smoking Areas In Restaurants And Taverns.**

(a) The owner, lessee, principal manager, or person in control of a restaurant or tavern may designate one smoking area of no more than fifty percent of the square footage of the floor area of the establishment which is open to the public so long as it meets all of the following criteria:

(1) It is independently ventilated from the non-smoking areas;

(2) It is physically separated from the non-smoking areas;

(3) A designated smoking area under this section may not include any waiting area, lobby, hallway, elevator, restroom, or area adjacent to a self-service food line or cash register, and such areas shall also be excluded from the calculation of the square footage of floor area under this subsection; and

(4) Any service or amenity which the establishment chooses to provide to patrons, other than smoking, shall at all times be at least as available in the non-smoking majority portion of the establishment as in the designated smoking area. This requirement includes, without limitation, live entertainment and games.

(5) The city manager may make reasonable rules interpreting the terms "independently ventilated" and "physically separated" and specifying ventilating and construction measures which will accomplish these goals.

(b) No owner, lessee, principal manager, or person in control of a restaurant or tavern which designates a smoking area shall fail to maintain it in accordance with the requirements of this chapter.

(c) If patron seating at an establishment with a designated smoking area is directed by an employee, no owner, lessee, principal manager, or person in control of the establishment shall fail to ensure that such employee asks each patron for the patron's preference for seating in or use of a no-smoking or a smoking area. If patron seating or use at an establishment with a designated smoking area is not directed by an employee, no owner, lessee,

principal manager, or person in control of the establishment shall fail to post a conspicuous sign on all public entrances or in a position clearly visible on entry into the restaurant advising patrons that such a no-smoking area is available and where it is located.

6-4-6 **Signs Required To Be Posted.**

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, no owner, lessee, principal manager, or person in control of a building or an establishment within a building shall fail to post signs with letters no less than one inch high or symbols no less than three inches high as follows:

(a) Where smoking is prohibited in the entire establishment, a sign using the words "No Smoking" or the international no-smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment.

(b) In a building where certain areas are designated as smoking areas pursuant to this chapter, a sign using the words "No Smoking Except In Designated Areas" shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building.

(c) In a building or establishment where smoking is permitted in the entire building or establishment, a sign using the words "Smoking Permitted" or the international smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment.

(d) If an ashtray or other receptacle for extinguished smoking materials is located in a building, except in an area where smoking is permitted, a sign with the international no-smoking symbol and letters no less than one inch high using the words "No Smoking" and three-quarters inch high using the words "Extinguish Here," shall be posted within twelve inches above each such ashtray or other receptacle.

(e) The requirements of this section do not apply to an exempt dwelling.

6-4-7 **Additional Responsibilities Of Proprietors.**

(a) No owner, lessee, principal manager, or person in control of a building or establishment shall fail to:

(1) Ask smokers to refrain from smoking in any no-smoking area;

(2) In a restaurant or tavern, if smoking is allowed, affirmatively direct smokers to designated smoking areas; and

(3) Use any other means which may be appropriate to further the intent of this chapter.

(b) No owner, principal manager, proprietor, or any other person in control of a business shall fail to insure compliance by subordinates, employees, and agents with the restrictions on sale and display of tobacco products contained in section 6-4-8, "Restrictions On Sale And Display Of Tobacco Products," B.R.C. 1981.

Ordinance No. 6088 (1999).

6-4-8 **Restrictions On Sale And Display Of Tobacco Products.**

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

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

(c) No person shall stock or display, or sell from a stock or display, tobacco products in a business which sells such products at retail in a manner which makes them accessible to customers without the assistance of an employee.This subsection requires a direct, face-to-face exchange of the tobacco product from an employee to the customer.

(d) No person shall distribute any tobacco product without charge in any public place or at any event open to the public for the purpose of promotion or advertising. No person shall, in any public place or at any event open to the public, distribute any coupon or similar writing which purports to allow the bearer to exchange the same for any tobacco product, either free or at a discount.

(e) No person shall sell tobacco products except cigars or pipe tobacco in any form or condition other than in the packaging provided by the manufacturer.

(f) No person shall sell cigarettes except in packs of twenty or more cigarettes per pack.

(g) It is an affirmative defense to a charge of violating subsection (a) of this section that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the person receiving the prohibited items as being eighteen years of age or older.

(h) It is a specific defense to a charge of violating subsection (b) of this section that the vending machine was located in a place of work not open to the public where persons under eighteen years of age are not permitted access.

(i) It is a specific defense to a charge of violating subsection (c) of this section that the store was a tobacco store and no person under the age of eighteen years was within the premises unless actually accompanied by a parent or legal guardian. A tobacco store may use self-service displays of tobacco products so long as it is within the terms of this specific defense.

(j) It is a specific defense to a charge of violating subsection (c) of this section that the tobacco product was a cigar or pipe tobacco in a locked walk-in humidor, entry into which by the customer required the assistance of an employee, and no person under eighteen years of age was in the humidor.

(k) (1) It is a specific defense to a charge of violating subsection (c) of this section that the tobacco product was a cigar or pipe tobacco in a walk-in humidor which was visually monitored by an employee, and no person under eighteen years of age was in the humidor.

(2) This defense shall not apply if there have been three convictions of violation of subsection (c) of this section involving the business within any thirty-six month period, based on the dates of the offenses, and the most recent conviction became final no more than five years before the pending violation.

Ordinance No. 6088 (1999).

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 5 Rodent Control[1]

Section:

6-5-1 Legislative Intent[2].

The purpose of this chapter is to protect the public health, safety, and welfare by requiring owners and occupants of buildings and watercourses in the city to eradicate rats residing in and around such locations, eliminate rat harborage, and rat-proof structures in order to eliminate the serious health hazard presented by rats. It is also the purpose of this chapter to require measures to eliminate rodent harborage and infestation in commercial establishments where food is stored and to rodent-proof animal feed containers. Nothing in this chapter shall be deemed to limit the authority of the city manager or any designate of the manager to exercise authority under state or federal law to eradicate severe health hazards created by rodents other than rats.

6-5-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Building" means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

"Occupant" means any person living in, sleeping in, possessing, or otherwise using any building or part thereof.

"Owner" means any person who, alone or jointly or severally with others, or in a representative capacity, including, without limitation, an authorized agent, executor, or trustee, has legal or equitable title to any building with or without actual possession thereof.

"Rat eradication" means the elimination or extermination of rats within and adjacent to buildings by any accepted measure, including, without limitation, poisoning, fumagating, or trapping.

"Rat harborage" means any plant growth, object, or structure that provides rats with shelter from the weather, protection from predators, or sites for nest building and rearing of young.

"Rat-proofing" means any form of construction to prevent the ingress of rats into buildings from the outside or from one building to another and consists of treatment with material impervious to rat gnawing of all actual or potential openings in exterior walls, ground or first floors, basements, roofs, and foundations that may be reached by rats from the ground, by climbing, or by burrowing.

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[1]Adopted by Ordinance No. 4687. Derived from Ordinance No. 1697.

[2]For regulation of accumulations of trash and rubble that attract animals or harbor rodents, see chapter 6-3, "Trash," B.R.C. 1981.

"Rodent" means members of the order rodentia, including rats and mice in the family muridae, any other introduced rodents, and various native species such as field mice, voles, wood rats, ground and tree squirrels, chipmunks, and prairie dogs.

6-5-3 **Buildings To Be Rat-Proofed; Removal Prohibited; Rat Harborage Prohibited.**

(a) No owner or occupant of a building shall fail to rat-proof it or to maintain such building and its adjacent premises free of rats or fail to repair all breaks or leaks in rat-proofing material.

(b) No owner of a ditch, drainage pond, lake, or other watercourse or body of water shall fail to eliminate harborage or food sources for rats or to eradicate rat infestation when it occurs on such property.

(c) No occupant or owner of any building or any contractor or other person shall remove ratproofing from any building and fail to restore it in a satisfactory condition, shall damage it without restoring it, or shall make any new openings that are not closed or sealed effectively against the entrance of rats.

(d) No person shall construct, repair, or remodel any building unless such construction, repair, or remodeling renders the building rat-proof as required by this chapter.

6-5-4 **Enforcement.**

(a) The city manager may inspect the interior and exterior of buildings and their premises and ditches, drainage ponds, and other bodies of water and watercourses to determine whether they comply with the requirements of this chapter.

(b) If the city manager finds that any person has failed to rat-proof a building or maintain it in a rat-free condition, the manager shall notify the owner or occupant of the duty to rat-proof or to eradicate a rat infestation and that the owner or occupant has fifteen days in which to complete required rat-proofing measures or five days to complete rat eradication measures. The manager may extend the time limit if the owner or occupant shows good cause. Notice under this subsection is sufficient if it is deposited in the mail first class to the last known address of the property owner on the records of the Boulder County Assessor or to the occupant at the address of the subject property.

(c) If the person so notified fails to correct the violation as required by the notice prescribed by subsection (b) of this section, the city manager may cause the violation to be corrected and charge the costs thereof, plus an additional amount thereof up to $25.00 for administrative costs, to the person so notified.

(d) If a property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(e) In addition to other remedies prescribed by this chapter, when the city manager finds a violation of the requirements of this chapter, the manager may:

(1) Order commercial buildings or watercourses or bodies of water that are providing extensive harborage and food sources for rats closed until such conditions are abated by rat-proofing, rat eradication, and removal of harborage and food sources;

(2) If violations are not corrected within a period of thirty days or such additional time as the manager for good cause provides, institute proceedings to condemn and destroy the building in order to abate the nuisance;

(3) Seek such injunctive relief to eliminate the nuisance as the manager deems appropriate;

(4) In the case of a public health emergency, summarily abate the condition without prior notice to the owner or occupant; or

(5) Require that firewood, lumber, boxes, barrels, bottles, cans, and other containers and similar materials creating rat harborage be elevated at least eighteen inches above the ground.

(f) Before the city manager may take any of the steps provided in subsection (e) of this section, the manager shall notify the property owner or occupant of the duty to correct the violation. Notice under this subsection is sufficient if it is deposited in the mail first class to the last known address of the owner of property on the records of the Boulder County Assessor or to the occupant at the address of the subject property.

6-5-5 Rodent-Proofing Of Food Storage Establishments And Animal Feed Containers.

(a) No person shall occupy any commercial building wherein food is to be stored, kept, handled, sold, or offered for sale unless such person takes construction measures to prevent the ingress of rodents into the building from the exterior or from one building to another by treating with material impervious to rodent gnawing all actual or potential openings in exterior walls, ground or first floors, basements, roofs, and foundations that may be reached by rodents from the ground, by climbing, or by burrowing.

(b) No person shall fail to store feed for chickens, cows, pigs, horses, and other animals in rodent-free and rodent-proof containers or rooms or a rodent-proof building.

6-5-6 City Manager Authorized To Issue Rules.

The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 6 Protection Of Trees And Plants[1]

Section:

6-6-1 Legislative Intent.

(a) The purpose of this chapter is to protect the public health, safety, and welfare by prescribing requirements for the protection of trees and plants within the city, including, without limitation, trees, shrubs, lawns, and all other landscaping.

(b) The city council finds that all trees, plants, and other landscaping, located, standing, or growing within or upon city property, including, without limitation, any city-owned or controlled street, alley, rights-of-way, or other public place or city or mountain park, recreation area, or open space, belong to the city and are a community asset comprising a part of the public infrastructure.

(c) The city councils finds that the requirements of this chapter are necessary to ensure the continued protection, maintenance, replacement, and management of city-owned trees, plants, and other landscaping.

6-6-2 Removal Of Dead, Diseased, Or Dangerous Trees.

(a) The city manager may enter upon any premises without a warrant to inspect all trees and plants in the city.

(b) If the city manager finds that there exist on any private property in the city dead trees or overhanging limbs that pose a danger to persons or property, the manager will notify the owner, lessee, agent, occupant, or other person in possession or control of the property upon which the condition exists of the duty to remedy the condition within fifteen days from the date of the notice or such shorter time as the manager finds appropriate in view of the nature and extent of the condition.

(c) If the city manager determines that any tree growing on private property within the city is afflicted with any dangerous or infectious insect infestation or disease, the manager will notify the owner, lessee, agent, occupant or other person in possession and control of the property of the condition and order such person to take specific prescribed measures that the manager determines are reasonably necessary to cure the infestation or disease and to prevent its spread, within fifteen days from the date of the notice or such time as the manager finds appropriate in view of the nature and extent of the condition.

(d) If the person notified pursuant to subsection (b) or (c) of this section fails to correct the condition as required by the notice prescribed in such subsection, except in cases of extreme

[1]Adopted by Ordinance No. 4731. Amended by Ordinance No. 5986. Derived from Ordinance Nos. 3511, 4335, 1925 Code.

emergency, the city manager may enter the property, pursuant to an administrative warrant issued by the municipal court, and correct the condition and charge the costs of such correction, plus an additional amount of $25.00 for administrative costs, to the owner and to the lessee, agent, occupant, or other person in possession and control of the property. If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may certify due and unpaid charges, including interest, to the Boulder County Treasurer for collection, as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(e) Notice under this section is sufficient if it is deposited in the mail first class to the address of the last known owner of property on the records of the Boulder County Assessor or to the last known address of the lessee, agent, occupant, or other person in possession or control of the property.

(f) Nothing in this section shall be deemed to prohibit the city manager from taking such steps to correct an immediate threat to the public health, safety, or welfare that the manager determines is posed by such diseased, dead, or dangerous trees.

(g) The city manager may prune, spray, or remove any diseased or infested tree on private property upon the written request of the property owner or a lessee, agent, occupant, or other person in possession or control of the property if such person agrees in writing to pay for the costs of such service.

6-6-3 City Manager Will Supervise Planting.

The city manager will supervise reforestation; regulate the preservation, culture, and planting of plants on city property; prune, spray, cultivate and otherwise maintain such plants; prune or direct the time and method of pruning such plants; and take such measures as the manager deems necessary to prevent, control, and exterminate weeds, insects, and other pests and plant diseases.

6-6-4 Planting In Public Areas.

(a) No person shall plant in or remove from any city property any plant or tree without first obtaining written permission from the city manager to do so.

(b) No person shall plant in or remove from any public right-of-way or public easement any plant or tree without complying with the requirements set forth in chapter 8-5, "Work In The Public Right-Of-Way And Public Easements," B.R.C. 1981.

(c) The planting, maintaining, relocating or removing of any tree or plant located within any public right-of-way or public easement shall conform with the standards in the City of Boulder *Design And Construction Standards*.

(d) A property owner may plant trees along the streets of the city, fronting on such person's property, if the person plants the trees of the species, in the places, and in the manner set forth in the City of Boulder *Design And Construction Standards* or as designated by the city manager, between the gutter line and the property line.

6-6-5 Spraying And Pruning.

(a) No person except the city manager shall spray, mulch, fertilize, or otherwise treat, remove, destroy, break, cut, or prune any living plant or any part thereof growing on city property without first having obtained permission from the manager.

(b) No person authorized by the city manager to cut or prune a plant on city property shall do so except in the manner prescribed by the manager.

6-6-6 Protection Of Trees And Plants.

(a) No person shall remove, damage, or destroy any tree or plant growing within or upon any city-owned or controlled property, except for public rights-of-way, without first having obtained written permission from the city manager.

(b) No person shall remove, damage, or destroy any tree or plant growing within or upon any public right-of-way without first having obtained a permit pursuant to chapter 8-5, "Work In The Public Right-Of-Way And Public Easements," B.R.C. 1981.

(c) No person shall attach to or install on any tree or plant growing within or upon any city-owned or controlled property, including public rights-of-way, without first having obtained approval from the city manager, any metal material, sign, cable, wire, nail, swing, or other material foreign to the natural structure of the tree, except materials used for standard tree care or maintenance, such as bracing and cabling, installed by tree professionals.

(d) No person shall attach any electric insulator or any device for holding electric wires to any tree or plant growing or planted upon any city property. No person owning any wire charged with electricity running through public property shall fail to fasten such wire securely to a post or other structure so that it will not contact any plant. If the city manager determines it is necessary to prune or cut down any plant growing on city property in the city across which electric wires run, no person owning such wires shall fail to remove any such wire or to discontinue electric service within twenty-four hours after being notified by the manager of the scheduled pruning or cutting of the trees.

(e) No person owning or operating a gas pipe or main within a radius of forty feet of any tree or plant shall fail to repair the same immediately if a leak occurs and stop such leak in order to protect the plant and the public health, safety, and welfare.

(f) No person shall perform any work or construction within or upon any city-owned property, public right-of-way or public easement without providing tree protection in conformance with the City of Boulder *Design And Construction Standards.*

6-6-7 Mitigation Of Trees Or Plants Removed Or Destroyed.

No person shall remove or destroy any tree or plant in the public right-of-way without first having a plan approved by the city manager for the mitigation of the loss of such tree or plant. The removed or destroyed tree or plant shall be replaced in an amount equivalent to the value, as determined by the city manager, of the tree, shrub, or plant that existed prior to loss, by:

(a) Planting or transplanting an approved tree or plant of the same species and size as previously existed in a location approved by the city manager;

(b) Planting one or more approved trees or plants where the combined value equals or exceeds that which previously existed in terms of species, condition, and size, in a location approved by the city manager; or

(c) Reimbursement of the city for the value of the tree or plant removed or destroyed subject to a determination by the city manager that the trees or plants lost could not be adequately replaced at or near the location where the loss occurred.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 7 Hazardous Material Transportation[1]

Section:

6-7-1 Legislative Intent.

(a) It is the intent of the city council in enacting this chapter to regulate the transportation of hazardous material and hazardous waste in the city in order to preserve the health, safety, and welfare of its inhabitants. The city council finds that there are federal and state laws that regulate hazardous material transportation and that those laws do not exclude local government regulation when such local regulation is not inconsistent therewith[2]. The city council further finds that the provisions of this chapter address the city's local concerns, including, without limitation, the establishment of appropriate transportation routes in the city and the implementation of effective enforcement. The city council finds that the provisions of this chapter are not inconsistent with federal and state law.

(b) The city council finds that the routes designated in this chapter minimize the risk of transportation of hazardous material and hazardous waste in the city, provide for reasonable accessibility to places of pickup and delivery, provide routes that are continuous with the commonly used commercial routes outside the city, do not produce a discontinuity of routes between jurisdictions, do not prevent through traffic and do not result in unnecessary delay in the transportation of hazardous material or hazardous waste.

(c) The city council finds that existing federal laws contain extensive standards for the safe transportation of hazardous material and hazardous waste, and the city council intends in this chapter to adopt those standards as the requirements for the transportation of such material in the city. The city council finds that such adoption will decrease the extreme risk to public health and safety posed by the transportation of hazardous material and hazardous waste in the city and promote more effective enforcement by creating such a capability at the local level.

6-7-2 Definitions.

The following terms are defined as follows:

"CFR" means the United States Code of Federal Regulations.

[1]Adopted by Ordinance No. 4967.
[2]See, e.g., 49 U.S.C. subsection 1811(a).

"DOT" means the United States Department of Transportation.

"Hazardous material" means any material that is a hazardous material for purposes of the federal Hazardous Materials Transportation Act, 49 U.S.C. sections 1801 through 1812 and regulations promulgated thereunder that is transported in the city.

"Hazardous waste" means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 CFR part 262 or would be subject to these requirements absent an interim authorization to a state under 40 CFR, part 123, subparagraph F.

Ordinance No. 5039 (1987).

6-7-3 Adoption Of Federal And State Laws And Regulations Affecting Transportation Of Hazardous Material.

The requirements of the federal Hazardous Materials Transportation Act, 49 U.S.C. sections 1801 through 1812, and regulations promulgated thereunder, 49 CFR parts 171 through 179 for transportation of hazardous material or hazardous waste, are hereby adopted by reference as the requirements for transportation of hazardous material and hazardous waste in the city. These regulations also incorporate other federal hazardous material transportation requirements including, without limitation, the Federal Motor Carrier Safety regulations, 49 CFR parts 390 through 397, and Federal Nuclear Regulatory Commission regulations concerning spent nuclear fuel and high-level radioactive waste, 10 CFR parts 71 and 73.

6-7-4 Violations Of Hazardous Material Transportation Chapter.

(a) No person shall fail to transport hazardous material or hazardous waste in the city in conformity with the requirements of section 6-7-3, "Adoption Of Federal And State Laws And Regulations Affecting Transportation Of Hazardous Material," B.R.C. 1981.

6-7-5 Operating Requirements.

(a) No person transporting hazardous material or hazardous waste in the city shall fail to operate the transport vehicle at all times with its headlights illuminated[1].

6-7-6 Inspections.

(a) Peace officers of the city and personnel of the city's fire department may inspect any vehicle transporting hazardous material or hazardous waste in the city to determine whether the vehicle is in compliance with the requirements of this chapter[2].

(b) No person transporting hazardous material in the city shall fail to submit to any inspection conducted under subsection (a) of this section.

Ordinance No. 5039 (1987).

[1]DOT Inconsistency Ruling IR-3, 46 Fed. Reg. 18919, at 18923 (discussion of section 7.1.5).
[2]DOT Inconsistency Ruling IR-8, 49 Fed. Reg. 46637, at 46644 (discussing Rule 9).

6-7-7 **Notification To Emergency Response Authority.**

(a) No person transporting hazardous material or hazardous waste in the city shall fail to notify the city's fire department of any hazardous material incident at the earliest practicable moment after occurrence of the incident. An incident shall be reported if it is one that is required to be reported to DOT under the provisions of 49 CFR section 171.16 including, without limitation, any incident involving the unintentional release of any quantity of any hazardous material or the discharge of hazardous waste[1].

Ordinance No. 5039 (1987).

6-7-8 **Transport Routes Established.**

Repealed.

Ordinance Nos. 5039 (1987); 5071 (1987); 5382 (1991).

6-7-9 **Authority To Impound.**

Peace officers of the city or personnel of the city's fire department are authorized to immobilize, impound, or otherwise direct the disposition of a motor vehicle transporting hazardous material in the city if such person deems that the motor vehicle or the operation thereof is unsafe and when such immobilization, impoundment, or disposition is appropriate under or required by rules and regulations promulgated by the Colorado Public Utilities Commission pursuant to section 40-2.1-103, C.R.S., including, without limitation, when there is any deficiency in the vehicle's steering, brake, lighting, tire, wheel, exhaust, fuel, or suspension system, or cargo-carrying capability, or in case of leakage of a hazardous material or hazardous waste[2].

Ordinance No. 5039 (1987).

6-7-10 **Route Extensions.**

Repealed.

Ordinance No. 5382 (1991).

[1]DOT Inconsistency Ruling IR-3, 46 Fed. Reg. 18918, at 18924 (discussing section 9).
[2]See 40-2.1-105(2), C.R.S.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 8 Nuclear Free Zone[1]

Section:

6-8-1 Legislative Intent.

(a) The city council finds the citizens of the City of Boulder have expressed their strong concern about nuclear weapons work or research within the city by the passage of an initiative in November 1985 directing the city council to enact an ordinance making Boulder a nuclear free zone.

(b) The purpose of this chapter is to prohibit, within the city, the production, storage, processing, or disposal of nuclear weapons or their components, or research or development thereof, since the council finds that such actions are inimical to the public peace, health, safety, welfare, and morals of the people of the city in light of the special needs and conditions of the city.

6-8-2 Definitions.

The following words have the following meanings as used in this chapter unless the context clearly indicates otherwise:

"Component of a nuclear weapon" means any device, radioactive or non-radioactive, designed to be installed in and contribute to the explosive operation of a nuclear weapon, but not a delivery device or any component thereof.

"Nuclear weapon" means any bomb or warhead, the purpose of which is use as a weapon, a weapon prototype, or a weapon test device, the intended detonation of which results from the energy released by fission or fusion reactions involving atomic nuclei.

6-8-3 Prohibition Of Nuclear Weapons.

After December 1, 1986, no person shall knowingly produce, store, process, or dispose of a nuclear weapon or component of a nuclear weapon within the city.

6-8-4 Prohibition Of Nuclear Weapons Facilities And Materials.

After December 1, 1986, no person shall knowingly possess or allow within the city any facility, equipment, or substance used primarily for the production, storage, processing, or disposal of a nuclear weapon or component of a nuclear weapon.

[1]Adopted by Ordinance No. 5002.

6-8-5 **Prohibition Of Nuclear Weapons Research.**

After December 1, 1986, no person shall knowingly engage in research within the city intended for the production, storage, processing, or disposal of a nuclear weapon or component of a nuclear weapon.

6-8-6 **Affirmative Defenses.**

It is an affirmative defense to a charge of violation of this chapter that the person was:

(a) An agency of the United States or the State of Colorado, or an employee thereof acting within the scope of such employment;

(b) Engaged solely in basic research in physics or chemistry; or

(c) Engaged in work otherwise violative of this section which was in progress under a contractual obligation binding on the person or the person's employer as of December 1, 1986, but this defense shall not apply to violations occurring after December 1, 1988.

6-8-7 **Private Right Of Action.**

Any resident of the city may maintain an action for declaratory, injunctive, or any other appropriate equitable relief in the District Court in and for the County of Boulder against a person violating any provision of this chapter. Nothing in this title authorizes the city or any of its employees or agents to be named as a defendant in such litigation.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 9 Air Quality[1]

Section:

6-9-1 Legislative Intent.

(a) It is the intent of the city council to regulate activities contributing to the degradation of the air quality within the city limits in order to preserve the health, safety, and welfare of its inhabitants.

(b) The city council finds that air pollution presents a threat to the health of the inhabitants of the city. As of March 3, 1978, the city was classified as a nonattainment area in carbon monoxide, ozone, and particulates. Federal standards must be met or various federal funding programs may be cut back. It is the intent of the city council to implement requirements that will enable the city to meet federal standards by reducing the total amount of hazardous materials in the atmosphere. The city council finds that there now exist woodstoves which have emissions that are ninety-five percent less than the emissions of conventional devices.

(c) It is the intent of city council to preserve and improve visibility, particularly scenic vistas.

(d) It is the intent of city council to allow low income persons to heat their homes if wood is the primary source of heat for their homes.

(e) City council finds that the burning of solid fuel has been determined to be a cause of air pollution and that regulations concerning the installation of solid fuel burning devices are necessary for the protection of the health, safety, and welfare of its inhabitants.

(f) The city council finds that there are federal and state laws that regulate certain activities that affect the quality of the air, but those laws do not exclude local government regulation, if such local regulation is not inconsistent therewith. The city council further finds that the provisions of this chapter address the city's local concerns, including, without limitation, certain limitations on activities that have an impact on the quality of the air and the implementation of effective enforcement. The city council finds that the provisions of this chapter are not inconsistent with federal and state law.

Ordinance No. 5445 (1992).

6-9-2 Definitions.

(a) The following words and phrases have the following meanings unless the context clearly indicates otherwise:

[1]Adopted by Ordinance No. 5007.

"Barbecue device" means a device that is used solely for the purpose of cooking food.

"Phase II certified device" means a solid fuel burning device which meets the emission standards set forth in subsection II, A, 1, Regulation No. 4, Colorado Air Quality Control Commission, 5 CCR 1001-6, for wood stoves.

"Phase III certified device" means a solid fuel burning device which meets the emission standards set forth in section II, paragraph B of Regulation No. 4, Colorado Air Quality Control Commission, 5 CCR 1001-6, for wood stoves.

"Primary source of heat" means that source of heat which heats more than fifty percent of the space heating load in any building.

"Sole source of heat" means one or more woodstoves which constitute the only source of heating in a building. No woodstove shall be considered to be the sole source of heat if the building is equipped with a permanently installed furnace or heating system utilizing oil, natural gas, electricity, or propane, whether connected or disconnected from its energy source.

"Solid fuel burning device" means a burning device designed for solid fuel combustion so that usable heat is derived for the interior of a building, and includes, without limitation, solid fuel-fired stoves, woodstoves of any nature, fireplaces, pellet stoves, solid fuel-fired cooking stoves, combination fuel furnaces or boilers which burn solid fuel, or any other device used for the burning of solid combustible material. Solid fuel burning devices do not include barbecue devices, natural gas-fired fireplaces, or electrical appliances.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined by this chapter.

Ordinance No. 5445 (1992).

6-9-3 No-Burn Days.

(a) No-burn days shall be in effect on such days as the Colorado Department of Health designates no-burn days for the Denver metropolitan area.

(b) In addition, the city manager may designate no-burn days when monitoring indicates actual or potential violations within the city of air quality standards established by either the United States Environmental Protection Agency ("EPA") or the Colorado Department of Health, or when meteorological conditions warrant such designation.

(c) No person shall use any solid fuel burning device during a no-burn day except as provided in subsection (f) of this section.

(d) No-burn days shall last for a twenty-four-hour period. Such days may be declared to be over at any time during that period. Such days may be renewed at the end of that twenty-four-hour period if violations still exist, or if meteorological conditions are such that it is likely that violations will continue to occur.

(e) At the time of the declaration of a no-burn day, the city manager shall allow three hours for the burndown of existing fires prior to the initiation of enforcement.

(f) It is a specific defense to a charge of burning on a no-burn day that:

(1) The burning occurred in a Phase III certified device or in a solid fuel burning device that meets the same emission standards as are required for a Phase III certified wood stove and is tested by an EPA accredited laboratory; or

(2) The person had obtained a temporary exemption demonstrating both an economic need to burn solid fuel for building space heating purposes and a reliance on a solid fuel burning device as the primary source of heat. The city manager may grant such exemptions according to the following standards:

(A) A person applying for an exemption shall demonstrate economic need by certifying eligibility for energy assistance according to economic guidelines established by the United States Office of Management and Budget under the Low-income Energy Assistance Program (L.E.A.P.), as administered by Boulder County.

(B) A person applying for an exemption must sign a verified affidavit demonstrating reliance on a solid fuel burning device as the primary source of heat.

(C) An exemption obtained under this section shall be effective for one year from the date it is granted; or

(3) A power outage, interruption of natural gas supply, or temporary equipment failure existed at the time and location of the violation that did not result from any action of the person charged with the violation.

Ordinance Nos. 5145 (1988); 5445 (1992).

6-9-4 Solid Fuel Burning Device Installation And Retrofit.

(a) No person shall repair, alter, move, or install a solid fuel burning device without having first obtained a building permit in accordance with title 10, "Structures," B.R.C. 1981.

(b) No person shall replace a solid fuel burning device which is substantially destroyed, demolished, or in need of replacement with another solid fuel burning device, unless the replacement is a Phase III certified device. Solid fuel burning devices lawfully existing and installed as of the date of enactment of this ordinance may be repaired to the extent that such repair, in the reasonable judgment of the city manager, is necessary to prevent the existence of an unsafe condition.

(c) No person shall install a solid fuel burning device in any building unless at the time of installation it meets the most stringent emission standards for that particular type of device established by the Colorado Air Quality Control Commission in effect as of such date. If there are no standards established for that device, then it shall meet the most stringent emission standards in effect as of such date for wood stoves as demonstrated by testing at an EPA accredited laboratory.

Ordinance No. 5445 (1992).

6-9-5 Limit On Coal Burning.

No person shall burn coal in a solid fuel burning device.

Ordinance No. 5445 (1992).

6-9-6 **Non-Owner Occupied Dwelling Units.**

No person shall rent a building if a solid fuel burning device is the sole source of heat. In such a case, the owner, and not the tenant, shall be liable for any penalty imposed.

Ordinance No. 5445 (1992).

6-9-7 **Enforcement.**

(a) Every person convicted of a violation of any provision of this chapter shall pay a fine according to the following schedule:

(1) First conviction, no more than $100.00;

(2) Second conviction, no more than $200.00; and

(3) Third conviction, no more than $300.00.

(b) The date when the actual violation occurred will control regardless of the date of conviction.

(c) The record of the violator for two years prior to the date of the current violation will be considered.

Ordinance No. 5445 (1992).

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 10 Pesticide Use[1]

Section:

6-10-1 Legislative Intent.

(a) It is the intent of the city council in enacting this chapter to prescribe requirements concerning pesticides in order to preserve the health, safety, and welfare of the inhabitants of the city. The council finds that there are federal and state laws that regulate pesticides, but that those laws do not exclude local government regulation not inconsistent therewith. The council finds that this chapter is not inconsistent with federal and state laws, and is not preempted by any such laws. The city council finds that the provisions of this chapter address the city's local and municipal concerns of storage, disposal, spill, water and sewer system, landlord-tenant, employee notification, trespass, and nuisance concerns not addressed by federal and state law.

(b) The city council finds that the unique wind conditions in the city cause drift to occur during airborne applications of pesticides and that absent pre-application notification, airborne applications of pesticides constitute a nuisance. It is the intent of the city council in enacting this chapter to prescribe requirements concerning the notification of the public of the outdoor use of pesticides. The city council finds that this objective is not inconsistent with federal and state laws, and is not preempted by any such laws. The city council further finds that notification of outdoor pesticide use is a matter of local and municipal concern.

Ordinance No. 5266 (1990).

6-10-2 Definitions.

(a) As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

"Airborne application" means the application of pesticides by misting or spraying plant materials greater than five feet in height, or by use of a fogger.

[1]Adopted by Ordinance No. 5083. Amended by Ordinance Nos. 5084, 5129, 5187. Readopted by Ordinance No. 5250.

6-10-2

"Anti-siphon device" means any device that prevents pesticides from flowing back into the city's water system.

"Commercial applicator" means a person which owns or manages any business activity in which pesticides are applied upon the lands of another for hire or which receives, directly or indirectly, any compensation for such activity. This definition does not include maintenance personnel hired by commercial establishments, if such personnel have a variety of maintenance duties.

"Commercial property" means property owned or leased by a business, industry, church, school, or government on which goods or services are provided to the public.

"Contracting party" means a person which hires a commercial applicator or other person to apply pesticides.

"Defoliant" means any substance or mixture of substances intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

"Desiccant" means any substance or mixture of substances intended to accelerate artificially the drying of plant tissues.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. section 136 et seq., as amended.

"Fogger" means a piece of equipment that breaks some pesticides into very fine droplets (aerosols or smokes) and blows or drifts the fog onto the target area.

"Mist blower" means spray equipment in which hydraulic atomization of the liquid at the nozzle is aided by an air blast past the source of spray.

"Misting" means the production of a cloud-like mass or layer of minute globules of pesticide in the air through use of a mist blower or similar device.

"Pest" means any insect, snail, slug, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other microorganism which is declared by the Colorado State Department of Agriculture to be a pest or which is considered a pest under FIFRA, except those on or in the human body or on or in other living animals.

"Pesticide" means any substance or mixture of substances intended for destroying or repelling any pest. This includes, without limitation, fungicides, insecticides, nematocides, herbicides, and rodenticides and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The following products are not pesticides:

(1) Deodorizers, bleaching agents, disinfectants, and cleaning agents for which no pesticidal claims are made in the sale, or distribution thereof; and

(2) Fertilizers and plant nutrients.

"Pesticide Act" means the Colorado Pesticide Act, section 35-9-101 et seq., C.R.S., as amended.

"Pesticide Applicators' Act" means the Colorado Pesticide Applicator's Act, 35-10-101 et seq., C.R.S., as amended.

"Pesticide regulations" means 40 C.F.R. section 162 et seq., and 8 C.C.R. section 1203-2.

"Plant regulator" means any substance or mixture of substances intended to accelerate or retard, through physiological action, the rate of growth or maturation or otherwise to alter the behavior of plants or their produce, but does not include a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.

"Spill" means the introduction of any pesticide into the environment in a manner other than that prescribed by the label.

"Spray" means a mixture of a pesticide with water or other liquid applied in fine droplets.

"User of pesticides" means any person which applies or causes the emission of a pesticide into the environment, whether by spraying, misting, fogging, dusting, dragging, or other means. Users of pesticides include, without limitation, commercial applicators, contracting parties, property owners, and governmental entities.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined by this chapter.

6-10-3 **Licensing Of Commercial Applicators.**

No commercial applicator shall engage in the use or application of pesticides without a valid current state license as required by the Pesticide Applicators' Act and the regulations promulgated thereunder.

6-10-4 **Maintenance Of Records.**

(a) Each commercial applicator shall maintain a record of information concerning each pesticide application. The record shall be consistent with state record keeping requirements, as set forth in section 35-10-111, C.R.S., as amended.

(b) Immediately following any pesticide application, each commercial applicator shall provide a full copy of the record set forth in subsection (a) of this section to the contracting party.

Ordinance No. 5266 (1990).

6-10-5 **Reports Of Spills.**

No user of pesticides which spills a pesticide or applies a pesticide in violation of any state or city law or regulation shall fail to report such event to the city manager immediately. In addition, no such person shall fail to notify all property owners and tenants who are or may be directly affected by the spill or improper application by making an immediate reasonable attempt at personal or written notification of all such property owners and tenants.

Ordinance No. 5266 (1990).

6-10-6 **Storage, Disposal, And Use.**

(a) No person shall transport, store, dispose of, or use any pesticide or pesticide container in such a manner as to cause injury to human beings, vegetation, crops, livestock, wildlife, or other animals or so as to contaminate any surface water or groundwater.

(b) No person shall fail to comply with the safety precautions recommended by the manufacturer of the pesticides in using, storing, or disposing of a pesticide container.

(c) No person shall use city water to fill any tank or for any other purpose except for application in accordance with subsection (d) of this section, without keeping a six-inch space between any connection to the city water supply and any pesticide.

(d) No person shall fail to use an anti-siphon device for any pesticide application method which connects to the city water system.

(e) No person shall flush, dump, or dispose of any pesticide into any city sanitary sewer, storm sewer, ditch, lake, or any other area that may flow into such a sewer, ditch, or lake. No person shall fail to dispose of pesticides pursuant to any applicable state statutes and regulations.

Ordinance No. 5266 (1990).

6-10-7 **Notification To Tenants And Employees Of Indoor Application.**

(a) Unless all affected tenants agree that an emergency exists and consent in writing to a shorter period, no property owner or contracting party shall fail to provide written notification to tenants not less than forty-eight hours and not more than seven days before the application of a pesticide to rental residential property owned by such property owner or contracted for by such contracting party or any common area associated with such property. Such notice may be accomplished by mail, by personal delivery, by doorknob hangers or by putting notices under doors. Such notice shall contain, at a minimum, the proposed date and time when the application is to occur, the dwelling or rooming unit number where the application is to occur, the pesticide to be used, and the names and telephone numbers of the property owner or manager and the applicator. All tenants of each dwelling unit in which pesticides are to be applied must be given written notice. For applications to common areas, it is sufficient to post a notice at a common point of entry to that area.

(b) Except for manufacturing businesses regulated under the Occupational Safety and Health Hazard Communication Standard, 29 C.F.R. section 1910, as amended, in SIC codes 20-39, no employer or contracting party which causes pesticides to be applied shall fail to provide reasonable notification of such application sufficient to allow an opportunity to avoid exposure to all persons having their principal place of employment at a work site prior to any pesticide application to any part of the work site where such employee would, upon reasonable inquiry, be expected to work within twenty-four hours following the pesticide application.

(c) Subsections (a) and (b) of this section apply only to indoor applications of pesticides.

Ordinance No. 5358 (1991)[1].

6-10-8 **Enforcement.**

(a) For the purpose of carrying out the provisions of this chapter, the city manager or the manager's designee may enter upon any public or private land in a reasonable and lawful manner during reasonable business hours for the purposes of inspection and observation.

(b) If denied access to any land or building, the city manager may apply to the municipal court for a search warrant or other appropriate court order.

[1]Ordinance No. 5358, effective 1-15-1991.

6-10-9 Federal And State Statutes And Regulations.

Repealed.

6-10-10 Emergency Suspension.

The city manager or the manager's designee may suspend any portion of this chapter in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or to the city's environment.

6-10-11 Pre-Application Notification Of Airborne Application.

(a) Prior to airborne application of any pesticide, no contracting party or other user of pesticides, shall fail to give notice to all occupants of all adjacent properties. For purposes of this section, properties located diagonally from the affected property and touching only on a property corner or other point shall be considered to be adjacent, and rights-of-way shall be disregarded in such determinations.

(b) The notice shall be given at least twenty-four hours prior to application.

(c) The notice shall be valid for seven days after it is given.

(d) The notice may be given by posting signs on the property to be treated or by giving verbal or written notice.

(e) The notice shall contain at a minimum the following information:

(1) Date notice given;

(2) Indication that pesticides will be applied and the approximate date of application;

(3) The name and telephone number of the contracting party or other user of pesticides; and

(4) Date notice expires.

(f) If notice is given by posting signs on the property to be treated, such signs shall conform to the following criteria:

(1) There shall be a minimum of one water-resistant sign along the principal street frontage of the property.

(2) Signs shall be placed so that the warning is conspicuous from the public right-of-way. All required information shall be on one face of the sign.

(3) For property surrounding commercial buildings or attached dwelling units, signs shall be posted at common access points.

(4) For city park or open space property, signs shall be posted at each trailhead, street access, or sidewalk entry point, and any additional common access points.

(5) Signs shall be a minimum of one foot by one foot in area, and a maximum of two square feet in area per face.

(6) Signs shall be placed at a maximum height of six feet.

(7) There shall be no greater size of letters for identification of the applicator than for any other information on the sign.

(8) Signs shall be dark lettering on a bright yellow background.

(g) If a commercial property or an attached (i.e., multi-family) residential dwelling is located adjacent to property on which an airborne application of any pesticide is to occur as set forth above, no contracting party or other user of pesticides shall fail to make a reasonable attempt to notify the owner or manager of the property at least forty-eight hours prior to the pesticide application. Upon receipt of such notice, such owner or manager shall not fail to post in a prominent place the information that the adjacent property will be treated.

Ordinance No. 5358 (1991).

6-10-12 **Post-Application Notification Of Outdoor Application.**

(a) No contracting party or other user of pesticides which applies pesticides outdoors shall fail to display at least one warning sign for at least twenty-four hours following each pesticide application, or longer if suggested or required by the manufacturer's label. All signs shall be posted at the time of the pesticide application.

(b) Signs shall conform to the following criteria:

(1) Signs shall include the following statement: "WARNING, PESTICIDES APPLIED. Name: _____ Phone:_____. Remove sign after 24 hours, or per label requirements."

(2) The name and telephone number shall be either the contracting party or other user of pesticides.

(3) Signs shall be at a minimum of four inches by five inches in area per face, and a maximum of two square feet in area per face.

(c) Signs shall comply with all other criteria set forth in subsection 6-10-11(f), B.R.C. 1981, except subparagraph 6-10-11(f)(5), B.R.C. 1981.

Ordinance Nos. 5358 (1991); 5393 (1991).

6-10-13 Exceptions.

No notice of outdoor application is required pursuant to section 6-10-12, "Post-Application Notification Of Outdoor Application," B.R.C. 1981, under the following circumstances:

(a) Individual spraying of weeds if the spraying distance is less than three feet; and

(b) Spot treatment of areas that are less than a total area of one hundred square feet on a lot.

6-10-14 Post-Application Notification Of Lake Application.

(a) In addition to the notice required pursuant to section 6-10-11, "Pre-Application Notification Of Airborne Application," B.R.C. 1981, no contracting party or other user of pesticides which applies pesticides to a lake or other open body of water shall fail to post the shoreline of that body of water with a warning sign. Such signs shall be placed every three hundred feet for the period of time during which the manufacturer's label warns against reentering the lake or using its water, but under no circumstances shall such time be less than twenty-four hours.

(b) Signs shall include at a minimum the following information:

(1) The statement: "THIS LAKE TREATED WITH PESTICIDES. STAY OUT. Name: _____ ___ Phone: _____. Remove sign after 24 hours, or per label requirements."

(2) The name and telephone number shall be either the contracting party or other user of pesticides.

(3) Signs shall be a minimum of four inches by five inches in area per face, and a maximum of two square feet in area per face.

(c) Signs shall comply with all other criteria set forth in subsection 6-10-11(f), B.R.C. 1981, except subparagraph 6-10-11(f)(5), B.R.C. 1981.

(d) The requirements of this section shall not apply to commercial applicators, unless they voluntarily assume such duty on behalf of the contracting party.

6-11-1

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 11 Ozone-Depleting Compounds[1]

Section:

6-11-1 Legislative Intent.

(a) It is the intent of the city council in enacting this chapter to prohibit the manufacture, sale and distribution of certain products made of or with an ozone-depleting compound; to reduce significantly the release of such compounds into the earth's atmosphere; and to prescribe requirements concerning use of such products in order to preserve the health, safety, and welfare of the inhabitants of the city.

(b) The Montreal Protocol on Substances That Deplete the Ozone Layer (an international pact) which was revised June 29, 1990, calls for an end to chlorofluorocarbon and halon production by the year 2000.

(c) The city council finds that available scientific evidence indicates that chlorofluorocarbons, halons, and certain other compounds, when discharged into the atmosphere, deplete the earth's protective ozone layer, allowing increased amounts of ultraviolet radiation to penetrate the earth's atmosphere, thereby posing a long-term danger to human health, life, and the environment by increasing such harms as skin cancers, cataracts, suppression of the immune system, damage to crops and to aquatic life, and related harms.

(d) The city council finds that the release of halons in testing fire extinguishing systems is a significant source of the release of halons into the earth's atmosphere.

(e) The city council finds that in light of the current and future limitations on the production of chlorofluorocarbons both nationally and internationally, the development and utilization of environmentally safe alternatives to chlorofluorocarbons at this time will create a competitive advantage to those businesses electing to utilize such alternatives prior to the effective date of any comprehensive international, federal, or state regulation banning the use of chlorofluorocarbons and halons.

(f) The city council finds that the release of chlorofluorocarbons and halons into the atmosphere is a global danger to the environment. Any reduction in the release of said materials within

[1]Adopted by Ordinance No. 5361, effective July 1, 1991.

the city will not only reduce the global danger, but will also benefit the city by reducing the long-term danger to human health, life, and the environment associated with such releases.

(g) The city council finds that chlorofluorocarbons are widely used in refrigeration and air conditioning systems and that the recapturing and recycling of chlorofluorocarbons from auto air conditioning units could eliminate approximately twenty percent of all chlorofluorocarbons released in the United States.

(h) It is the intent of the city council to encourage the research and development of environmentally safe alternative technologies and products to replace the use of chlorofluorocarbons and halons.

(i) It is the intent of the city council to support the adoption of international, national and state bans on the use of chlorofluorocarbons; however, until such bans have been adopted by the appropriate agencies, responsible action on the part of the city is necessary to reduce chlorofluorocarbon and halon use in order to promote the long-term health, safety and welfare of the general public, and the environment.

6-11-2 **Definitions.**

(a) The following words and phrases have the following meanings unless the context clearly indicates otherwise:

"Approved motor vehicle refrigerant recycling equipment" means equipment models which have been certified by Underwriters Laboratories to meet the Society of Automotive Engineers (SAE) standard for the extraction and reclamation of refrigerant from motor vehicle air conditioners (SAE standard J-1990).

"Food packaging" means any bag, sack, wrapping, container, bowl, plate, tray, carton, cup, glass, straw or lid, but specifically excludes knives, forks and spoons.

"Ozone-depleting compound" means those substances identified by the federal Environmental Protection Agency as contributing to depletion of the stratospheric ozone layer. Those substances currently identified are: CFC-11 (trichloromonofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-113 (trichlorotrifluoroethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), Halon-1211 (bromochlorodifluoromethane), Halon-1301, (bromotrifluoromethane), Halon-2402 (dibromoetrafluoroethane), Methyl chloroform, and Carbon tetrachloride.

"Refrigerant" means CFC-11 (trichloromonofluoromethane), CFC-12 (dichlorodifluoromethane, also known as chlorofluorocarbon-12 or R-12), or any other refrigerant used in motor vehicle air conditioning equipment, refrigerators, air conditioners, or refrigeration systems, which contains an ozone-depleting compound.

"Refrigeration system" means, without limitation, refrigerators, freezers, cold storage warehouse refrigeration systems, chillers, and air conditioners.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined in this chapter.

6-11-3 **Motor Vehicle Air Conditioners.**

(a) No person who owns or operates a facility which installs, services, repairs or disposes of motor vehicle air conditioners shall:

(1) Fail to prevent any service involving the release or recharge of refrigerant on a motor vehicle air conditioner from being performed unless approved motor vehicle refrigerant recycling equipment is used in a proper manner; or

(2) Intentionally vent or negligently release refrigerants from a motor vehicle air conditioner.

(b) No person who owns or operates a facility which accepts motor vehicles for dismantling, scrap metal, or permanent disposal shall:

(1) Fail to prevent a motor vehicle from being dismantled or wrecked unless any air conditioner refrigerant has first been recovered by an approved motor vehicle refrigerant recycling equipment used in a proper manner; or

(2) Intentionally vent or negligently release refrigerants from a motor vehicle air conditioner.

(c) De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in this section.

(d) It shall be unlawful for any person to sell or distribute, or offer for sale or distribution to any person any refrigerant capable of being used to charge motor vehicle air conditioners in a container which contains less than twenty pounds of such refrigerant, except to a person that performs service for consideration on motor vehicle air conditioning systems in compliance with this section.

Ordinance No. 5462 (1992).

6-11-4 **Refrigeration Systems.**

(a) No person who owns, operates, manufactures, installs, services, repairs or disposes of refrigeration systems shall:

(1) Fail to prevent the installation, service, repair or disposal of a refrigeration system which involves the removal or recharge of refrigerant from being performed unless refrigerant reuse or recycling equipment is used in a proper manner; or

(2) Intentionally vent or negligently release refrigerants from a refrigeration system.

(b) No person destroying any ozone-depleting compound shall fail to prevent its release into the atmosphere.

(c) De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in this section.

6-11-5 **Manufacture And Sale Of Products Which Use An Ozone-Depleting Compound As A Propellant Or Energy Source Banned.**

No person shall manufacture or sell any aerosol container that uses an ozone-depleting compound as a propellant or source of energy. This section shall not apply to the manufacture or sale of products used for medical purposes.

6-11-6 Prohibition On The Manufacture, Sale, Distribution Or Installation Of Certain Material For Padding Or Building Insulation.

(a) Effective January 1, 1994, no person shall manufacture, sell, distribute or install any material for padding or building insulation that contains an ozone-depleting compound.

(b) The city manager may prohibit, prior to January 1, 1994, such manufacture, sale, distribution, or installation if a commercially viable chemical substitution for such ozone-depleting compounds is available. The provisions of this section shall not apply to any existing building or structure if such building was issued a building permit on or before December 31, 1993 or the date of the regulations adopted by the city manager, whichever is earlier.

6-11-7 Prohibition On Certain Packaging Materials.

No person shall manufacture, distribute, sell or use any material or product containing an ozone-depleting compound for the purpose of packaging, wrapping or containing edible or non-edible products. This section shall not apply to the package, wrapping or container of any product imported into the City where such packaging, wrapping or containment was applied to the product prior to importation.

6-11-8 Fire Extinguishing Systems Or Units Which Utilize Halon.

(a) No person shall release halon during the training of personnel or in the testing of any fire extinguishing system unless so required by statute, rule or regulation.

(b) No person who owns or operates a facility that repairs, services, or performs maintenance on a fire extinguishing system or unit shall fail to recapture and recycle any halon used as an extinguishing agent in the system or unit.

(c) De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in this section.

6-11-9 Permit Required For Sales Of Certain Fire Extinguishers.

(a) No person shall sell at retail and no person shall purchase at retail a fire extinguisher which contains Halon-1301 or Halon-2402 unless at the time of purchase the purchaser presents a valid permit for the purchase from the city manager. No person shall purchase such fire extinguisher without such a permit.

(b) The city manager shall issue such permits for aviation use, use in protecting electrical equipment, and for other uses where the applicant demonstrates that there is no technically feasible, economically sound and environmentally safe substitute or alternative available.

6-11-10 Maintenance Of Records.

By July 1 of each year, industrial and commercial users of one thousand pounds or more of any combination of ozone-depleting compounds annually shall submit a report to the city manager containing information on emissions of CFCs from their facilities and emission reduction plans for the reduction of CFCs from their facilities from the previous year on forms provided by the city manager.

6-11-11 **Regulations.**

The city manager may from time to time issue regulations for the implementation and enforcement of this ordinance.

6-11-12 **Enforcement.**

(a) For the purpose of carrying out the provisions of this chapter, the city manager may enter upon any public or private land in a reasonable and lawful manner during reasonable business hours for the purposes of inspection and observation.

(b) If denied access to any land or building, the city manager may apply to the municipal court for a criminal search warrant, administrative search warrant, or other appropriate court order.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 12 Trash Hauling[1]

Section:

6-12-1 Legislative Intent.

The city council finds that a significant reduction of the volume of solid waste and a corresponding increase in the volume of recyclable materials generated by citizens and businesses in the city would benefit the public welfare by reducing the consumption of important, non-renewable natural resources, as well as the amount of land required for disposal of solid waste in landfills, thereby helping to extend the longevity of these valuable non-renewable natural resources and to allow land to be used for purposes other than the disposal of solid wastes. The intent of the city council in enacting this chapter is to decrease the amount of solid waste and increase waste reduction and recycling practices by the citizens of and businesses located in the city.

6-12-2 Definitions.

The following terms used in this chapter have the following meanings, unless the context clearly indicates otherwise.

"Compostable materials" means materials from any residential or commercial source that have been completely segregated from garbage by the generator for the purpose of such materials being composted or otherwise processed through natural degradation into soil amendment, fertilizer or mulch.

"Garbage" means "trash" as defined in section 6-3-2, "Definitions," B.R.C. 1981, excluding recyclable materials and compostable materials which have been separated for collection.

"Hauler" means any person in the business of collecting, transporting or disposing of garbage for another, for a fee, or for no fee in the city.

"Multi-family customer" means the occupants, taken together, of a residential building or set of residential buildings that uses a collective, common system for the collection of garbage generated by the occupants.

"Periodic garbage collection" means the regular collection of garbage from single-unit or multi-unit dwellings, on a schedule of not less than once every calendar month.

"Recyclable materials" means any materials that are designated by the city manager by regulation which may include newspaper, magazines, sorted mail and office paper, cardboard, paper-

[1]Enacted by Ordinance No. 7078.

board, telephone books, loose paper, glass containers, plastic containers, steel cans, aluminum cans and scraps, reusable clothing and household items, or anything else discarded from a residential or commercial source that have been completely segregated from garbage for the purpose of diverting such materials from landfills.

"Recyclables processing center" means a facility that sorts, packages, and otherwise prepares recyclable materials for sale.

"Residential customer" means every occupant of a residential building or set of residential buildings who receives periodic garbage collection service, and who does not use a collective, common system for the collection of garbage generated by the occupants.

Ordinance No. 7172 (2001).

6-12-3 **Exemptions.**

(a) The following persons are exempt from the provisions of this chapter:

(1) Any person that transports only the garbage which that person generates.

(2) A charitable organization that sporadically and infrequently collects, transports and markets recyclable materials solely for the purpose of raising funds for its charitable activities.

(3) A property owner or agent thereof who transports garbage, recyclable materials, or compostable materials left upon such owner's property, so long as such property owner does not provide such collection service for compensation for tenants on a regular or continuing basis.

(4) Landscaping contractors which produce and transport trash as defined in section 6-3-2, "Definitions," B.R.C. 1981, recyclable or compostable materials in the course of such occupations that is merely incidental to the particular landscaping work being performed by such contractors.

(5) Any person who transports only liquid wastes including, without limitation, sewage, sewage sludge, septic tank or cesspool pumpings, discarded or abandoned vehicles or parts thereof, discarded home or industrial appliances, materials used as fertilizers or for other productive purposes, household hazardous wastes, and hazardous materials as defined in the rules and regulations adopted by the United States Hazardous Materials Transportation Act, 49 U.S.C. section 5101 et seq.

(b) The provisions of this chapter shall not apply to the collection of garbage or recyclable materials by a hauler pursuant to a written contract in existence as of August 15, 2000, until such time as the then-existing term of such contract expires or is otherwise terminated.

Ordinance No. 7172 (2001).

6-12-4 **Hauler Requirements.**

(a) Each hauler shall submit an annual report to the city manager of the weight in tons of garbage, recyclable materials and compostable materials collected by commodity and transported within the limits of the city. For loads that contain garbage or recyclable materials originating in part from within the limits of the city, and in part from outside the limits of the city, the reported quantity may be estimated by the hauler, and reported as an

estimate. Reports shall be submitted for each year by January 31 of the succeeding year using a form or forms provided by the city manager. All such reports shall be treated as confidential commercial documents under the provisions of the Colorado Open Records Act, section 24-72-201 et seq., C.R.S.

(b) Each hauler that provides periodic garbage collection shall also provide to each residential customer and multi-family customer, at no additional charge, the collection of all of that customer's recyclable materials, either separated by material or commingled according to the hauler's directive. The collection of recyclable materials shall be provided no less frequently than every other week.

(c) Each hauler shall provide to each residential customer a base unit of periodic garbage collection of a maximum of thirty-two gallons of garbage and a minimum of thirty-two gallons of recyclable materials for each collection period. Each hauler may charge any amount for this base unit of service. Each hauler may additionally charge a flat periodic fee for the purposes of covering the combined fixed operational costs of collecting garbage and recyclable materials from a residential customer. This flat periodic fee may not exceed the charge for the base unit of service and shall be itemized separately on the billing statements of their customers. No hauler may charge less than a prorated portion of the unit charge for each additional and equal volume of garbage that may be collected from a customer during one or more collection periods. As provided in subsection (b) of this section, each additional level of recyclable materials collection service must be collected at no additional charge.

(d) Each hauler shall provide to all multi-family customers, collection service of all their recyclable materials at no additional charge beyond that agreed for garbage collection service. Recycling collection may be provided to multi-family residents either at their street curbs or at a common area.

(e) Nothing in this section shall be construed as prohibiting any hauler from also establishing rules regarding the safe maximum weight of containers as well as pricing for special collection of bulky items, or of bulky or non-containerized loose items, or of individual bags of garbage.

6-12-5 **Containers For Recycling Collection.**

The city has furnished residents with some recycling containers, for both single-family and multi-family recycling collection. It is not the city's intent to remove any recycling containers from residents, nor to continue to provide these containers over time. Haulers shall repair or replace any existing containers used by their residential customers or multi-family customers for recycling. At any time a hauler begins to offer recycling collection service that requires residential customers or multi-family customers to put their recyclable materials in new and different containers, the hauler shall deliver the new containers to these customers' houses. The city will furnish all trash haulers doing business in the city as of the effective date of this chapter with contact information, number of households in each multi-family complex, and current on-site contact for all the multi-family customers currently receiving recycling services through the city's *Recycle Boulder* program.

6-12-6 **Disposition Of Recyclable Materials.**

(a) No person other than the person placing the recyclable materials for collection or that person's hauler shall take physical possession of any recyclable materials separated from garbage, set out in the vicinity of the curb, and plainly marked for recyclable material collection.

(b) Each residential customer or multi-family customer may relinquish recyclable materials to a hauler only on the condition that the hauler haul the recyclable materials only to a recyclables processing center designated by the customer. Each hauler shall haul all the customer's recyclable materials only to the recyclables processing center designated by the hauler's customer.

(c) In the absence of an express written designation to the contrary initiated by the customer, it shall be presumed that each residential customer or multi-family customer in the city has designated recyclable materials to be hauled to the recyclables processing center owned by the Boulder County Recycling and Composting Authority or its successor-in-interest. However, each customer may designate another recyclables processing center by notifying the hauler of that designation in writing. This written notification must be given at the initiative of the customer, not the hauler, and may not be written on a form furnished by the hauler.

6-12-7 **Educational Materials.**

The city will furnish to each hauler an educational brochure explaining the changes to the city's recycling programs, to be distributed by the haulers to all their residential customers on or before the effective date of this chapter. In addition, the city will, no more frequently than twice each calendar year, produce an educational flyer about recycling and waste reduction opportunities in the city. Haulers shall distribute this flyer, not to exceed one sheet of paper in length, to all their residential customers and multi-family customers, at no charge to the city. The city will consult with the haulers about the flyer prior to printing them.

6-12-8 **Audits, Enforcement And Penalties.**

(a) Each hauler shall make its records available for audit by the city manager at its principal place of business if it is located in the Denver-Boulder metropolitan area, or, if it is located elsewhere, at another place of business within the Denver metropolitan area during regular business hours when requested in order for the city to verify hauler compliance with the provisions of this chapter. Among other records, each hauler shall make available for review all customer invoices and similar documents reflecting actual pricing to customers. All such information shall be treated as confidential commercial documents under the provisions of the Colorado Open Records Act, section 24-72-201 et seq., C.R.S.

(b) No person shall violate or permit to be violated any of the requirements of this chapter.

(c) In addition to any other remedies prescribed by this chapter or by this code or other ordinance of the city, the city attorney, acting on behalf of the city council, may maintain an action for an injunction to restrain or correct any violation of this chapter.

6-12-9 **Authority To Issue Regulations.**

The city manager is authorized to adopt rules and regulations necessary in order to interpret or implement the provisions of this chapter.

TITLE 6 HEALTH, SAFETY, AND SANITATION

Chapter 13 Voice And Sight Control Evidence Tags[1]

Section:

6-13-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and general welfare by establishing a requirement and process for dog guardians to obtain a Voice and Sight Control Evidence Tag that permits the dog to accompany the guardian without a leash held by a person on certain open space and mountain parks lands. Voice and Sight Control Evidence Tags are intended to assure the public that the dog is capable of being adequately controlled by voice and sight commands without a leash held by a person.

6-13-2 Voice And Sight Control Evidence Tag Required.

(a) In addition to and in conjunction with the requirements of section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981, any dog guardian who desires to accompany a dog without a leash held by a person shall apply for and obtain a Voice and Sight Control Evidence Tag pursuant to the procedures and requirements established by this chapter.

(b) Any dog guardian who accompanies a dog without a leash held by a person shall cause such dog to wear and visibly display a lawfully obtained and displayed Voice and Sight Control Evidence Tag at all times when the dog is present on open space and mountain parks lands where voice and sight control is permitted under section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981.

(c) The city manager may promulgate guidelines, forms, or informational materials that are necessary or desirable to assist with implementation of this chapter or its legislative intent.

(d) The maximum penalty for a first conviction is a fine of $50.00. For a second conviction within two years, based upon the date of the first violation, the maximum penalty shall be a fine of $100.00. For a third and each subsequent conviction, within two years based upon the date of the first violation, the maximum penalty shall be a fine of not less than $200.00.

6-13-3 Voice And Sight Control Evidence Tag Application.

The applicant for a Voice and Sight Control Evidence Tag shall apply on forms furnished by the city manager and pay the fee, if any, prescribed by section 4-20-60, "Voice And Sight Control Evidence Tag Fees," B.R.C. 1981.

[1]Adopted by Ordinance No. 7443.

6-13-4 Voice And Sight Control Evidence Tag Requirements.

(a) Before a Voice and Sight Control Evidence Tag shall be issued, the applicant shall certify, under penalty of perjury, the following facts:

(1) The applicant has watched (or listened to if visually impaired) a video presentation on voice and sight control of a dog, prepared by the city and provided to the applicant by the city or its designated agents; and

(2) The applicant agrees to control any dog accompanying the applicant without a leash held by a person on certain open space and mountain parks lands in the manner described in the video presentation on voice and sight control of a dog.

6-13-5 Revocation And Reinstatement Of Voice And Sight Control Evidence Tags Upon Violations.

(a) Upon a third conviction for violation of section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981, occurring on land owned by the city and constituting park land or open space land within two years of the date of the first violation, the right to display any Voice and Sight Control Evidence Tag shall be revoked automatically, but may be reinstated through the following procedures:

(1) Payment of a supplemental fee established in subsection 4-20-60(b), B.R.C. 1981, in addition to the fees established by section 6-13-3, "Voice And Sight Control Evidence Tag Application," B.R.C. 1981, and prescribed by subsection 4-20-60(a), B.R.C. 1981, for an initial application (and in addition to any fines imposed under section 6-1-16, "Dogs Running At Large Prohibited," or subsection 6-13-2(d), B.R.C. 1981);

(2) Providing written proof of attendance at a City of Boulder sanctioned and monitored showing of the video presentation on voice and sight control of a dog;

(3) Providing written proof of attendance at and successful completion of a voice and sight control certification course approved by the City of Boulder; and

(4) Certification by the applicant for reinstatement that he or she agrees to control any dog accompanying the guardian without a leash held by a person on certain open space and mountain parks lands in the manner described in the video presentation on voice and sight control of a dog.

TITLE 7

REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING[1]

[1]This footnote comprises ordinance references for all chapters and sections of this title. Adopted by Ordinance No. 4704. Derived from Ordinance Nos. 1662, 1773, 1774, 1776, 2126, 2178, 2331, 2399, 2478, 2750, 2968, 3011, 3021, 3157, 3165, 3166, 3174, 3181, 3182, 3189, 3198, 3213, 3235, 3295, 3347, 3365, 3396, 3436, 3458, 3608, 3628, 3693, 3839, 3873, 3962, 3971, 4041, 4122, 4175, 4288, 4340, 4485.

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 1 Definitions

Section:
7-1-1 Definitions

7-1-1 Definitions.

(a) The following words and phrases used in this title have the following meanings unless the context clearly indicates otherwise:

"Abandoned vehicle" means any vehicle other than a bicycle that is left in one location on public property or on private property without the consent of the owner thereof for a continuous period of more than seventy-two hours.

"Alley" means a street or way within a block set apart for public use, vehicular travel, and local convenience to provide access to the rear or side of abutting lots or buildings.

"Antique vehicle" means a vehicle registered with and licensed as an antique vehicle by the Division of Motor Vehicles of the Colorado State Department of Revenue or the department of motor vehicles of any other state.

"Authorized emergency vehicle" means every vehicle equipped with audible or visual signals meeting the requirements of section 42-4-213, C.R.S., as amended, and operated by a city police officer, city firefighter, or any peace officer, every other vehicle defined as an authorized emergency vehicle by state law, and every bicycle operated by a uniformed peace officer.

"Authorized service vehicle" means such highway or traffic maintenance vehicles as are publicly owned and operated on a highway by or for a governmental agency, the function of which requires the use of service vehicle warning lights as prescribed by state law and such other vehicles having a public service function, including, without limitation, public utility vehicles and tow trucks, as determined by the State Department of Highways under section 42-4-214(5) C.R.S., as amended. Some vehicles may be designated as both an authorized emergency vehicle and an authorized service vehicle.

"Bicycle" means a vehicle propelled solely by human power applied to pedals upon which any person may ride having two tandem wheels or two parallel wheels and one forward wheel, all of which are more than fourteen inches in diameter.

"Bike lane" or "bicycle lane" means that portion of a roadway designated for use by bicycles and distinguished from the portion of the roadway for other vehicular traffic by a paint stripe and other traffic control device. It extends from the stripe to the right-hand edge of the roadway, unless a second stripe delineates a parking lane or lane of vehicular travel adjacent to the right-hand edge of the roadway, in which event the bicycle lane extends from stripe to stripe.

"Bus" means a motor vehicle owned or operated by a public authority and designed for carrying more than ten passengers.

"Bus stop" means an area extending eight feet into the roadway from the curb and extending along the curb between the traffic control signs designating it as such. Where a traffic

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control sign indicates the bus stop but does not indicate its extent, it extends for fifty feet before the sign. Where the curb is indented on a street where parking is prohibited and a traffic control sign indicates a bus stop in the indented area, the bus stop extends along the entire indented area. For the purposes of this paragraph, signs erected at the curb bearing the words Regional Transportation District, or "The Ride," or the letters R.T.D., or "The Hop," or a symbol for a bus are traffic control signs designating a bus stop.

"Center" or "centerline" means a continuous or broken line marked upon the surface of a roadway by paint or otherwise to indicate the portion of the roadway allocated to traffic proceeding in opposite directions, and if the line is not so painted or otherwise marked, it is an imaginary line in the roadway equally distant from each curb. In the event that a street includes two or more separate one-way roadways, centerline means the left curb of each such roadway.

"Child care center" means a facility required to be licensed under the "Child Care Licensing Act," article 26-6, C.R.S.

"Child restraint system" means any device that is designed to protect, hold, or restrain a child in a motor vehicle in such a way as to prevent or minimize injury to the child in the event of a motor vehicle accident and that conforms to all applicable federal motor vehicle safety standards.

"Commercial vehicle" means any self-propelled or towed vehicle bearing an apportioned plate or having a manufacturer's recommended gross vehicle weight of ten thousand one pounds or more, which vehicle is used in commerce on the public highways of this state or is used to transport sixteen or more passengers, including the driver.

"Construction zone" means a portion of a street designated by the city manager or, in the case of state highways, by either the manager or the Colorado Department of Transportation, where maintenance, repair, or construction activities are occurring or will be occurring within four hours. Such designation shall be by an appropriate sign erected or placed in a conspicuous place before the area where the activity is taking place or will be taking place, and shall notify the public that increased penalties for speeding violations are in effect in such zone. The manager or the department shall erect or place a second sign after the zone indicating that the increased penalties for speeding violations are no longer in effect. Such signs may be displayed on any fixed, variable, or movable stand, and may be placed on a moving vehicle if required for the work, which may include, but shall not be limited to, highway painting work.

"Controlled access street" means any street that is a state highway and those portions of any other street, bounded by intersecting streets, that have no established curbcuts.

"Crosswalk" means, where unmarked, that portion of a roadway included within the prolongation or connection of the lateral lines of a sidewalk, sidewalks, or path or paths and, where marked, that portion of a roadway indicated for pedestrian crossing by traffic control markings.

"Curb" or "curb line" means the raised concrete or asphalt edge separating the roadway of a street from the sidewalk, boulevard strip, median strip, path, or other areas, and includes its prolongation across an intersection or junction. Where no curb exists, the edge of that portion of the street improved, designed, or ordinarily used for motor vehicular travel is the curb.

"Driver" means every person who drives or is in actual physical control of the steering, accelerating, or braking controls of a vehicle or the rider of an animal. No person shall be deemed not to be the driver or to drive because a vehicle is out of control except immediately following a collision not proximately caused by a traffic violation of such driver. A person

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dismounted from a bicycle, moped, or motorcycle and pushing it on foot is a pedestrian, not a driver.

"Driving lane" means a lane available for vehicular traffic, but does not include within its meaning a parking lane, a paved shoulder if the vehicle is a motor vehicle, or a restricted lane if the vehicle being driven is not permitted to be driven within that restricted lane.

"Earphones" means any headset, radio, tape player, or other similar device, which is designed to provide the listener with radio programs, music, or other recorded information through a device which covers all or a portion of both ears.

"Electric assisted bicycle" means a bicycle with a battery powered electric motor with a capacity of no more than four hundred watts continuous input power rating which assists the person pedaling and which is not capable of propelling the bicycle and rider at more than twenty miles per hour on level pavement.

"Firefighter" means any person commissioned as such under the provisions of section 2-5-4, "Identification Card For Firefighters," B.R.C. 1981, and any member of another fire department who is acting under the direction of the City of Boulder Fire Department and is identifiable as a firefighter.

"Flagger" means an employee of a public authority, other than a peace officer or firefighter, acting within the scope of such employee's duties. It also means such employees of private enterprises working on or adjacent to a street or on any street construction project under contract with a public authority or by permit who have been trained and appointed for special traffic duty as street or highway flaggers by the city or the state. Such employees are "flaggers" only when reasonably recognizable as such by wearing the badge, insignia, or uniform of their office.

"Holiday" means New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Veterans' Day, Labor Day, Colorado Day, Thanksgiving Day, Christmas Day, and such additional entire days declared as holidays by city ordinance or state or federal statute. Where the holiday observed differs from the day of the historical event commemorated, the day observed is the holiday for the purposes of traffic law enforcement.

"Inoperable motor vehicle" means any motor vehicle or trailer that does not have a current license plate and validation sticker lawfully affixed thereto or that is apparently inoperable due to being wrecked, dismantled, or partially dismantled or having essential parts missing.

"Intersection" means the area embraced within the prolongation or connection of the lateral curblines of two streets that join one another at, or approximately at, right angles or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict, whether or not one such street crosses the other, but the term does not include the junction of any alley with a street. If a street includes two roadways thirty feet or more apart, every crossing of each roadway of such divided street by an intersecting street is a separate intersection. If such intersecting street also includes two roadways thirty feet or more apart, every crossing of such streets is a separate intersection. The farthest applicable points shall be used when measuring.

"Junction" means the intersection of a street with a driveway, alley, parking lot, or any similar established point of entry or exit onto or from a street other than onto or from another street.

"Lane" means the portion of a roadway used for the movement of a single line of vehicles. Unless otherwise indicated by traffic control devices, every undivided roadway on which

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lanes are not marked or on which the only pavement marking is a centerline shall be deemed to be a two-way street with one lane for vehicular travel in each direction separated by the centerline. The marked or unmarked portion of a street on which parking is permitted is not a separate lane for vehicular travel but is a parking lane.

"Mall" means the Downtown Boulder Mall as defined in section 1-2-1, "Definitions," B.R.C. 1981.

"Moped" is synonymous with motorized bicycle and means a vehicle having two or three wheels, equipped with operable pedals and a helper motor, and not licensed or required to be licensed as a motorcycle, motor-driven cycle, motor scooter, or motor-bicycle under the state vehicle licensing laws.

"Motor vehicle" means any self-propelled vehicle other than a moped or motorized wheelchair.

"Motorcycle" means every motor vehicle designed to travel with not more than three wheels in contact with the ground, except a moped or farm tractor.

"Motorized wheelchair" means a self-propelled vehicle similar in size to a wheelchair and designed for and used by a person with a mobility impairment.

"Neighborhood electric vehicle" means a self-propelled, electrically powered motor vehicle that meets the equipment standards for such vehicles of the Uniform Safety Code of 1935, as amended, of the state and is registered as such as may be required by the laws of the state. Such vehicles are motor vehicles and are authorized to operate upon the streets of the city subject to the provisions of this title.

"Owner" means jointly and severally the person who holds the legal title of a vehicle, the person in whose name the vehicle is registered with the state or any other state for licensing purposes, and any person otherwise having lawful use or control or the right to use or control a vehicle for a period of thirty days or more.

"Park" means, when prohibited, the stopping of a vehicle, whether occupied or not, other than very briefly for the purpose of and while actually engaged in loading or unloading passengers while the vehicle is occupied.

"Parking meter" means a timing device that is used for the purpose of collecting a fee for parking in a parking space and regulating the time of parking therein, is activated by the insertion of a coin or token and such other action as the device requires, and indicates how much purchased parking time remains.

"Path" means a way publicly maintained that has been designated for use by bicycles only or by bicycles and pedestrians by a traffic control device or other sign or by regulation and that is separated from the roadway for other vehicular traffic by open space, a curb, or another barrier.

"Pay station" means a device other than a parking meter that is used for the purpose of collection of a fee for parking in a parking space and regulating the time of parking therein, is activated by the insertion of a coin, currency, token, key, or payment card, depending on the type of device, and such other action as the device requires for activation. A pay station differs from a parking meter in that it governs more than two parking spaces, including spaces which are not adjacent to the station, requires the user to indicate the space for which payment is being made or to display a printed receipt from the pay station on the dash of the user's vehicle, and does not necessarily indicate to the user or the public whether or not payment is current for a particular space.

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"Pedestrian" means:

(1) A person afoot or using a wheelchair or motorized wheelchair; or

(2) A person specifically assigned the rights of a pedestrian by any provision of this title.

"Private driveway" means every surface designed for vehicular travel and not owned by a public authority.

"Private sidewalk" means any walk not within a street that is paved or otherwise improved, designed, or ordinarily used for pedestrians.

"Proximate cause" means that which, in natural and continuous sequence, unbroken by an efficient, intervening cause, produced the result complained of and without which the result would not have occurred[1].

"Public authority" means the City of Boulder, State of Colorado, or the United States, any of their agencies or instrumentalities, and any body or official thereof possessing power or authority delegated by the public authority.

"Railroad grade crossing" means the intersection of a street and the tracks of a railroad.

"Railroad sign or signal" means any sign, signal, or device erected by a public authority or by any railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

"Right-of-way" means the right of one user of a street to proceed unimpeded in a lawful manner in preference to another person who is approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other. A speed no more than ten miles per hour in excess of the speed limit prescribed by section 7-4-58, "Speeding," B.R.C. 1981, does not cause a forfeiture of the right-of-way, and all persons are presumed to be driving at no more than such a speed until the contrary is established by a preponderance of credible evidence.

"Roadway" means that portion of a street from curb to curb. If a street includes two or more separate roadways, "roadway" refers to any such roadway separately, but not to all such roadways collectively.

"Rotary traffic island" means a median island located in the center portion of an intersection.

"Safe," "safely" and "in safety" mean:

(1) Without hazard to person or property;

(2) Without in any way interfering with, impeding, hindering, obstructing, or taking the right-of-way from any other vehicle or pedestrian;

(3) In an attentive, careful, and prudent manner; and

(4) At a speed such that recovery from errors in judgment is possible.

"Safety belt" means a system utilizing a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, which system conformed to federal motor vehicle safety standards at the time of its installation.

[1]Stout v. Denver Park & Amusement Co., 87 Colo. 294, 287 P. 650 (1930).

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"School bus" means every motor vehicle operated for the transportation of children to or from school and owned by a public authority or privately owned and operated for compensation. The term "compensation" does not include informal or intermittent arrangements, such as sharing of actual gasoline expense or participation in a carpool.

"School zone" means any portion of a street designated by an official traffic control device as a school zone, during the time when a lower speed limit for that zone is in effect as indicated on or by such device, or during any other time indicated by a traffic control device as a time for increased vigilance in such zone, and, for the purposes of increased penalties, if the sign also indicates that penalties will be doubled.

"Seating position" means any motor vehicle interior space intended by the motor vehicle manufacturer to provide seating accommodation while the motor vehicle is in motion.

"Sidewalk" means that portion of the sidewalk areas paved or otherwise improved, designed, or ordinarily used for pedestrians and every such walk parallel and adjacent to a roadway, and every other paved exterior walkway publicly maintained.

"Sidewalk area" means the area between the curb of a street and the adjacent property lines.

"State highway" means a street designated as part of the state highway system under the provisions of section 43-2-134, C.R.S., as amended. Designation of the street as a state highway on any map published by the state or the city or marked as such by signs is prima facie evidence of such designation.

"State traffic control manual" means the most recent edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways,* including any supplement thereto, as adopted by the Colorado State Highway Commission.

"Stop" means, when required, complete cessation from movement. When prohibited, the term means any halting, even momentarily, of a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, firefighter, or any other person authorized under this title to control traffic, or any traffic control device.

"Street" means the entire width between the property boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and includes, without limitation, alleys, or the entire width of every way declared to be a public highway by any law.

"Sunrise" and "sunset" mean the time given at latitude 40 degrees north for the day of the year in the current *Nautical Almanac*, plus one hour during daylight saving time.

"Time" means, whenever certain hours are named herein or on any traffic control sign or parking meter, mountain standard time or mountain daylight time, depending on the date, as prescribed by state law. Mountain standard time is coordinated universal time minus seven hours. Mountain daylight time is coordinated universal time minus six hours.

"Towing carrier" means a person regularly engaged in the business of towing motor vehicles and licensed by the Colorado Public Utilities Commission.

"Traffic" means pedestrians, ridden or herded animals, and vehicles, either singly or together, while using any street for purposes of travel.

"Traffic circle" means an intersection containing a rotary traffic island, and includes that portion of the intersection open and available for counterclockwise vehicular traffic flow around the central island.

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"Traffic control device" means any traffic control sign, signal, marking, or device, not inconsistent with this title, placed or displayed by authority of the traffic engineer or of any public official or public body having authority over a street, drive, way, or parking area for the purpose of regulating, warning, or guiding traffic or the parking of vehicles. Where this title does not prescribe the meaning of a device, it has the meaning ascribed to it by the state traffic control manual, and where no such meaning is given, it has the meaning a reasonable person would give it.

"Traffic control marking" means a marking on the pavement of a street placed by a public authority to regulate, warn, or guide traffic.

"Traffic control sign" means a sign on, above, or adjacent to a street placed by a public authority to regulate, warn, or guide traffic.

"Traffic control signal" means a device on, above, or adjacent to a street placed by a public authority by which traffic is alternately directed to proceed and stop by means of the display of colored lights or symbols.

"Traffic engineer" means the city manager, any city employee designated by the manager to act as traffic engineer or assistant traffic engineer, and the supervisors of any person so designated.

"Trailer" means any wheeled vehicle, without motive power, that is designed to be drawn by a motor vehicle.

"Vehicle" means any device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks, excepting devices used exclusively upon stationary rails or tracks.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined by this chapter.

Ordinance Nos. 5058 (1987); 5241 (1989); 5271 (1990); 5638 (1994); 5681 (1994); 5686 (1994); 5848 (1996); 5920 (1997); 6033 (1998); 7021 (1999); 7294 (2003).

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 2 General Provisions

Section:

7-2-1 Legislative Intent.

The purpose of this title is to protect the health, safety, welfare, and convenience of the public by regulating the movement and stopping of pedestrians and ridden or herded animals on streets and the equipment, movement, stopping, parking, storage, and towing of vehicles.

7-2-2 Short Title.

This title may be referred to as the "Boulder Traffic Ordinance."

7-2-3 Application Of Title.

(a) Regulation of vehicles under this title applies everywhere to the maximum extent of the jurisdiction of the city, except for those provisions, sections, or chapters that by their terms apply only to certain areas.

(b) Regulation of pedestrians and ridden or herded animals under this title applies to streets, including, without limitation, sidewalks and sidewalk areas.

7-2-4 Penalties.

(a) Violations of any of the provisions of those sections of this title for which no specific penalty has been provided are traffic infractions. Every person who is convicted of a traffic infraction, who admits liability for a traffic infraction, or against whom a judgment is entered for a traffic infraction is subject to a fine or penalty of at least $10.00 but not more than $500.00.

(b) The minimum and maximum fine or monetary penalty for any moving traffic infraction committed in a school zone shall be double that otherwise provided in this section, but not to exceed $500.00. If the school zone was also a construction zone for which speeding fines are doubled, and the person is convicted of, admits liability for, or against whom a judgment is entered for both a speeding infraction and some other moving traffic infraction, only the fine for the speeding infraction shall be doubled.

Ordinance Nos. 6033 (1998); 7409 (2005).

7-2-5 Overlapping Prohibitions.

Certain traffic misconduct is prohibited under more than one section of this title. The fact that the section a defendant is charged with violating is less specific, carries a greater maximum penalty, or carries greater collateral consequences than some other section is not a basis for dismissal or acquittal as long as the elements of the section cited are proven. If the judge finds that the sole basis for the finding of guilt of or liability for a more general charge, one that carries a greater maximum penalty, or one that carries greater penalty point collateral consequences against the driving privilege under the statutes of the state was conduct that satisfied the elements of the other charge and no more, the sentence may not exceed the maximum applicable to the other charge, and upon application of a convicted defendant at the time of sentencing, the judge shall amend the judgment to reflect the other charge. Inattentive driving and reckless driving are never "other" charges within the meaning of this section, nor is paragraph 7-4-58(b)(4), B.R.C. 1981, such an other charge of paragraph 7-4-56(a)(2), B.R.C. 1981.

Ordinance No. 7424 (2005).

7-2-6 Necessity.

(a) Conduct that would otherwise constitute a violation of this title is justifiable and not a violation when:

(1) It is a reasonable emergency response compelled by the necessity of avoiding an imminent traffic hazard that is about to occur by reason of a traffic situation occasioned or developed through no misconduct, fault, or omission of the driver;

(2) The driver had been obeying all relevant traffic laws prior to the time such driver discovered or reasonably should have discovered the hazard; and

(3) The hazard was of sufficient gravity that, according to all ordinary standards of careful driving, the desirability and urgency of avoiding the hazard through violating the traffic law by the means employed clearly outweigh the desirability of avoiding the hazard through lawful driving alternatives.

(b) Before evidence relating to a defense under this section is presented to a jury, the defendant shall first make a detailed offer of proof to the judge, who shall rule as a matter of law whether the claimed facts or circumstances would, if established, establish the defense. If the judge admits such evidence, the judge shall again rule as a matter of law on the sufficiency of the evidence that if believed by the jury would establish the defense.

(c) A defense under this section is a specific defense.

7-2-7 Mechanical Failure No Defense.

The driver of a vehicle has a responsibility to the public to guarantee that the vehicle is at all times in proper mechanical condition so that the driver is able to steer, start, proceed, stop, signal, see, and be seen properly, and otherwise to comply with the traffic law. Consequently, mechanical failure, however unexpected, is no defense to a charge of violation of this title except insofar as it serves to negate a reckless, knowing, or intentional mental state where such is an element of the violation.

7-2-8 Bicycle School For Children.

Before the judge accepts a plea from a child under the age of sixteen years for a bicycle infraction, the judge shall afford the child a reasonable opportunity to attend a free bicycle safety class, and if the child attends such class, the judge shall dismiss the charge unless the judge finds that dismissal is not in the best interests of the child.

7-2-9 Driving, Stopping, Or Parking In Space.

If any provision of this title prohibits driving, stopping, or parking a vehicle in any space, a violation occurs if any part of the vehicle is in such space. If any provision of this title requires that driving, stopping, or parking occur within any space, a violation occurs if any part of the vehicle is not in such space.

7-2-10 Traffic Control Device Required.

(a) Every provision of this title for which a traffic control device is required shall be enforced against an alleged violator if, at the time and place of the alleged violation, the device was of the proper type, in proper position, sufficiently legible to be seen by an ordinarily observant person, and placed by a public authority. Whenever a particular section does not state that a device is required, such section is effective even though no device was in place.

(b) Any traffic control device placed in substantial compliance with the position required by the state traffic control manual is in proper position. Where no position is required, any position recommended by the state traffic control manual and any other reasonable position is a proper position.

(c) Every traffic control device on a street or other land in which a public authority has an interest shall be presumed to be an official traffic control device of proper type and in proper

position and sufficiently legible to be seen by an ordinarily observant person and placed by a public authority unless the contrary is established by a preponderance of credible evidence.

(d) Every traffic control device alongside of or on a sidewalk or path intended to regulate bicycle, pedestrian or any other traffic thereon is in proper position and of the proper type if, at the time and place of the alleged violation, it was in a reasonable position, its command was clear, it was sufficiently legible to be seen by an ordinarily observant person, and it was placed by a public authority.

Ordinance No. 5241 (1989).

7-2-11 **Public Employees To Obey Traffic Regulations.**

The provisions of this title apply to all persons regardless of their public or private employment or the public or private ownership of any vehicle involved, subject only to any specific exceptions set forth in this title.

7-2-12 **Exemptions For Authorized Emergency Vehicles.**

(a) The driver of an authorized emergency vehicle, while responding to an emergency call, while in pursuit of an actual or suspected violator of the law, or while responding to but not returning from a fire alarm may exercise the privileges set forth in this section. The driver of any authorized emergency vehicle may:

(1) Park or stop, irrespective of the provisions of this title;

(2) Proceed past a red or stop traffic control signal or sign, but only after slowing down as may be necessary for reasonably safe operation;

(3) Exceed a speed limit so long as life or property is not unreasonably endangered thereby; and

(4) Disregard regulations governing direction of movement, turning in specified directions, or driving in a particular place.

(b) The provisions of this section and section 7-2-13, "Exemptions For Maintenance Vehicles," B.R.C. 1981, do not relieve the privileged driver of the duty to drive with due regard for the safety of all persons, nor do such provisions protect the driver from the consequences of such driver's reckless disregard for the safety of others.

(c) The exemptions granted in this section apply only while the authorized emergency vehicle, other than a bicycle, is making use of audible or visible signals meeting the requirements of section 42-4-213 or 42-4-222, C.R.S., as amended. But an authorized emergency vehicle being operated as a police vehicle while in actual pursuit of a suspected violator of any provision of this title need not display or make use of audible or visual signals as long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator. Where paragraph (a)(1) of this section is concerned, only such lights or other measures need to be taken as are reasonably necessary to warn of the special hazard, if any, presented by such parking or stopping.

Ordinance Nos. 5848 (1996); 5920 (1997).

7-2-13 **Exemptions For Maintenance Vehicles.**

Drivers of authorized service vehicles and vehicles engaged in the construction or maintenance of public streets or traffic control devices or authorized to work in the right-of-way under chapter 4-18, "Street, Sidewalk, And Public Property Use Permits," B.R.C. 1981, may, when and where reasonably necessary for such purposes, disregard the provisions of this title concerning parking and stopping, driving too slowly, direction of movement, turning in specified directions, lane usage, and similar provisions as long as life or property is not unreasonably endangered thereby.

7-2-14 **Permit Required For Parades, Processions, And Sound Trucks.**

(a) No person in a funeral or other procession or a parade, except the military, police, or fire forces of the city, the state, or the United States, shall occupy, march, drive, or proceed upon or along any street except in accordance with a permit issued under this section.

(b) No sound truck or other vehicle equipped with an amplifier or loudspeaker shall use such equipment while upon a street for the purpose of selling, offering for sale, or advertising in any fashion except in accordance with a permit issued under this section.

(c) Upon application the city manager shall issue a funeral, procession, parade, or sound truck permit if the manager finds that:

(1) Such activity will not violate chapter 5-9, "Noise," B.R.C. 1981;

(2) There is no reason to believe that such activity cannot be carried out in safety;

(3) Such activity will not unreasonably interfere with the efficient movement of traffic; and

(4) The activity is not for an illegal purpose.

The manager may prescribe the form of the application and may require information reasonably necessary to make the required findings. The manager may place in the permit such restrictions on the time, place, and manner of carrying out the activity as the manager finds reasonably necessary to meet the requirements of this section.

7-2-15 **Certain Devices Banned From Roadway And Required To Yield To Pedestrians.**

(a) No person upon any roller skate, in-line skate, skateboard, roller ski, ski, coaster, sled, toboggan, toy vehicle, child's tricycle, or any similar device shall go upon a roadway except while crossing the roadway on a crosswalk in conformance with the rules applicable to pedestrians. When so crossing, persons have the rights and duties of pedestrians. This subsection does not apply on any roadway set aside as a play street as provided by section 7-4-48, "Driving On Restricted Street Prohibited," B.R.C. 1981, and so designated by signs.

(b) No person shall ride or operate a snowmobile on any street except upon specific request of a public authority in a time of emergency.

(c) It is a specific defense to a charge of violating any of the provisions of this section that the person was on skis or roller skis, was skiing or roller skiing in safety on a roadway in a residential, public or industrial district zoned RR-1, RR-2, RE, RL, MH, RM, RMX, RH-1, RH-2, RH-4, RH-5, MU-1, MU-3, P, IM, IG, IS, or IMS and was not on a roadway that was part of a state highway, a divided street, or a street with four or more lanes for moving motor vehicular traffic.

(d) A person upon any of the devices listed in subsection (a) of this section shall yield the right-of-way to any pedestrian upon a sidewalk, in a crosswalk, or on a path.

Ordinance Nos. 5039 (1987); 5241 (1989); 5920 (1997); 5930 (1997); 7522 (2007).

7-2-16 **Method Of Riding On Motorcycle Or Moped.**

(a) A person driving a motorcycle or moped shall ride only upon the permanent and regular seat attached thereto. Such driver shall not carry any other person; nor shall any other person ride on a motorcycle or moped unless it is designed to carry more than one person, in which event a passenger may ride upon the permanent seat, if designed for two persons, or upon another permanent or regular seat firmly attached to the motorcycle or moped at the rear or side of the driver.

(b) A person shall ride upon a motorcycle or moped only while sitting astride the seat, facing forward, with one leg on either side of the motorcycle or moped.

(c) No person shall drive a motorcycle or moped while carrying packages, bundles, or other articles that prevent such person from keeping both hands on the handlebars.

(d) No person shall drive a motorcycle or moped while carrying a passenger in a position that will interfere with the operation or control of the motorcycle or moped or the view of the operator, and no person shall ride in such a position.

(e) No person shall drive a motorcycle while carrying a passenger unless the motorcycle is equipped with footrests for the passenger or the passenger is riding in a sidecar or enclosed cab.

7-2-17 **Clinging To Vehicles Prohibited.**

(a) No person riding upon any motorcycle, moped, bicycle, roller skates, skateboard, roller ski, ski, coaster, sled, toboggan, toy vehicle, child's tricycle, or any similar device shall attach the device or the person's self to any vehicle moving on a street.

(b) It is a specific defense to a charge of violating this section that the device was a bicycle trailer attached to a bicycle and designed for such attachment.

Ordinance No. 5241 (1989).

7-2-18 **Permitting Clinging Prohibited.**

No person shall drive a vehicle on a street while he or she knows or reasonably should know that acts in violation of section 7-2-17, "Clinging To Vehicles Prohibited," B.R.C. 1981, are occurring with respect thereto.

7-2-19 **Riding On Portion Of Motor Vehicle Not Designed For Passengers Prohibited.**

No person shall sit, ride, hang on, or otherwise attach him or herself to the outside, top, hood, or fender, or to any other portion of a motor vehicle in motion on a street, other than on a seat in the specific enclosed portion of such motor vehicle intended for passengers or while in a sitting position in the cargo area of a motor vehicle if such area is fully or partially enclosed on all four sides. Employees while engaged in the necessary discharge of the duties of their lawful em-

ployment and persons riding in parades or processions for which a permit has been issued under section 7-2-14, "Permit Required For Parades, Processions, And Sound Trucks," B.R.C. 1981, are exempted from the prohibitions of this section and sections 7-2-20, "Riding In Trailers Prohibited," and 7-2-21, "Permitting Illegal Riding Prohibited," B.R.C. 1981.

Ordinance No. 5241 (1989).

7-2-20 **Riding In Trailers Prohibited.**

No person shall occupy a trailer while it is being moved on a street by a motor vehicle.

7-2-21 **Permitting Illegal Riding Prohibited.**

No person shall drive a vehicle while he or she knows or reasonably should know that acts which are in violation of section 7-2-19, "Riding On Portion Of Motor Vehicle Not Designed For Passengers Prohibited," or 7-2-20, "Riding In Trailers Prohibited," B.R.C. 1981, are occurring on or about the vehicle.

7-2-22 **Boarding Or Alighting From Moving Vehicles Prohibited.**

No person shall board or alight from any motor vehicle while such vehicle is in motion on a street.

7-2-23 **Opening And Closing Vehicle Doors.**

No person shall open any door on a vehicle unless it is done in safety, nor shall any person leave a door open on a side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

7-2-24 **Spilling Load On Street Prohibited.**

No person shall drive, move, stop, or park any vehicle on any street unless such vehicle is constructed and loaded and the load thereof securely covered to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom. This section does not apply to the operation of equipment for street maintenance.

7-2-25 **Removal Of Injurious Material From Street Required.**

(a) Any person who drops, throws, or deposits upon a street any glass bottle, glass, nail, tack, wire, flammable or burning substance, or any other substance or object likely to injure or damage other traffic or permits the same to be done shall immediately remove the same or cause it to be removed.

(b) Any person removing a wrecked or damaged vehicle from a highway shall remove from the street any glass or other injurious substance dropped from the vehicle.

7-2-26 **Display Of Unauthorized Sign, Signal, Or Marking Prohibited.**

(a) No person shall place, maintain, or display upon or in view of any street, at a place where it could be mistaken for or confused with a traffic control device governing such street, any

unauthorized sign, signal, marking, or device that purports to be, is an imitation of, or resembles a traffic control device or railroad sign or signal; that attempts to direct the movement of traffic; except for official government notices, uses any words, phrases, symbols, or characters implying the existence of danger or the need for stopping or maneuvering of a vehicle; or creates any other unsafe distraction for vehicle operators; that obstructs the view of or interferes with the effectiveness of any traffic control device or any railroad sign or signal; or that obstructs the view of vehicle operators entering a public roadway from any parking area, service drive, private driveway, alley, or other thoroughfare.

(b) No person shall place or maintain upon any traffic control sign or signal or parking meter any advertising.

(c) This section shall not be deemed to prohibit the use of motorist services information of a general nature on official highway guide signs if such signs do not indicate the brand, trademark, or name of any private business or commercial enterprise offering the service, nor shall this section be deemed to prohibit the erection upon private property adjacent to streets of signs permitted under section 9-9-21, "Signs," B.R.C. 1981, giving useful directional information and of a type that cannot be mistaken for traffic control signs.

(d) Every such sign, signal, marking, or device prohibited by this section constitutes a public nuisance, and the city manager is empowered to remove the same or cause it to be removed without notice, after which the manager shall afford to the owner the opportunity for a hearing to contest the removal, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

Ordinance No. 6017 (1998).

7-2-27 **Interference With Traffic Control Device.**

(a) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, change signal timing, or remove any traffic control device, any railroad sign or signal, or any inscription, shield, or insignia thereon or any part thereof.

(b) Any person who violates any provision of this section commits the offense of interference with a traffic control device and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail for no more than ninety days, or both such fine and jail.

Ordinance No. 7409 (2005).

7-2-28 **Obedience To Traffic Control Device.**

No person shall disobey the instructions of any traffic control device.

7-2-29 **Meter Tampering Prohibited.**

(a) No person shall:

(1) Deposit in any parking meter anything other than a token approved by the city manager or a lawful coin of the United States;

(2) Deposit in any parking meter any token or coin that is bent, torn, cut, battered, or otherwise misshapen;

(3) Tamper with or open a parking meter; or

(4) Knowingly manipulate a parking meter in such a way as to cause it to fail to show the correct amount of unexpired time.

(b) The provisions of this section do not apply to public employees on official business repairing or maintaining the meters.

7-2-30 **Misuse Of Handicapped Parking.**

No person shall display the placard or license mentioned in subsection 7-6-22(a), B.R.C. 1981, if such person does not then have an impairment that substantially limits such person's ability to move from place to place and a valid license or placard issued by the Colorado Department of Revenue with respect thereto.

7-2-31 **Driver To Exercise Due Care.**

No provision of this title relieves a driver from the duty to exercise due care to avoid colliding with a pedestrian on a roadway or to sound the horn when necessary and exercise proper precaution upon observing any child or any apparently intoxicated, handicapped, or incapacitated person upon a roadway.

7-2-32 **Use Of Seatbelt Required.**

(a) Unless exempted pursuant to subsection (b) of this section, every driver in a motor vehicle shall wear a fastened safety belt while the motor vehicle is being operated on a street, and no such driver shall fail to ensure that every front seat passenger in such vehicle is wearing a fastened safety belt.

(b) The requirement of subsection (a) of this section shall not apply to:

(1) A child required by section 7-2-33, "Child Restraint System Required," B.R.C. 1981, to be restrained by a child restraint system;

(2) A member of an ambulance team, other than the driver, while involved in patient care;

(3) A police officer exempted under regulations issued by the chief of police pursuant to subsection 2-4-4(b), B.R.C. 1981;

(4) A person with a physically or psychologically disabling condition whose physical or psychological disability prevents appropriate restraint by a safety belt system if such person possesses a written statement by a physician certifying the condition, as well as stating the reason why such restraint is inappropriate;

(5) A person driving or riding in a motor vehicle not equipped with a safety belt system due to the fact that federal law does not require such vehicle to be equipped with a safety belt system;

(6) A rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier;

(7) A person operating a noncommercial motor vehicle for commercial or residential delivery or pickup service, except that such person shall be required to wear a fastened safety belt

during the time period prior to the first delivery or pickup of the day and during the time period following the last delivery or pickup of the day; and

(8) The driver and passengers of a motorcycle, a public or private bus, or on any motor vehicle not required to be licensed for travel on public roads under the laws of this state.

(c) No driver of a motor vehicle shall be cited for a violation of this section unless the driver was stopped by a peace officer for an alleged violation of law other than a violation of this section.

Ordinance Nos. 5058 (1987); 5920 (1997).

7-2-33 **Child Restraint System Required.**

(a) Every child who is less than four years of age, weighs less than forty pounds, and is being transported in a privately owned, noncommercial passenger vehicle or in a vehicle operated by a child care center shall be provided with a child restraint system suitable for the child's size and shall be properly fastened into such child restraint system in a seating position equipped with a safety belt or other means to secure said system according to the manufacturer's instructions.

(b) Every child, who is at least four years of age but less than sixteen years of age or who is less than four years of age and weighs forty pounds or more, being transported in a privately owned noncommercial vehicle or in a vehicle operated by a child care center, shall be provided with a safety belt system and shall be properly fastened into the safety belt system according to the manufacturer's instructions.

(c) No person shall use a safety belt or child restraint system, whichever is applicable under the provisions of this section, for children less than sixteen years of age in a motor vehicle unless it conforms to all applicable federal motor vehicle safety standards.

(d) No driver transporting children subject to the requirements of this section shall fail to ensure that such children are provided with and that they properly use the required child restraint or safety belt system.

(e) The requirements of this section shall not apply to a child that:

(1) Is being transported in a privately owned noncommercial motor vehicle in which all seating positions equipped with safety belts or child restraint systems are occupied;

(2) Is being transported in a motor vehicle as a result of a medical emergency;

(3) Is being transported in a commercial motor vehicle that is operated by a child care center; or

(4) Is the driver of a motor vehicle and is subject to the safety belt requirements provided in section 7-2-32, "Use Of Seatbelt Required," B.R.C. 1981.

Ordinance Nos. 5058 (1987); 5920 (1997).

7-2-34 **Use Of Earphones Prohibited.**

No person shall drive a vehicle while wearing earphones.

Ordinance No. 5241 (1989).

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 3 Condition Of Vehicles

Section:

7-3-1 Unsafe Vehicle.

No person shall drive or move upon a street any vehicle or combination of vehicles with brakes, steering, or a suspension whose condition is so unsafe as to endanger any person or property or that fails to comply with any state statute or regulation, including, without limitation, the *Rules and Regulations Governing the Safety Standards and Specifications of All Commercial Vehicles,* Volume 8, Colorado Code of Regulations 1507-1, as promulgated by the Colorado Department of Safety as the same may be amended from time to time, governing such equipment.

Ordinance No. 5638 (1994).

7-3-2 Required And Prohibited Equipment.

No person shall drive or move upon a street any motor vehicle or moped or combination of vehicles:

(a) That lacks any equipment, including, without limitation, head lamps, turn signals and lamps, projecting load flag or light, stop lights, tail lamps, identification lamps, clearance lights, reflectors, horns, mirrors, windshield wipers, tires, safety glazing material, windshield, emergency lighting equipment, fire extinguishers, suspension system, and slow moving vehicle identification emblem, as required by parts 2, 3, or 4 of article 4, title 42, C.R.S., as amended, or by section 42-4-1903, C.R.S., as amended, or any state regulation governing such equipment.

(b) While required equipment as set forth in subsection (a) of this section does not otherwise comply with such statutes or regulations; or

(c) With equipment prohibited by such statutes or regulations.

Ordinance Nos. 4817 (1984); 5546 (1993); 5848 (1996); 7334 (2004).

7-3-3 Height, Length, And Weight Of Vehicles.

(a) No person shall drive, move, stop, or park on any street any vehicle or vehicles of a size, weight, or load that exceeds that permitted for such vehicle or vehicles under sections 42-4-502 through 42-4-509, C.R.S., as amended.

(b) It is a specific defense to a charge of violating this section that the driving, moving, stopping, and parking was on a state highway and in compliance with the terms of a permit issued in accordance with section 42-4-510, C.R.S., as amended.

(c) It is a specific defense to a charge of violating this section that the driving, moving, stopping, and parking occurred on a street that was not a state highway, and

(1) Was in compliance with a permit issued under the provisions of subsection (d) of this section; or

(2) Was in compliance with a permit or exclusion under section 42-4-510, C.R.S., as amended.

(d) The city manager shall issue a one time permit allowing a vehicle or vehicles that are, when loaded, oversize or overweight or both to travel so loaded over city streets upon application therefor if the manager finds that:

(1) The trip can be accomplished in reasonable safety;

(2) The trip can be accomplished without unreasonable interference with the efficient movement of traffic;

(3) The trip can be accomplished without damage to street foundations, surfaces, structures, and utilities under and over streets and without undue damage to trees; and

(4) The oversize or overweight load cannot reasonably be moved other than in an oversize or overweight condition over city streets.

The manager may prescribe the form of the application and may require information that the manager determines is reasonably necessary to make the required findings. The manager may place such restrictions on the time and route and impose such other requirements that the manager finds reasonably necessary to meet the requirements of this section and may require the posting of a reasonable bond when the manager finds there is a reasonable possibility of damage.

(e) This section does not apply to the operation of authorized emergency vehicles, buses, implements of husbandry, and farm tractors temporarily moved upon a street, vehicles operated by a public utility when required for emergency repair of public service facilities or properties, fire apparatus, self-propelled construction equipment, or highway maintenance equipment. Nothing in this section shall be deemed to relieve any person from civil liability for damage done.

Ordinance No. 5848 (1996).

7-3-4 Adequate Muffling Of Noise Required.

(a) Every motor vehicle or moped driven upon a street and propelled by a combustion engine shall be equipped with a muffler and exhaust system in constant operation and properly maintained to prevent any noise:

(1) In excess of that emitted by the exhaust system of such vehicle as originally installed by the manufacturer of such vehicle; or

(2) That is excessive or unusual.

(b) No motor vehicle or moped driven on a street shall be equipped with any muffler cut off or bypass.

(c) No motor vehicle or moped driven on a street shall emit sound in excess of that allowed in chapter 5-9, "Noise," B.R.C. 1981.

(d) No person shall own and no person shall drive any motor vehicle or moped that is in violation of any of the provisions of this section.

7-3-5 Visible Emissions Prohibited.

(a) No driver and no owner of any motor vehicle, moped, or diesel-fueled locomotive for switching and railroad yard use shall fail to prevent the emission into the atmosphere from such vehicle of any visible air pollutant in excess of that specified below:

(1) Vehicles powered by any fuel except diesel: no emissions permitted.

(2) Vehicles powered by diesel fuel: ten consecutive seconds at thirty percent opacity or greater.

(3) Locomotives: ten consecutive seconds at forty percent opacity or greater.

(b) Visible air pollutants that are the direct result of cold engine startup are excepted from the prohibitions of this section.

(c) For the purposes of this section, the following terms have the meanings specified:

"Air pollutant" means any fume, smoke, particulate matter, vapor, or gas or any combination thereof, but does not include water vapor or steam condensate.

"Cold engine startup" means the operation of any engine before it reaches its normal operating temperature while the vehicle is stationary at a location where the vehicle and its engine has been stopped for at least one hour immediately prior to the emission.

"Opacity" means the degree to which an air pollutant emission obscures the view of an observer or reduces the transmission of light. Any person certified by the Colorado Department of Health after completion of a course in observing and grading visible emissions in terms of opacity is competent to express an opinion on degree of opacity in any proceeding.

(d) Only one complaint may be filed under this section against a vehicle for any calendar day.

(e) Any person served with a summons and complaint for a violation of this section may, before the date set for arraignment, report to an environmental protection officer designated by the city manager and demonstrate that the engine in question is in compliance with this section. If the environmental protection officer finds such compliance, the officer shall direct the municipal court to dismiss the complaint. The environmental protection officer may, upon timely request in specific cases, continue the arraignment date by thirty days after notifying the municipal court if the officer finds that such time is necessary to achieve compliance and that compliance will probably be achieved within the thirty day period.

(f) The penalty for violation of any provision of this section is a fine of no more than $500.00.

Ordinance No. 7409 (2005).

7-3-6 **Headlights Must Be On.**

Between sunset and sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the street are not clearly discernable at a distance of one thousand feet ahead, no person shall drive a motor vehicle or moped upon a street unless the vehicle displays the lighted headlights and other illuminated lights required by part 2, article 4, title 42, C.R.S., as amended. Such lamps shall be displayed while the vehicle is being driven or is stopped but need not be displayed while the vehicle is parked in a legal parking space. Failure to display at least one headlight and one tail light constitutes a violation of this section without need to refer to the above-mentioned statutes. But a moped need not display a tail light if it is equipped with a reflector at the rear meeting the requirements of section 7-5-11, "Bicycle Headlight And Reflector Required," B.R.C. 1981.

7-3-7 **Headlights Must Be Dimmed.**

(a) While a driver of a vehicle approaches an oncoming vehicle within five hundred feet on a roadway, such driver shall use low beams only, as these are prescribed in part 2, article 4, of title 42, C.R.S., as amended, for the type of vehicle involved.

(b) While following another vehicle within two hundred feet in the rear, a driver shall use such low beams only.

(c) The driver of a parked vehicle shall use such low beams only.

7-3-8 **Lights On Parked Vehicles.**

While a vehicle equipped with all reflectors required by law is parked in a place where vehicles may lawfully be parked, no lights need be displayed upon such vehicle.

7-3-9 **Obstruction To Driver's View Or Driving Mechanism Prohibited.**

(a) No person shall drive a vehicle while it is so loaded or while there are in the front seat or seats such number of persons so situated as to obstruct the view of the driver to the front or to the sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view to the front or to the sides or as to interfere with the driver's control over the driving mechanism of the vehicle, nor shall any passenger in a bus stand forward of any safety line on the floor of the bus.

(c) No person shall drive any vehicle upon a street unless the driver's vision is normal through the windshield, front right, front left, and rear windows, and any required mirrors. Vision is normal if the swept area of the windshield, and all other windows and mirrors, are clear of snow, ice, frost, condensation, dirt, and any other material that inhibits vision and if such windshield, windows, and mirrors are free of any sign, poster, or other nontransparent material that obstructs the driver's view, other than a certificate required to be so displayed by law.

7-3-10 Television Screen In Front Seat Prohibited.

No person shall drive any vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast that is located in the vehicle at any point forward of the back of the driver's seat or that is visible to the driver while operating the vehicle.

7-3-11 Protective Eyecover Required.

No person shall drive any motorcycle on any street unless such person, and any passenger on the motorcycle, is wearing goggles, eyeglasses, or a face shield with a lens of safety glass or plastic.

7-3-12 Unauthorized Display Of Public Insignia Prohibited.

No vehicle shall display any official designation, sign, insignia, or counterfeit thereof of any public authority without the permission of such authority, and no person shall own or drive any vehicle with such unauthorized marking.

7-3-13 Wheel And Axle Loads.

(a) No person shall move or operate any vehicle, and no owner of any vehicle shall fail to prevent the movement or operation of any vehicle, on any street if the gross weight upon any wheel of the vehicle exceeds any of the following:

(1) When the wheel is equipped with a steel-tire, five hundred pounds per inch of cross-sectional width of tire.

(2) When the wheel is equipped with a solid rubber or cushion tire, eight thousand pounds.

(3) When the wheel is equipped with a pneumatic tire, nine thousand pounds.

(b) No person shall move or operate any vehicle, and no owner of any vehicle shall fail to prevent the movement or operation of any vehicle, on any street if the gross weight upon any single axle of a vehicle exceeds either of the following:

(1) When the wheels attached to the axle are equipped with solid rubber or cushion tires, sixteen thousand pounds.

(2) When the wheels attached to the axle are equipped with pneumatic tires, twenty thousand pounds. But this paragraph does not apply to vehicles equipped with a self-compactor which is used solely for transporting trash.

(c) No person shall move or operate any vehicle, and no owner of any vehicle shall fail to prevent the movement or operation of any vehicle, on any street if the gross weight upon any tandem axle equipped with pneumatic tires exceeds forty thousand pounds.

(d) For the purposes of this section, a single axle is defined as all wheels whose centers are included within two parallel transverse vertical planes not more than forty inches apart, extending across the full width of the vehicle.

(e) For the purposes of this section, a tandem axle is defined as two or more consecutive axles, the centers of which may be included between parallel vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending across the full width of the vehicle.

(f) For the purposes of this section and section 7-3-14, "Gross Weight Of Vehicles And Loads," B.R.C. 1981, axle scales and the method of weighing vehicles that is commonly referred to as "split weighing" or "fore and aft draft weighing," for obtaining a vehicle's axle weights and gross weight, is authorized as an acceptable and accurate method of weighing for law enforcement purposes and statistical data gathering.

Ordinance No. 5638 (1994).

7-3-14 **Gross Weight Of Vehicles And Loads.**

(a) No person shall move or operate any vehicle, and no owner of any vehicle shall fail to prevent the movement or operation of any vehicle, on any street if the gross weight thereof exceeds any of the limits specified below:

(1) The gross weight of a single vehicle having two axles shall not exceed thirty-six thousand pounds.

(2) The gross weight of a single vehicle having three or more axles shall not exceed fifty-four thousand pounds.

(3) The maximum gross weight of any vehicle, or combination of vehicles, shall not exceed the lesser of eighty-five thousand pounds or that determined by the formula:

W = 1,000 (L plus 40)

W = The gross weight in pounds

L = The length in feet between the centers of the first and last axles of such vehicle or combination of vehicles

For the purpose of calculating the maximum allowable gross weight of any combination of vehicles, the length of any vehicle in the combination which has a gross weight of less than ten percent of the overall gross weight of the combination of vehicles shall not be included in calculating "L," but this provision concerning weight calculation shall not apply to specialized trailers of fixed public utilities.

(4) Notwithstanding any other provision of this title, no vehicle or combination of vehicles shall be moved or operated, or be permitted to be moved or operated, on any street or bridge when the gross weight thereof exceeds any posted weight limit for such street or bridge, unless the vehicle is operating in accordance with a valid permit issued by the Colorado Department of Transportation or Colorado State Patrol pursuant to section 42-4-510, C.R.S., or by the city manager pursuant to subsection 7-3-3(d), B.R.C. 1981.

(b) No person shall move or operate any vehicle, and no owner of any vehicle shall fail to prevent the movement or operation of any vehicle, on any street if it exceeds the maximum weight allowed pursuant to a valid permit issued by the Colorado Department of Transportation or Colorado State Patrol pursuant to section 42-4-510, C.R.S., or by the city manager pursuant to subsection 7-3-3(d), B.R.C. 1981. If the vehicle exceeds its permit weight, the penalty shall be calculated as if no permit had been issued.

(c) The limitations provided in this section shall be strictly construed and enforced.

Ordinance Nos. 5638 (1994); 5848 (1996).

7-3-15 **Vehicles Weighed, Excess Removed.**

(a) Any police officer who reasonably suspects that the weight of a vehicle and load is unlawful is authorized to require the driver to stop, and upon probable cause may require the driver to submit to a weighing of the same, either by requiring that such vehicle be driven to the nearest certified public scales, or by requiring that such vehicle be driven to the nearest portable or stationary scales operated by the port-of-entry, the Colorado State Patrol, or the city, in the event such scales are within a five-mile radius of the location of such stop.

(b) Except as provided in subsection (c) of this section, whenever an officer, upon weighing a vehicle and load, determines that the weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed or shifted as may be necessary to reduce the gross weight of such vehicle or the weight upon a wheel or a single axle or a tandem axle of such vehicle, to limits permitted under this chapter. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(c) Whenever an officer, upon weighing a vehicle and load, determines that the weight is unlawful and the load consists of either explosives or hazardous materials, as defined in section 42-1-102, C.R.S., such officer shall permit the driver of such vehicle to proceed to its destination without requiring the driver to unload or shift the excess portion of such load, unless non-explosive and non-hazardous materials may be removed or shifted to cure the illegality.

(d) No driver of a vehicle, when directed by a police officer, shall fail or refuse to stop and submit the vehicle and load to a weighing or fail or refuse when directed by an officer to allow the unloading or shifting of the load of the vehicle to the gross weight of such vehicle or the weight upon any wheel or single axle or tandem axle of such vehicle permitted in this chapter, or otherwise fail or refuse to comply with the provisions of this section.

(e) Any person who violates any provision of this section commits the offense of aggravated excess weight, and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance Nos. 5638 (1994); 7409 (2005).

7-3-16 **Inspection Of Unsafe Vehicles.**

(a) Uniformed police officers, at any time upon reasonable suspicion, may require the driver of any vehicle other than a commercial vehicle to stop, and upon probable cause may require the driver to submit such vehicle and its equipment to an inspection and such test with reference thereto as may be appropriate. The fact that a vehicle is an older model vehicle shall not alone constitute reasonable suspicion.

(b) In the event any such vehicle is, in the reasonable judgment of such police officer, in such condition that further operation would be hazardous, the officer may require that the vehicle be moved at the operator's expense and not operated under its own power or that it be driven to the nearest garage or other place of safety.

Ordinance No. 5638 (1994).

7-3-17 Inspection And Immobilization Of Commercial Vehicles.

(a) A police officer may, at any time, require the driver of any commercial vehicle to stop so that the officer may inspect the vehicle and all required documents for compliance with the *Rules and Regulations Governing the Safety Standards and Specifications of All Commercial Vehicles,* Volume 8, Colorado Code of Regulations 1507-1, as promulgated by the Colorado Department of Safety, and as the same may be amended from time to time.

(b) A police officer may immobilize, impound, or otherwise direct the disposition of a commercial vehicle when it is determined that the motor vehicle or operation thereof is unsafe and when such immobilization, impoundment, or disposition is appropriate under the *Rules and Regulations Governing the Safety Standards and Specifications of All Commercial Vehicles,* Volume 8, Colorado Code of Regulations 1507-1, as promulgated by the Colorado Department of Safety, and as the same may be amended from time to time.

Ordinance No. 5638 (1994).

7-3-18 Overweight Vehicle Penalty.

(a) The penalty for exceeding the wheel or axle load limits of section 7-3-13, "Wheel And Axle Loads," B.R.C. 1981, or the gross weight limits of section 7-3-14, "Gross Weight Of Vehicles And Loads," B.R.C. 1981, shall be as follows:

Excess Weight - Pounds	Penalty	Surcharge
1 – 3,000	$ 15.00	$ 5.00
3,001 – 4,250	25.00	9.00
4,251 – 4,500	50.00	18.00
4,501 – 4,750	55.00	20.00
4,751 – 5,000	60.00	22.00
5,001 – 5,250	65.00	24.00
5,251 – 5,500	75.00	27.00
5,501 – 5,750	85.00	31.00
5,751 – 6,000	95.00	35.00
6,001 – 6,250	105.00	38.00
6,251 – 6,500	125.00	46.00
6,501 – 6,750	145.00	53.00
6,751 – 7,000	165.00	61.00
7,001 – 7,250	185.00	68.00
7,251 – 7,500	215.00	80.00
7,501 – 7,750	245.00	90.00
7,751 – 8,000	275.00	101.00
8,001 – 8,250	305.00	112.00
8,251 – 8,500	345.00	127.00
8,501 – 8,750	385.00	142.00
8,751 – 9,000	425.00	157.00
9,001 – 9,250	465.00	172.00
9,251 – 9,500	515.00	190.00
9,501 – 9,750	565.00	209.00
9,751 – 10,000	615.00	227.00
10,001 – 10,250	665.00	246.00

7-3-18

Excess Weight - Pounds	Penalty	Surcharge
Over 10,250	$30.00 for each 250 pounds additional over-weight, plus $665.00	$11.00 for each 250 pounds additional over-weight, plus $246.00

If one vehicle or combination of vehicles exceeds more than one weight limit in any one occurrence, only the penalty for the greatest violation may be imposed.

(b) The clerk of the municipal court shall separately account for the surcharge, and shall remit it periodically to the court administrator for the 20th Judicial District for credit to the victims and witness assistance and law enforcement fund established pursuant to state law[1].

[1]See 24-4.2-101 et seq., C.R.S.

7-4

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 4 Operation Of Vehicles

Section:

7-4-1 Obedience To Green Signal Required.

(a) A driver facing a circular green traffic control signal indication may proceed straight through or make any otherwise legal turning movement.

(b) A driver facing a green arrow traffic control signal indication, shown alone or in combination with another indication, shall enter the intersection only to make the movement indicated by such arrow or any otherwise legal turning movement.

(c) A driver proceeding on a circular green or green arrow traffic control signal indication shall yield the right-of-way to all traffic within the intersection or any adjacent crosswalk at the time such signal is displayed.

Ordinance No. 5241 (1989).

7-4-2 Steady Yellow Signal.

A driver facing a steady circular yellow or yellow arrow traffic control signal indication is thereby warned that the related green movement is being terminated and that a red indication will be exhibited immediately thereafter.

7-4-3 Obedience To Red Signal Required.

(a) A driver facing a steady circular red traffic control signal indication alone shall stop at a clearly marked stop line or, if none, then before entering the crosswalk on the near side of the intersection, or, if none, then before entering the intersection and shall remain stopped until an indication to proceed is shown. Under no circumstances shall any driver wherever

located cross the curb line at the near side of an intersection while facing such red signal. But:

(1) Such a driver, after coming to a stop and yielding the right-of-way to pedestrians within or approaching any adjacent crosswalk and to other traffic within or approaching the intersection, may make a right turn unless a traffic control sign or other provision of this title prohibits such turn.

(2) Such a driver, while on a one-way street and after coming to a stop, may make a left turn onto a one-way street upon which the direction of traffic is to the left of the driver after yielding to pedestrians within or approaching any adjacent crosswalk and to other traffic within or approaching the intersection, unless a traffic control sign prohibits such turn.

(b) A driver facing a steady red arrow signal indication shall not enter the intersection to make the movement indicated by such arrow and, unless entering such intersection to make any otherwise legal movement, shall stop and remain stopped as provided in subsection (a) of this section, without exceptions (1) and (2).

7-4-4 Non-Intersection Signal.

(a) If a traffic control signal is in place other than at an intersection, the provisions of this section and all other sections dealing with traffic control signals are applicable except those which by their nature can have no application.

(b) But where a traffic control signal controls traffic at the junction of a street with a private drive, parking lot entrance, alley, or the mall, the same shall be considered an intersection for the purposes of this and all other sections dealing with traffic control signals, and the prolongation of each side of the curb cut defines the intersection.

7-4-5 Obedience To Lane Use Signal Required.

Lane use control signals placed over individual lanes of a street apply as follows:

(a) Downward-pointing green arrow (steady): A driver facing such signal may enter or travel in any lane over which the signal is exhibited.

(b) Yellow "X" (steady): A driver facing such signal is thereby warned that the related green arrow movement is being terminated and shall vacate in safety the lane over which the signal is located.

(c) Yellow "X" (flashing): A driver facing such signal may enter or travel in the lane over which the signal is located for the purpose of making a left turn or a passing maneuver, in safety, but for no other purpose.

(d) Red "X" (steady): No driver shall enter or travel in any lane over which such signal is exhibited.

7-4-6 Stop And Yield For Flashing Red Signal Required.

(a) A driver facing a traffic control signal while the red lens of the signal is illuminated with rapid intermittent flashes shall stop at a clearly marked stop line or, if none, then before entering the crosswalk on the near side of the intersection, or, if none, then before entering the intersection, before proceeding into the intersection. A driver so required to stop shall

yield the right-of-way to pedestrians within or approaching any adjacent crosswalk and to any vehicle within or approaching the intersection on another roadway.

(b) This section does not apply to railroad signs or signals.

7-4-7 Flashing Yellow Signal.

(a) A driver facing a traffic control signal when the yellow lens of the signal is illuminated with rapid intermittent flashes is thereby warned:

(1) At an intersection, that cross traffic has a flashing red light.

(2) At any other location, that a special hazard exists, and drivers of all vehicles shall proceed past such signal and through the hazardous location only with caution.

(b) This section does not apply to railroad signs or signals.

7-4-8 Malfunctioning Traffic Control Signal.

(a) If a driver approaches or is stopped at an intersection while a malfunctioning traffic control signal is in place:

(1) If no uncovered signal lens facing the driver is illuminated, the signal shall be considered a flashing red signal as described in section 7-4-6, "Stop And Yield For Flashing Red Signal Required," B.R.C. 1981, and no driver shall disobey the rules for flashing red signals;

(2) A driver stopped at the required position for stopping facing a steady red traffic control signal indication may proceed in accordance with the rules for stop signs if portions of the traffic signal system at the intersection governing other lanes of travel are observed by the driver to go through two complete cycles while remaining steady red for such driver or if the lens governing the driver remains steadily red for more than four minutes; or

(3) A driver facing a steady yellow traffic control signal indication that remains yellow for more than ten seconds shall follow the rules prescribed by paragraph (a)(1) of this section.

(b) The defense of malfunctioning traffic control signal is a specific defense.

7-4-9 Avoiding Traffic Control Device Prohibited.

No driver shall turn from a street onto a private drive, parking lot, gas station, or other non-street area and reenter the same street beyond a specified traffic control device or enter an intersecting street where a specified traffic control device would have controlled the movement through the intersection or past the device had the vehicle remained on the first street, without making a stop off of the street in addition to and before the stop required by section 7-4-15, "Stop Before Entering Street Required," B.R.C. 1981. The specified traffic control devices are stop signs, yield signs, traffic control signals of any color, and otherwise applicable turn prohibition or regulation signs.

7-4-10 Stop When Traffic Obstructed.

No driver shall enter a crosswalk, intersection, or railroad grade crossing unless there is sufficient space beyond the crosswalk, intersection, or grade crossing to accommodate the vehicle

without interfering with or obstructing the passage of pedestrians, vehicles, or railroad trains, notwithstanding the indication of any traffic control device to proceed.

7-4-11 Stop At Stop Sign Required.

A driver approaching a stop sign shall stop at a clearly marked stop line, or if none, at the stop sign.

7-4-12 Yield Required At Stop Sign.

(a) A driver required to stop at a stop sign shall yield the right-of-way to all vehicles within the intersection or approaching on an intersecting roadway and not required to stop.

(b) At an all-way stop intersection, a driver required to stop in obedience to a stop sign shall yield the right-of-way to all other vehicles that have previously executed the required stop. But as between vehicles executing the required stop simultaneously, a driver turning left shall yield to an opposing vehicle as prescribed by section 7-4-22, "Vehicle Turning Left To Yield," B.R.C. 1981, and other drivers shall yield to vehicles on the right, as prescribed by section 7-4-14, "Driver On Left To Yield At Uncontrolled Intersection," B.R.C. 1981.

7-4-13 Obedience To Yield Sign Required.

A driver approaching a "yield" sign at an intersection shall yield the right-of-way to all vehicles within the intersection or approaching on an intersecting roadway, slowing or stopping as may be necessary so to yield.

7-4-14 Driver On Left To Yield At Uncontrolled Intersection.

When two vehicles approach an intersection on different streets, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right, unless a traffic control device indicates otherwise.

7-4-15 Stop Before Entering Street Required.

A driver about to enter a street at any place other than an intersection shall stop at the near edge of a sidewalk and a path or its prolongation, but if none, at the curb.

Ordinance No. 5241 (1989).

7-4-16 Yield Required Before Entering Or Leaving Street.

(a) A driver entering a street at any place other than an intersection shall yield the right-of-way to any pedestrian or bicycle approaching on a sidewalk or path and to any vehicle approaching on a roadway of the street.

(b) A driver leaving a street at any place other than an intersection shall yield the right-of-way to any pedestrian or bicycle approaching on a sidewalk or path.

Ordinance Nos. 5241 (1989); 5920 (1997).

7-4-17 Improper Starting Of A Parked Vehicle.

No driver shall move a stopped or parked vehicle unless and until such movement can be made in safety, and, except where legally angle parked, after first signalling the intention to enter the stream of traffic by the appropriate signal described in section 7-4-29, "Method Of Signalling," B.R.C. 1981, for at least five seconds.

7-4-18 Improper Backing.

(a) No driver shall back a vehicle unless such movement can be made in safety.

(b) No driver shall back a vehicle upon the roadway or shoulder of a controlled access street.

Ordinance No. 5462 (1992).

7-4-19 Obedience To Turn Requirement Device Required.

Where a traffic control device is in place requiring a right turn or a left turn, no driver shall disobey the requirements of such device.

7-4-20 Obedience To Turn Prohibition Sign Required.

Where a traffic control sign is in place prohibiting or restricting a right, left, or all turns, no driver shall disobey the directions of such sign.

7-4-21 U-Turn Prohibited.

(a) No driver shall make a U-turn:

(1) If a traffic control sign is in place prohibiting U-turns or left turns;

(2) Upon any curve or upon the approach to or near the crest of a grade, where the turning vehicle cannot be seen for three hundred feet by the driver of any other vehicle that might approach from either direction; or

(3) Unless such movement can be made in safety.

(b) "U-turn" means the movement of a vehicle on a street or within an intersection or junction so as to proceed in approximately the opposite direction from that in which the vehicle was originally proceeding.

7-4-22 Vehicle Turning Left To Yield.

(a) A driver turning to the left shall yield the right-of-way to any vehicle approaching from the opposite direction.

(b) Vehicles stopped for a traffic control signal or stop signs facing each other at an intersection are considered to be approaching each other.

(c) A driver intending to turn left from a lane governed by a circular green signal light at an intersection shall not enter any oncoming lane of traffic until all oncoming vehicles stopped

in that lane at the intersection at the time the green signal was last displayed and not displaying a left turn signal have proceeded through the intersection. It is a specific defense that the oncoming vehicle was disabled for at least ten seconds or that the driver thereof voluntarily relinquished the right-of-way and gave an unambiguous signal of such intent. But nothing in this subsection shall be deemed to limit any other provision of this code.

7-4-23 **Yield To Pedestrian Required.**

A driver shall yield the right-of-way to every pedestrian on a sidewalk or approaching or within a crosswalk[1].

Ordinance Nos. 5241 (1989); 5920 (1997).

7-4-24 **Yield To Blind Pedestrian Required.**

A driver shall yield the right-of-way to any blind pedestrian carrying a clearly visible white cane or accompanied by a guide dog.

7-4-25 **Improper Turn Prohibited.**

(a) A driver turning from a roadway shall do so only after giving the signal required by section 7-4-26, "Turn Signal Required," B.R.C. 1981, and in the following manner:

(1) Right turn: The approach for the turn, the turn itself, and the finish of the turn shall be made as close as practicable to the right-hand curb without driving over such curb.

(2) Left turn: Both the approach and the finish of a left turn shall be made immediately to the right of the left-hand edge of the farthest left lane lawfully available to vehicular traffic moving in the direction of travel of such vehicle. If practicable, the turn itself shall be made to the left of the center of the intersection.

(3) Double turn lanes: Where a traffic control sign is in place permitting a right or left turn to be made from two or more lanes, the driver of a vehicle in the lane farthest from any lane not permitted so to turn shall turn as required above, and vehicles in each successive lane shall turn into the corresponding lane on the new roadway, following lane markings through the turn if present, and otherwise following a course reasonably calculated to reach that goal and to avoid interfering with vehicles turning from other lanes. No driver of a vehicle in any such turn lane shall fail to make the indicated turn, except vehicles in the lane nearest to any lane not permitted so to turn when a traffic control sign indicates that such option is permitted.

(4) Definitions: For the purposes of this section, "approach" means the last one hundred feet, or two hundred feet where the speed limit is more than forty miles per hour, traveled on the roadway before the place at which the turn is made, and "finish" means the first one hundred or two hundred feet as calculated above traveled on the new roadway.

(b) Two-Way Left Turn Lanes: Where a special lane for making left turns between intersections by vehicles proceeding in opposite directions has been indicated by a traffic control device, no driver shall turn left from any other lane, and no vehicle shall be driven in such special lane

[1]Pursuant to section 7-5-5, "Bicycle In Crosswalk," B.R.C. 1981, a bicyclist has the rights of a pedestrian over a motorist in a crosswalk only if the approach and entry into the roadway are made at a speed no greater than an ordinary walk so that other drivers may anticipate the necessity to yield when required. Pursuant to section 7-4-16, "Yield Required Before Entering Or Leaving Street," B.R.C. 1981, a bicyclist on a sidewalk or path has the right-of-way over a motorist entering or leaving an alley or driveway.

except while preparing for or making a left turn from or into the roadway, or while preparing for or making a U-turn when otherwise permitted by law.

7-4-26 **Turn Signal Required.**

(a) No driver shall turn a vehicle at an intersection or junction, change lanes or otherwise turn a vehicle from a direct course, or move right or left upon a roadway, without first displaying a signal of such intention in the manner described in section 7-4-29, "Method Of Signalling," B.R.C. 1981, continuously for at least the last one hundred feet traveled before making the movement where the speed limit is forty miles per hour or less and for two hundred feet upon portions of streets with higher speed limits.

(b) Where the turning vehicle is stopped or slowed in obedience to a stop sign or signal or because of a traffic obstruction, five seconds of signal may be substituted for the one hundred or two hundred feet required by this section.

(c) For the purposes of this section, each lane change or turn is considered, without limitation, a separate movement.

7-4-27 **Improper Use Of Turn Signal.**

The turn signals described in section 7-4-29, "Method Of Signalling," B.R.C. 1981, shall not be displayed by any driver except when signalling a turn, lane change, or start from a parked position, and then not for a time or distance greater than is reasonable. Four-way flashers shall not be displayed by any driver except while stopped to indicate a hazard or while disabled.

7-4-28 **Braking Signal Required.**

No driver of a motor vehicle or moped shall stop or suddenly decrease speed substantially without displaying a stop signal described in section 7-4-29, "Method Of Signalling," B.R.C. 1981, while so doing.

7-4-29 **Method Of Signalling.**

Stop or turn signals as required by this title shall be given only as follows:

(a) By signal lamps or signal devices of a type approved by the Colorado Department of Revenue, or

(b) Except as provided by subsection (c) of this section, by hand and arm from the left side of the vehicle:

(1) Left turn, extended horizontally;

(2) Right turn, extended upward;

(3) Stop or slow, extended downward.

(c) Where the distance from the center of the top of the steering post of a motor vehicle in use on a street exceeds two feet to the left outside limit of the body, cab, or load, or fourteen feet to the rear limit of the body or load, the vehicle shall be equipped with signal lamps, and the required signals shall be given only by such lamps.

7-4-30 **Defense To Turning Or Signalling Violation.**

Where a driver turns a vehicle at an intersection and turns again at or before the next intersection but at least one hundred feet from the first, it is a specific defense to a charge of violating the requirements of subsection 7-4-25(a), B.R.C. 1981, or section 7-4-26, "Turn Signal Required," B.R.C. 1981, concerning the position of finishing a turn or the length of signalling before a lane change or the next turn, that:

(a) The distance involved between turns was too short to permit compliance with both sections, and

(b) The otherwise prohibited maneuver was completed in safety.

7-4-31 **Vehicles Proceeding In Opposite Directions Must Pass To Right.**

Drivers proceeding legally in opposite directions upon the roadway of a street or on a sidewalk or path shall pass each other to the right.

Ordinance No. 5241 (1989).

7-4-32 **Driving On Right Side Of Roadway Required.**

Upon all roadways of sufficient width, no person shall drive to the left of the centerline thereof, except as follows:

(a) While overtaking and passing another vehicle proceeding in the same direction in conformance with all the rules governing such movement;

(b) Where an obstruction exists making it necessary to drive to the left of the centerline of the roadway, but any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway;

(c) Where proceeding in the proper direction upon a roadway restricted to one-way traffic as indicated by traffic control devices; or

(d) While turning left within an intersection or junction in conformance with all the rules governing such movement.

7-4-33 **Passing On The Left Prohibited.**

(a) No driver shall overtake or pass or attempt to overtake or pass upon the left of another vehicle proceeding in the same direction unless:

(1) The left side of the roadway is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be, and the same shall be, made only under all of the following conditions:

(A) The overtaking and passing is completed in safety and before coming within two hundred feet of any approaching vehicle; and

(B) The passing is made at a safe distance to the left of any overtaken vehicle, and the overtaking vehicle is not moved back to the right until it is safely clear of any overtaken vehicles;

(2) And none of the following conditions exists:

(A) Approaching the crest of a grade or curve in the street within a distance that would create a hazard if another vehicle approached from the opposite direction;

(B) Approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(C) Any overtaken vehicle is in the process of executing a left turn from a proper lane after exhibiting a sufficient signal;

(D) The overtaking vehicle is to the left of the centerline of a roadway with two or more lanes of travel in the direction of the vehicle's travel;

(E) A traffic control sign or marking is in place to define a no passing zone; or

(F) Any overtaken vehicle is stopped or slowed for a pedestrian in a crosswalk.

(b) The prohibitions of this section except subparagraphs (a)(1)(B), (a)(2)(C), and (a)(2)(F) of this section do not apply to one-way streets. The prohibitions of this section except subparagraphs (a)(1)(B), (a)(2)(C), (a)(2)(D), and (a)(2)(F) of this section do not apply to roadways marked for two or more lanes of travel in the direction of the overtaking vehicle.

7-4-34 **Passing On The Right Prohibited.**

No driver shall overtake or pass or attempt to overtake or pass upon the right of another vehicle proceeding in the same direction upon a roadway unless:

(a) The overtaking and passing is completed in safety on unobstructed paved roadway of sufficient width; and

(1) It is done entirely within an unoccupied and marked driving lane on a roadway marked for two or more lanes of moving motor vehicles in the direction of the vehicle's travel;

(2) The overtaking vehicle is turning right and overtakes or passes a single stopped vehicle that is not signalling a right turn;

(3) A single overtaken vehicle is signalling a left turn;

(4) The overtaking vehicle is a bicycle or electric assisted bicycle in a bike lane; or

(5) The overtaking vehicle is a bicycle or electric assisted bicycle that is traveling to the right of vehicles stopped or moving in the right-hand lane of traffic, but:

(A) The bicycle shall not overtake or pass the first vehicle stopped at an intersection unless the bicycle or electric assisted bicycle is preparing to turn right and the vehicle is not signalling a right turn;

(B) The bicycle or electric assisted bicycle shall not overtake or pass a moving vehicle signalling a right turn; and

(C) The bicycle or electric assisted bicycle shall not overtake or pass a vehicle within an intersection except as authorized by paragraph (a)(3) of this section; and

(b) The overtaken vehicle is not stopped or slowed for a pedestrian.

Ordinance Nos. 5241 (1989); 7021 (1999).

7-4-35 **Passing Within Lane Prohibited.**

Subject to special rules applicable to motorcycles, mopeds, electric assisted bicycles, or bicycles and rules permitting passing on the right, no driver of any vehicle shall pass another vehicle within the same lane. But any vehicle may pass to the left of a bicycle, electric assisted bicycle, or moped within the same lane if it is done in safety and if the overtaking vehicle does not come within three feet of the bicycle or moped.

Ordinance No. 7021 (1999).

7-4-36 **Improper Lane Change.**

Where any roadway has been divided into two or more clearly marked lanes for vehicular travel in the same direction, no person shall drive a vehicle other than entirely within a single lane, and no person shall move a vehicle from a lane until such movement can be made in safety, and then only after displaying the signal required by section 7-4-26, "Turn Signal Required," B.R.C. 1981.

7-4-37 **Following Too Closely Prohibited.**

The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of both vehicles and the traffic upon and condition of the street, and in no event at a distance of less than one and one half feet per mile per hour of speed of a motor vehicle following any vehicle.

Ordinance No. 5241 (1989).

7-4-38 **Changing Lanes Prohibited.**

Whenever a traffic control device is in place prohibiting the changing of lanes, no driver shall disobey the instruction of such device.

7-4-39 **Slow Moving Vehicle Must Keep To Right.**

A driver proceeding at less than the normal and legal speed of traffic then existing upon a roadway shall drive in the lane farthest to the right then available to that class of vehicle and as close as practicable to the right-hand curb except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or junction, subject to specific rules for that class of vehicle that may provide otherwise.

7-4-40 **Cycles Not To Pass In Or Between Lanes.**

Except for the special rule for bicycles described at paragraph 7-4-34(a)(5), B.R.C. 1981, the driver of a motorcycle, moped, electric assisted bicycle, or bicycle shall not overtake or pass in the same lane occupied by a four-, or more, wheeled vehicle being overtaken, nor shall any person

operate a motorcycle, moped, or bicycle between lanes of traffic or between adjacent lines or rows of vehicles.

Ordinance No. 7021 (1999).

7-4-41 When Cycles May Pass Within A Lane.

The driver of a motorcycle, moped, electric assisted bicycle, or bicycle may pass another such vehicle within a single lane, but only if it may be done in safety.

Ordinance No. 7021 (1999).

7-4-42 Cycles Not To Ride More Than Two Abreast.

No person shall drive a motorcycle, moped, electric assisted bicycle, or bicycle adjacent to more than one other such vehicle within the same lane.

Ordinance No. 7021 (1999).

7-4-43 Driving Wrong Way On One-Way Roadway Prohibited.

(a) No person shall drive the wrong way on a roadway restricted to one-way traffic.

(b) A roadway is restricted to one-way traffic when so indicated by traffic control devices, including, without limitation, a "one-way," "do not enter," or "wrong way" sign, or when the provisions of section 7-4-45, "Driving On Wrong Side Of Divided Street Prohibited," B.R.C. 1981, apply. This section also applies where, had the driver obeyed a traffic control device requiring or prohibiting a turn, no violation would have occurred.

7-4-44 Rotary Traffic Islands And Traffic Circles.

(a) No person shall drive past a rotary traffic island except to the right of such island.

(b) Where yield signs are in place indicating that a traffic circle is a four-way-yield or an all-way-yield intersection, no driver entering the traffic circle shall fail to yield the right-of-way to any driver whose vehicle is already entirely or partially within the traffic circle.

(c) Drivers entering or leaving a traffic circle are excused from the signaling requirements of section 7-4-26, "Turn Signal Required," B.R.C. 1981.

(d) No driver of a vehicle shall overtake or pass or attempt to overtake or pass any other vehicle proceeding in the same direction within a traffic circle.

Ordinance No. 5920 (1997).

7-4-45 Driving On Wrong Side Of Divided Street Prohibited.

Where any street has been divided into separate one-way roadways by leaving an intervening space or by a physical barrier, curb, or other clearly indicated dividing section so constructed as to impede vehicular traffic, no person shall drive other than on the right-hand roadway.

7-4-46 **Driving On Median Prohibited.**

(a) Where any street has been divided into separate roadways by leaving an intervening space or by a physical barrier, curb, or other clearly indicated dividing space so constructed as to impede vehicular traffic, no person shall drive over, across, or within such median space, except at a crossover or intersection established across such space if not otherwise prohibited.

(b) This section does not prohibit a left turn across a median island formed solely by traffic control markings where such movement is not otherwise prohibited and can be made in safety.

7-4-47 **Restricted Access.**

No person shall drive onto or from the roadway of any controlled access street except at entrances and exits established or authorized by a public authority.

7-4-48 **Driving On Restricted Street Prohibited.**

Where a traffic control sign indicates that a street is prohibited to or restricted to a particular class or classes of vehicle or to particular vehicle occupancies, no driver shall disobey the direction of any such sign.

7-4-49 **Driving In Restricted Lane Prohibited.**

Where a traffic control device indicates that a lane is restricted to a particular class or classes of vehicle or to particular vehicle occupancies, no driver shall disobey the direction of any such device. Where traffic control devices restrict the lane to bicycles, such lane may also be used by electric assisted bicycles.

Ordinance No. 7021 (1999).

7-4-50 **Driving On Sidewalk Prohibited.**

No person shall drive a moped or a motor vehicle upon or within any sidewalk area or upon any sidewalk located therein or upon any path except to cross it upon a permanent or duly authorized temporary driveway or drive such vehicle upon any other public or private sidewalk except with the permission of the manager or owner thereof.

Ordinance No. 5241 (1989).

7-4-51 **Vehicle On Mall Prohibited.**

(a) No person shall drive or operate any motor vehicle, moped, or animal-drawn vehicle on the mall except:

(1) Authorized emergency vehicles responding to an emergency or on other official business;

(2) Vehicles making deliveries to properties abutting the mall that cannot accept delivery in any other reasonable manner, but no such deliveries shall be made between the hours of 10:00 a.m. and 4:00 p.m.;

(3) Vehicles used in the construction, operation, or maintenance of the mall; or

(4) Vehicles that have a permit issued by the city manager, who is authorized to issue the same for a period not to exceed forty-eight hours if the presence of the applicant's vehicle is reasonable and necessary for a special activity authorized under chapter 4-11, "Mall Permits And Leases," B.R.C. 1981.

(b) No driver excepted from the prohibition of subsection (a) of this section shall drive on the mall unless:

(1) The speed does not exceed five miles per hour;

(2) The vehicle is operated in a manner that is careful and prudent for an area that is primarily for pedestrians; and

(3) Authorized emergency vehicles responding to emergencies have emergency lights or sirens in use in accordance with subsection 7-2-12(c), B.R.C. 1981, maintenance vehicles with special warning lights display them, and all other motor vehicles have emergency flashers in use.

7-4-52 **Inattentive Driving.**

(a) No person shall drive:

(1) In a careless, inattentive, negligent, or imprudent manner without due regard for the width, grade, curves, corners, traffic, and use of the streets or other places, or any other attendant circumstances; or

(2) In such a manner as to violate two or more of the specific sections of this title regulating the driving of vehicles for which penalty points are assessed against the driving privilege under the statutes of the state in a single driving episode. This paragraph does not limit the application of paragraph (a)(1) of this section.

(b) Any person who violates any provision of this section commits the offense of inattentive driving, and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance No. 7409 (2005).

7-4-53 **Driving On Roadway Required.**

(a) No driver proceeding on a roadway shall drive off the roadway except at an intersection or junction in accordance with the rules governing such movement.

(b) It is a specific defense to a charge of violating this section and sections 7-4-47, "Restricted Access," and 7-4-50, "Driving On Sidewalk Prohibited," B.R.C. 1981, that the driver was engaged in a construction project that necessitated the conduct and was acting with the permission of the owner of the property adjacent to the street.

7-4-54 **Colliding With Parked Vehicle Prohibited.**

No driver shall fail to prevent a collision between the driver's vehicle and any vehicle that is parked at a place where vehicles may legally be parked.

7-4-55 **Failure To Avoid Interfering With Vehicle Ahead.**

No driver of a vehicle to the rear shall fail to avoid colliding or otherwise interfering with any vehicle ahead that is proceeding in the same direction as the driver's vehicle or that is stopped facing the same direction as the driver's vehicle. It is an affirmative defense to a charge of violating this section that the driver of the other vehicle violated any section of this title governing right-of-way, turning, lane use, passing, or parking and that such violation was the proximate cause of the collision or interference.

7-4-56 **Reckless Driving.**

(a) No person shall drive a vehicle in such a manner as to:

(1) Indicate either a willful or wanton disregard for the safety of persons or property;

(2) Exceed by thirty or more miles per hour the applicable speed limit; or

(3) In a single driving episode, violate four or more of the specific sections of this title regulating the driving of vehicles for which penalty points are assessed against the driving privilege under the statutes of the state.

(4) Neither paragraph (a)(2) nor paragraph (a)(3) of this section limits the application of paragraph (a)(1) of this section.

(b) Any person who violates any provision of this section commits the offense of reckless driving, and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail; but on a second or subsequent conviction such person shall be punished by a fine of not less than $50.00 nor more than $1,000.00, jail of no less than ten days nor more than six months, or both such fine and jail.

Ordinance Nos. 5241 (1989); 5333 (1990); 7409 (2005).

7-4-57 **Speed Contest Prohibited[1].**

(a) No person shall race or engage in any motor vehicle speed or acceleration contest or exhibition of speed or acceleration upon a street.

(b) Any person who violates any provision of this section commits the offense of speed contest, and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance No. 7409 (2005).

7-4-58 **Speeding.**

(a) No person shall drive:

(1) Upon any street, alley, parking lot, sidewalk, or path in excess of the speed limit posted thereon;

(2) In excess of fifteen miles per hour on any alley, parking lot, sidewalk, or path upon which no speed limit is posted; or

[1]People v. Heckard, 431 P.2d 1014 (1967).

(3) In excess of twenty-five miles per hour on any street upon which no speed limit is posted or in any other place.

(b) Every complaint of violation of this section shall allege the speed at which the driver traveled and the speed limit applicable at the specified location of the violation. For increased penalties under paragraph (b)(5) of this section to be applicable, the complaint shall also indicate that the offense occurred in a school zone or construction zone. The trier of fact shall determine the applicable speed limit and shall determine in which of the following categories, if any, the speed fell:

(1) Exceeding the speed limit by one through four miles per hour. This infraction carries a penalty of not more than $500.00;

(2) Exceeding the speed limit by five through nine miles per hour. This infraction carries a penalty of not more than $500.00;

(3) Exceeding the speed limit by ten through nineteen miles per hour. This infraction carries a penalty of not more than $500.00;

(4) Exceeding the speed limit by twenty or more miles per hour. Any person who commits this offense is subject to punishment by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail; or

(5) If alleged in the complaint, whether the offense occurred in a school zone or a posted construction zone, in which case the maximum fine for the infraction or offense shall be doubled[1].

(c) No complaint shall be dismissed if the applicable speed limit differs from that alleged, but the court may not impose a sentence for a category of speeding infraction greater than the category alleged in the complaint.

Ordinance Nos. 5333 (1990); 6033 (1998); 7409 (2005).

7-4-59 **Driving Too Fast For Conditions Prohibited.**

The fact that the speed of a vehicle is not in violation of section 7-4-58, "Speeding," B.R.C. 1981, does not relieve its driver from the duty to decrease speed to less than those limits where special hazard exists because of the presence of a pedestrian or other traffic or by reason of weather or roadway conditions, and no driver shall fail to reduce speed to a speed that permits the vehicle to be operated in compliance with all applicable requirements of this title.

7-4-60 **Driving Too Slowly Prohibited.**

No person shall drive a motor vehicle on any roadway at such a slow speed as to impede or block the normal and legal forward movement of traffic or below any posted minimum speed, except when a reduced speed is necessary for safe operation of such vehicle or in compliance with law.

7-4-61 **Obstructing Traffic Prohibited.**

No driver shall stop any vehicle upon a roadway in such a manner or under such conditions as to interfere with or obstruct the free movement of vehicular traffic, block a traffic lane, or create a traffic hazard, but this section does not apply to a driver:

[1]See subsection 7-2-4(b), B.R.C. 1981, concerning penalties generally for the limitation of doubled infraction fines to $500.00.

(a) Engaged in the process of legally parking;

(b) Stopped so as to avoid conflict with other traffic;

(c) Acting in compliance with the directions of a peace officer, firefighter, flagger, or traffic control sign or signal;

(d) Stopping a vehicle because it is involved in a collision or suffers a disabling mechanical failure or because of other similar matters beyond the driver's control or remedy when such stopping is reasonable under the circumstances; or

(e) Stopping a bus at a bus stop.

7-4-62 **Obedience To Railroad Signal Required.**

A driver approaching a railroad grade crossing shall stop within fifty feet but no fewer than fifteen feet from the nearest rail and shall not proceed unless it can be done in safety, if:

(a) A clearly visible railroad signal gives warning of the approach or passing of a train;

(b) A railroad employee or flagger gives or displays a signal of the approach or passage of a train;

(c) An approaching train gives an audible signal at a reasonable distance not more than one thousand five hundred feet from the railroad grade crossing; or

(d) An approaching or passing train is plainly visible and is in hazardous proximity to the railroad grade crossing.

7-4-63 **Certain Vehicles Must Stop At Railroad Grade Crossings.**

(a) Before crossing at grade any tracks of a railroad, the driver of any vehicle carrying more than six passengers for hire, of any school bus carrying any school child, of any vehicle carrying explosives or hazardous materials as a cargo or part of a cargo, or of any vehicle designed to carry flammable liquids, whether empty or loaded, shall stop such vehicle within fifty feet but no fewer than fifteen feet from the nearest rail, while so stopped shall listen and look in all directions along all tracks for any approaching train and for signals indicating the approach of a train, and shall not proceed until it can be done in safety. The driver of a vehicle so required to stop shall cross only in a gear that will not require changing gears while traversing such railroad grade crossing, and the driver shall not manually shift gears while crossing the tracks.

(b) For the purposes of this section, hazardous materials means any material that is a hazardous material for purposes of the federal Hazardous Materials Transportation Act, 49 U.S.C. sections 1801 through 1812 and regulations promulgated thereunder that is transported in the city.

(c) This section does not apply at any railroad grade crossing:

(1) Protected by crossing gates or an alternately flashing light intended to give warning of the approach of a train;

(2) At which traffic is regulated by a traffic control signal;

(3) At which traffic is controlled by a police officer or flagger; or

(4) Where a traffic control sign carrying the legend "exempt" is erected.

(d) Any person who violates any provision of this section commits the offense of failure to stop at railroad grade crossing and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance Nos. 5462 (1992); 6054 (1999); 7409 (2005).

7-4-64 **Stop For School Bus Required.**

(a) A driver meeting or overtaking from either direction a school bus stopped upon a street shall stop before reaching the school bus, if there is displayed on the school bus in the direction facing the driver two or more alternately flashing red lights, and shall not proceed until the school bus resumes motion or the flashing red lights are no longer displayed. But the driver of a vehicle that is on a different roadway of a divided street than the school bus is not required by this section to stop upon meeting or passing a school bus. For the purposes of this section, divided street includes division by a painted median serving as a clearly indicated dividing island.

(b) Any person who violates any provision of this section commits the offense of failure to stop for school bus and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance No. 7409 (2005).

7-4-65 **Method Of Stopping School Bus.**

(a) The driver of a school bus shall activate the flashing red lights and stop arm required by section 42-4-1903, C.R.S., as amended, whenever stopped for the purpose of receiving or discharging a school child and at no other time. But these signals need not be activated when the school bus is stopped at a location where the traffic engineer has by prior written designation declared such activation unnecessary.

(b) Any person who violates any provision of this section commits the offense of failure to follow method of stopping school bus and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance Nos. 5848 (1996); 7409 (2005).

7-4-66 **Operation Of Vehicle On Approach Of Authorized Emergency Vehicle.**

(a) Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals meeting the requirements of section 42-4-213 or 42-4-222, C.R.S., as amended, the driver of every other vehicle shall yield the right-of-way and where possible shall immediately clear the farthest left-hand lane lawfully available to through traffic, shall drive to a position parallel to and as close as possible to the right-hand curb of a roadway clear of any intersection, and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer or firefighter or the driver of the authorized emergency vehicle.

(b) Any person who violates any provision of this section commits the offense of interference with an emergency vehicle and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance Nos. 5848 (1996); 7409 (2005).

7-4-67 **Eluding.**

(a) No driver who has received or reasonably should have received a visual or audible signal, including, without limitation, a red light or siren from a peace officer driving a vehicle marked as a police, park ranger, environmental protection officer, sheriff, or Colorado State Patrol car or an order given by a police officer directing the driver to stop, shall knowingly increase speed, extinguish lights in an attempt to elude such peace officer, or knowingly attempt in any other manner to elude the peace officer.

(b) Any person who violates any provision of this section commits the offense of eluding, and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance Nos. 5241 (1989); 7409 (2005).

7-4-68 **Following Or Parking Near Fire Truck Prohibited.**

No driver of any vehicle, other than an authorized emergency vehicle on official business, shall follow any fire apparatus that is using a siren or displaying any emergency lighting closer than five hundred feet or drive into or park within the block where any fire apparatus is stopped displaying emergency lighting.

7-4-69 **Crossing Fire Hose Prohibited.**

No person shall drive over any unprotected fire hose unless so directed by a peace officer or firefighter.

7-4-70 **Obedience To Peace Officers And Firefighters Directing Traffic Required.**

(a) No person shall fail to comply with any traffic direction given by voice, hand, or other signal by any peace officer or firefighter.

(b) Any person who violates any provision of this section commits the offense of disobeying a peace officer or firefighter and upon conviction thereof shall be punished by a fine of no more than $1,000.00, jail of no more than ninety days, or both such fine and jail.

Ordinance No. 7409 (2005).

7-4-71 **Obedience To Flagger Required.**

No driver shall unreasonably disobey any visible instruction or signal of an official hand signal device of a type prescribed in the state traffic control manual when displayed to such driver by a flagger in the manner prescribed in the manual.

7-4-72 **Yield To Maintenance Worker Or Vehicle Required.**

Every driver shall yield the right-of-way to any vehicle or pedestrian engaged in street work upon a street within any street construction or maintenance area indicated by a traffic control device and shall also yield the right-of-way to any authorized service vehicle engaged in work upon a street and displaying flashing lights that substantially comply with the requirements of section 42-4-214, C.R.S., as amended.

Ordinance No. 5848 (1996).

7-4-73 **Neighborhood Electric Vehicle Not To Be Operated On Limited Access Highway.**

No person shall drive a neighborhood electric vehicle upon or along any limited access highway. For the purposes of this section, "limited access highway" means U.S. Highway 36 from the south city limits to Colorado Avenue, Colorado Highway 157, and any other limited access highway within the meaning of that term in the *Uniform Safety Code* of 1935, as amended, of the state.

Ordinance No. 5920 (1997).

7-4-74 **Automated Enforcement Systems.**

(a) The city manager is authorized to use red-light cameras to detect violations of section 7-4-3, "Obedience To Red Signal Required," B.R.C. 1981, and to use camera radar to detect violations of section 7-4-58, "Speeding," B.R.C. 1981.

(b) As used in this section:

"Camera" means a device capable of capturing visual images, and includes, without limitation, cameras which capture images by the effect of light on chemicals on a film and cameras which capture images by converting light into electromagnetic or optical data which are stored on magnetic tape, computer memory disks, or other storage media.

"Camera radar" means a device used for speed enforcement consisting of a camera and a radar unit or other speed measurement device that can be programmed to produce an image which depicts a vehicle, and which also indicates the vehicle's speed and the date and approximate time of day.

"Red-light camera" means a device adapted for use at a signalized intersection or crosswalk and that is programmed to produce an image which depicts a vehicle, the driver of which has violated the provisions of section 7-4-3, "Obedience To Red Signal Required," B.R.C. 1981, at the intersection or crosswalk, and which also indicates the vehicle's location before entering and within the intersection or crosswalk and the date and approximate time of day and the status of the applicable traffic signal. Red-light camera also includes a device which will also use sensors, camera, and other equipment used to detect red-light violations to compute the speed of vehicles by recording the time the vehicle takes to activate two or more sensors set at known distances.

(c) When a peace officer, based on evidence obtained in whole or in part by means of camera radar or red-light camera, has probable cause to believe that a vehicle has been driven in violation of section 7-4-58, "Speeding," B.R.C. 1981, or has violated the provisions of section 7-4-3, "Obedience To Red Signal Required," B.R.C. 1981, the peace officer may issue, or cause to be issued through a contractor designated by the city manager, a summons and complaint charging the person in whose name the vehicle is registered based on the license plate or any other identification of the vehicle with violation of the applicable section. If, however, the

vehicle is registered in more than one person's name, the summons and complaint shall be issued to the registrant whom the issuing peace officer determines, under all the facts and circumstances, was the person most likely depicted in the image produced by the camera. The summons and complaint shall contain the signature, or a reasonable facsimile thereof, of the peace officer issuing the summons and complaint.

(d) Proof that a particular vehicle was exceeding the legal speed limit in violation of section 7-4-58, "Speeding," B.R.C. 1981, as detected by camera radar or red-light camera, together with proof that the particular vehicle is registered in the charged person's name, shall raise the evidentiary presumption and constitute prima facie evidence in any prosecution of a violation of that section of the fact that the charged person was the person driving the vehicle depicted. However, such evidence and presumption may be rebutted by presentation of probative and competent evidence that the charged person was not the driver shown. And if the image is not of sufficient quality to permit reasonable identification of the driver of the vehicle, the presumption shall not arise.

(e) In any proceeding in municipal court to prosecute a violation of section 7-4-58, "Speeding," B.R.C. 1981:

(1) The image and related data produced by camera radar concerning the violation shall be admissible in court as prima facie evidence of the speed of the vehicle depicted in the image, provided that the person who activated the camera radar prior to the image being taken testifies as to the placement of the camera radar and the accuracy of the scene depicted, and further testifies that the person tested the radar unit of the camera radar for proper calibration within a reasonable period of time both before and after the taking of the image.

(2) The image and related data produced by a red-light camera concerning the violation shall be admissible in court as prima facie evidence of the speed of the vehicle depicted in the image, provided that the person who activated and tested the red-light camera prior to the image being taken testifies as to the placement of the red-light camera and the accuracy of the scene depicted in the image, and further testifies that the person tested the red-light camera for proper operation within a reasonable period of time both before and after the taking of the image.

(3) It shall not be necessary that the same person who did the testing before the taking of the image be the person who testifies concerning the testing which occurs thereafter. Testing and operation in accordance with the manufacturer's specifications shall be, without limitation, sufficient foundation for introduction of the evidence.

(f) Proof that a particular vehicle entered an intersection in violation of section 7-4-3, "Obedience To Red Signal Required," B.R.C. 1981, as detected by a red-light camera, together with proof that the particular vehicle is registered in the charged person's name, shall raise the evidentiary presumption and constitute prima facie evidence in any prosecution of a violation of that section of the fact that the charged person was the person driving the vehicle depicted in the image. However, such evidence and presumption may be rebutted by presentation of probative and competent evidence that the charged person was not the driver shown. And if the image is not of sufficient quality to permit reasonable identification of the driver of the vehicle, the presumption shall not arise.

(g) In any proceeding in municipal court to prosecute a violation of section 7-4-3, "Obedience To Red Signal Required," B.R.C. 1981, the image and related data produced by a red-light camera concerning the violation shall be admissible in court as prima facie evidence of a violation of such section, provided that the person who activated and tested the red-light camera prior to the image being taken testifies as to the placement of the red-light camera and the accuracy of the scene depicted in the image, and further testifies that the person tested the red-light camera for proper operation within a reasonable period of time both

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before and after the taking of the image. It shall not be necessary that the same person who did the testing before the taking of the image be the person who testifies concerning the testing which occurs thereafter. Testing and operation in accordance with the manufacturer's specifications shall be, without limitation, sufficient foundation for introduction of the evidence.

(h) The penalty for speeding less than twenty-five miles per hour over the applicable speed limit in violation of section 7-4-58, "Speeding," B.R.C. 1981, if evidence produced by camera radar or red-light camera constituted an indispensable element of the proof, shall be $40.00[1]. The penalty for violation of section 7-4-3, "Obedience To Red Signal Required," B.R.C. 1981, if evidence produced by red-light camera constituted an indispensable element of the proof, shall be $75.00. The fine doubling provisions of subsection 7-2-4(b), B.R.C. 1981, concerning traffic infractions in school zones shall also apply to fines imposed under this subsection.

(i) In addition to other court costs, there shall be imposed in the manner specified in section 2-6-35, "Court Costs," B.R.C. 1981, upon any defendant who did not waive service of process the additional court cost amount for service of process specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981.

(j) Because the city council, acting pursuant to its home rule authority, has adopted by ordinance an absolute speed limit system, and not a prima facie system, with respect to any warning or any other matter purportedly required under state law for automated vehicle identification systems, the reasonable and prudent speed shall be the posted speed. The city manager may cause letters concerning violations detected by automated vehicle identification systems to be sent by first class mail to the owner of the vehicle involved, informing the owner of the event, and of the steps the city may take subsequently, so long as it is clear that such letters are not the formal process of the municipal court. Because nothing in this section or in section 42-4-110.5, C.R.S., changes any element of the offenses of speeding or disobeying a signal light, no failure of compliance shall constitute grounds for dismissal of the charge, nor shall it preclude conviction if the underlying elements are proven.

(k) The city manager shall not release or permit the inspection or copying of images taken by camera radar or red-light camera for other than law enforcement purposes, unless directed to do so by subpoena from a court of competent jurisdiction, or as part of litigation or threatened litigation involving the city. But such images shall be available to the owner of any vehicle and to the driver of any vehicle depicted in any such image.

Ordinance Nos. 5954 (1997); 6033 (1998); 6073 (1999); 7143 (2001); 7394 (2004); 7409 (2005); 7445 (2005).

[1]Paragraph 7-4-58(b)(4), B.R.C. 1981, provides for a penalty of up to a $1,000.00 fine and ninety days in jail for exceeding the speed limit by twenty or more miles per hour, so a conviction based on camera radar evidence for going twenty-five or more miles per hour over the limit would carry that potential penalty.

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 5 Pedestrian, Bicycle, And Animal Traffic

Section:

7-5-1 Application Of Traffic Laws To Bicycles.

Every person driving a bicycle or electric assisted bicycle has all of the rights and duties applicable to the driver of any other vehicle under this title except as modified by this chapter.

Ordinance No. 7021 (1999).

7-5-2 Required Method Of Riding Bicycle.

(a) No person driving a bicycle or electric assisted bicycle shall ride other than astride a permanent and regular seat attached thereto.

(b) No bicycle or electric assisted bicycle shall be used by either the driver or any passenger to carry more persons than the number for which it is designed or equipped.

(c) An adult riding on a bicycle or electric assisted bicycle may carry a child securely attached to the person in a backpack or sling.

Ordinance Nos. 5241 (1989); 7021 (1999).

7-5-3 **Carrying Articles.**

Every person driving a bicycle or electric assisted bicycle shall keep at least one hand on the handlebars at all times and shall not carry any package, bundle, or article that obstructs the driver's vision or prevents the use of both hands in the control and operation of the bicycle.

Ordinance No. 7021 (1999).

7-5-4 **Bicycle To Be Driven To Right.**

(a) Every person driving a bicycle or electric assisted bicycle upon a roadway at a speed so slow as to impede or block the normal and legal forward movement of traffic proceeding immediately behind such bicycle shall drive within the right four feet of the right-hand through lane of the roadway, except under any of the following conditions:

(1) When driving in a bike lane;

(2) When preparing for a left turn;

(3) When reasonably necessary for safety because of debris or other obstruction on or a defect in the surface of the pavement, but the bicyclist shall continue to drive as close to the right side of the roadway as is practicable;

(4) When overtaking and passing on the left of another vehicle; or

(5) On a one-way street, when driving in the left four feet of the left-hand through lane.

(b) A bicycle or electric assisted bicycle may be driven on a paved shoulder if such driving does not violate any section of this title for passing or direction of travel.

Ordinance Nos. 5241 (1989); 7021 (1999).

7-5-5 **Bicycle In Crosswalk.**

Persons driving bicycles across a roadway upon and along a crosswalk from a sidewalk or path have all the duties applicable to pedestrians under the same circumstances. Such persons similarly have the rights of a pedestrian, but only if the bicyclist was entitled to use the sidewalk or path, and the approach and entry into the roadway are made at a speed no greater than an ordinary walk so that other drivers may anticipate the necessity to yield when required.

Ordinance Nos. 5241 (1989); 5920 (1997).

7-5-6 **Driving More Than Two Abreast On Path Prohibited.**

No person shall drive a bicycle upon a path adjacent to more than one other bicycle.

Ordinance No. 5241 (1989).

7-5-7 **Left Turns By Bicycles.**

(a) The driver of a bicycle or electric assisted bicycle turning left in accordance with section 7-4-25, "Improper Turn Prohibited," B.R.C. 1981, may approach the turn anywhere within

any separate left turn lane and may finish the turn by moving to the right lane as soon as it can be done in safety.

(b) In addition to any other method specified in this title, the driver of a bicycle or electric assisted bicycle may make a left turn by crossing the intersection as close as practicable to the right-hand curb line to the far curb and then turning left to proceed in the proper position on the other roadway. A person making a left turn under the provisions of this subsection may do so only after complying with all the obligations of drivers of vehicles approaching in the new direction on the other roadway, including, without limitation, the duties to stop and yield in response to traffic control signs or signals.

Ordinance No. 7021 (1999).

7-5-8 **Bicycle Turn Signals.**

The driver of a bicycle is excepted from giving the hand and arm signal continuously if the hand is needed in the control or operation of the bicycle or electric assisted bicycle, but it shall be given for a substantial period while stopped waiting to turn. The driver of a bicycle or electric assisted bicycle may signal a right turn by extending the right hand and arm horizontally.

Ordinance No. 7021 (1999).

7-5-9 **Bicycle Must Yield Right-Of-Way And Obey Traffic Control Devices On Sidewalk, Crosswalk, Or Path.**

(a) A person driving a bicycle on a sidewalk, a crosswalk, or a path shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing any pedestrian.

(b) If any traffic control device is in place alongside of or on a sidewalk or a path, no driver of a bicycle or pedestrian shall fail to obey the requirements of the device.

Ordinance No. 5241 (1989).

7-5-10 **Driving Bicycle On Sidewalk Prohibited.**

(a) No person shall drive a bicycle or use a skateboard, rollerblade, or roller ski upon and along a sidewalk except:

(1) Upon sidewalks in residential or public districts zoned RR-1, RR-2, RE, RL, RM, RMX, RH-1, RH-2, RH-3, RH-4, RH-5, MH, MU-1, MU-3, or P; or

(2) Upon sidewalks designated as paths.

(b) No person shall drive a bicycle on the mall. This subsection does not apply to an entertainer who is performing an act on a unicycle.

(c) No person shall drive a bicycle upon and along a sidewalk where such use is prohibited by a traffic control device.

Ordinance Nos. 5241 (1989); 5930 (1997); 7522 (2007).

7-5-11 **Bicycle Headlight And Reflector Required.**

(a) No person shall drive a bicycle or electric assisted bicycle between sunset and sunrise unless it is equipped with a red rear reflector mounted on the bicycle so located and of sufficient size and reflectivity to be visible for six hundred feet to the rear when directly in front of lawful lower beams of headlamps on a motor vehicle.

(b) No person shall drive a bicycle or electric assisted bicycle between sunset and sunrise or at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles are not clearly discernable at a distance of one thousand feet ahead, unless it is equipped with a lamp mounted on the front of the bicycle and emitting a white light visible from a distance of at least five hundred feet to the front.

Ordinance Nos. 4913 (1985); 5241 (1989); 7021 (1999).

7-5-12 **Bicycle Brake Required.**

No person shall drive a bicycle or electric assisted bicycle unless it is equipped with a brake system which will enable its driver to stop the bicycle within twenty-five feet from a speed of ten miles per hour on dry, level, clean pavement.

Ordinance Nos. 5241 (1989); 7021 (1999).

7-5-13 **Definition Of Walk.**

Any requirement placed on a walking pedestrian under this chapter applies to every pedestrian.

7-5-14 **Pedestrian Or Bicyclist Entering Roadway.**

No pedestrian or bicyclist shall suddenly leave a curb or other place of safety and walk, run, or drive into the path of a moving vehicle that is both so close as to constitute an immediate hazard and is not required to stop or yield by a traffic control sign or signal.

Ordinance No. 5241 (1989).

7-5-15 **Pedestrian Obedience To Traffic Signal Required.**

(a) Except as otherwise directed by a pedestrian traffic control signal, no pedestrian shall enter the roadway at an intersection controlled by a steady traffic control signal unless a circular green signal is displayed governing the direction of travel.

(b) Where a pedestrian control signal exhibiting "Walk" or "Don't Walk" word or symbol indications is in operation, no pedestrian shall enter the roadway unless a steady or flashing "Walk" indication is displayed governing the direction of travel.

(c) The prohibitions of this section apply to a pedestrian crossing in the crosswalk, in the intersection, or within fifty feet of the crosswalk.

(d) Whenever a traffic signal system provides for the stopping of all vehicular traffic and the exclusive movement of pedestrians and "Walk" and "Don't Walk" word or symbol indications control such pedestrian movement, pedestrians may cross in any direction between corners of

the intersection offering the shortest route within the boundaries of the intersection while the walk indication is exhibited.

(e) Any pedestrian who has lawfully entered a crosswalk governed by traffic control signals may complete crossing the roadway notwithstanding any indication subsequently displayed.

7-5-16 Pedestrian At Flashing Red Light.

Pedestrians crossing a roadway with a flashing red traffic control indication light shall obey the rules for non-intersection crossing described in subsections 7-5-17(a) and (b), B.R.C. 1981.

7-5-17 Pedestrian Crossing At Other Than Crosswalk.

(a) No pedestrian shall cross a roadway other than by a route at right angles to the curb or by the shortest route to the opposite curb.

(b) Every pedestrian crossing or otherwise within a roadway shall yield the right-of-way to and avoid any interference with all vehicles upon or approaching the roadway.

(c) Where a traffic control signal is in operation at an intersection, no pedestrian shall cross a roadway within fifty feet of the crosswalk at the intersection except in the crosswalk in conformance with section 7-5-15, "Pedestrian Obedience To Traffic Signal Required," B.R.C. 1981.

(d) The provisions of this section do not apply to pedestrians crossing in crosswalks or in accordance with subsection 7-5-15(d), B.R.C. 1981.

7-5-18 Action Of Pedestrian Upon Approach Of Authorized Emergency Vehicle.

Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals meeting the requirements of section 42-4-213 or 42-4-222, C.R.S., as amended, all pedestrians shall yield the right-of-way and shall leave the roadway and remain off the same until said vehicle has passed, except if otherwise directed by a police officer or firefighter or the driver of the authorized emergency vehicle.

Ordinance No. 5848 (1996).

7-5-19 Pedestrian To Use Sidewalks On Main Streets.

(a) Where a sidewalk is provided on or adjacent to any street that is a state highway, a street with four or more lanes for moving motor vehicular traffic, or a street in a district zoned BT, BC, or BR and its use is practicable for walking, no person shall walk along and upon an adjacent roadway.

(b) Where no such sidewalk is provided on such a street, pedestrians shall walk along a road shoulder, if present, as far as practicable from the edge of the roadway.

7-5-20 **Pedestrian To Walk Facing Traffic.**

A pedestrian walking along and upon a roadway shall walk as near as practicable to an outside edge of the roadway and, if on a two-way street, shall walk only on the left side facing approaching traffic.

7-5-21 **Hitchhiking In Roadway Prohibited.**

(a) No person while upon a roadway shall solicit a ride from the driver of any vehicle.

(b) No person shall solicit a ride from the driver of any vehicle unless there exists an area within one hundred feet from the person soliciting the ride in which the vehicle may be stopped without obstructing traffic in violation of the provisions of section 7-4-61, "Obstructing Traffic Prohibited," B.R.C. 1981.

Ordinance No. 5241 (1989).

7-5-22 **Animal To Be Ridden Facing Traffic.**

Any person on a street riding or leading any animal not pulling a vehicle shall ride or lead same on the far left side of the street facing approaching traffic. This requirement does not apply to persons driving herds of animals along streets.

7-5-23 **Bicycle Racing Prohibited.**

No person shall engage with another bicyclist or person driving any other vehicle in any bicycle race, speed, or acceleration contest, or exhibition of speed or acceleration on a street, a sidewalk, or a path except as authorized in paragraph 2-2-11(b)(16), B.R.C. 1981.

Ordinance No. 5241 (1989).

7-5-24 **Approved Bicycle Races.**

Bicycle racing shall not be unlawful when a racing event has been approved by the city manager. It is a specific defense to a charge of violating any provision of chapter 7-2, "General Provisions," 7-3, "Condition Of Vehicles," 7-4, "Operation Of Vehicles," or 7-5, "Pedestrian, Bicycle, And Animal Traffic," B.R.C. 1981, that the driver was racing as a participant in a bicycle race authorized under paragraph 2-2-11(b)(16), B.R.C. 1981, and was driving in accordance with such authorization. This defense does not apply to charges of violating paragraphs 7-4-52(a)(1), 7-4-56(a)(1), and section 7-4-66, "Operation Of Vehicle On Approach Of Authorized Emergency Vehicle," 7-4-67, "Eluding," 7-4-68, "Following Or Parking Near Fire Truck Prohibited," 7-4-69, "Crossing Fire Hose Prohibited," or 7-4-70, "Obedience To Peace Officers And Firefighters Directing Traffic Required," B.R.C. 1981.

Ordinance No. 5241 (1989).

7-5-25 **Staying On Medians Prohibited.**

(a) No person shall stand or be upon a median of any street for longer than is reasonably necessary to cross the street.

7-5-25

(b) For the purposes of this section, "median" means:

(1) The area of a street, generally in the middle, which separates traffic traveling in one direction from traffic traveling in another direction, or which, at intersections, separates traffic turning left from traffic proceeding straight. Such an area is physically defined by curbing, landscaping, or other physical obstacles to the area's use by motor vehicles, or by traffic control markings which prohibit use of a portion of the pavement of a street by motor vehicles other than to drive generally perpendicularly across the markings, or to wait there awaiting the opportunity to cross or merge with the opposing lanes of traffic (also known as painted medians, which are wider than a double yellow line); or

(2) The area of a street at an intersection between the streets and a right turn only lane, roughly triangular in shape, and separated from the motor vehicular traffic lanes by curbing, landscaping, or other physical obstacles to the area's use by motor vehicles (also known as a right turn island).

(c) This section does not apply to medians which are thirty or more feet wide, to the medians on Mapleton Avenue between Fourth Street and Ninth Street, or to persons maintaining or working on the median for the government which owns the underlying right-of-way or for a public utility.

Ordinance No. 7260 (2003).

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 6 Parking Infractions

Section:

7-6-1 Driver And Owner Liable For Violation.

No driver shall stop or park a vehicle and no owner of a vehicle shall fail to prevent the stopping or parking of that vehicle in violation of any of the prohibitions or requirements of this chapter. Both the owner and the driver are jointly and severally liable for any such violation. It is a specific defense to the liability of the owner that the vehicle was parked or stopped by a thief at the time of the violation.

7-6-2 Parking Penalties.

Violations of any of the provisions of this chapter are traffic infractions. Every person who is convicted of, who admits liability for, or against whom a judgment is entered for such a traffic infraction shall be fined or penalized according to the following schedule:

(a) Section 7-6-22, "Parking In Handicapped Space Prohibited," B.R.C. 1981: $112.00.

(b) Paragraph 7-6-13(b)(8) (concerning parking in a work zone or closed street), paragraph 7-6-23(a)(5) (concerning parking with expired license plates), B.R.C. 1981: $50.00.

(c) Section 7-6-21, "Parking In Loading Zone Prohibited," and subsection 7-6-27(d) (concerning parks and open space parking permits), B.R.C. 1981: $25.00.

(d) Sections 7-6-14, "Unauthorized Parking Prohibited," and 7-6-15, "Overtime Parking, Signs," B.R.C. 1981: $20.00.

(e) Sections 7-6-16, "Overtime Parking, Meters," 7-6-17, "Time Limit, Meter Parking," and 7-6-20, "Parking For More Than Seventy-Two Hours Prohibited," B.R.C. 1981: $15.00.

(f) All other sections for which no amount is specifically provided: $15.00.

(g) Where specific penalties are otherwise provided, those penalties apply.

Ordinance Nos. 4817 (1984); 4903 (1985); 5082 (1987); 5425 (1991); 5546 (1993); 5686 (1994); 5869 (1997); 5888 (1997); 7105 (2000); 7120 (2001); 7190 (2002); 7294 (2003).

7-6-3 **Late Fee.**

Whenever enforcement is initiated by issuance of a parking ticket, and the fine or penalty is not received by the municipal court or the owner or driver does not appear in the municipal court to set a hearing on the allegation within fourteen days of the date of issue, the fine or penalty shall be increased by a late fee of $15.00.

Ordinance Nos. 5686 (1994); 5888 (1997).

7-6-4 **Separate Infractions.**

(a) For each overtime parking infraction, a new and separate infraction occurs when a vehicle remains illegally parked for more than the maximum allowable time for parking after the issuance of the preceding parking ticket.

(b) For all other parking infractions, a new and separate infraction occurs when a vehicle remains illegally parked for more than two hours after the issuance of the preceding parking ticket.

7-6-5 **Initiation.**

(a) Enforcement of the provisions of this chapter may be initiated in any of the following ways:

(1) A parking ticket may be served by leaving it under the windshield wiper or otherwise attached to the vehicle, or handing it to the driver or owner if the driver or owner is present, or mailing it by first class or certified mail to the address of the owner of the vehicle as shown in the motor vehicle ownership records of the state of registration;

(2) A summons and complaint may be served on the driver of the vehicle as provided in the Colorado Municipal Court Rules of Civil Procedure;

(3) A summons and complaint may be served on the owner of the vehicle as provided in the Colorado Municipal Court Rules of Civil Procedure.

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 6 Parking Infractions

Section:

7-6-1 Driver And Owner Liable For Violation.

No driver shall stop or park a vehicle and no owner of a vehicle shall fail to prevent the stopping or parking of that vehicle in violation of any of the prohibitions or requirements of this chapter. Both the owner and the driver are jointly and severally liable for any such violation. It is a specific defense to the liability of the owner that the vehicle was parked or stopped by a thief at the time of the violation.

7-6-2 Parking Penalties.

Violations of any of the provisions of this chapter are traffic infractions. Every person who is convicted of, who admits liability for, or against whom a judgment is entered for such a traffic infraction shall be fined or penalized according to the following schedule:

(a) Section 7-6-22, "Parking In Handicapped Space Prohibited," B.R.C. 1981: $112.00.

(b) Paragraph 7-6-13(a)(10) (concerning parking in a fire lane), paragraph 7-6-13(b)(2) (concerning parking within five feet of a fire hydrant), paragraph 7-6-13(b)(8) (concerning parking in

a work zone or closed street), paragraph 7-6-23(a)(5) (concerning parking with expired license plates), B.R.C. 1981: $50.00.

(c) All violations in section 7-6-21, "Parking In Loading Zone Prohibited," subsection 7-6-27(d) (concerning parks and open space parking permits), and all violations in section 7-6-13, "Stopping Or Parking Prohibited In Specified Places," B.R.C. 1981, except the paragraphs listed in subsection (b) of this section: $25.00.

(d) Sections 7-6-14, "Unauthorized Parking Prohibited," and 7-6-15, "Overtime Parking, Signs," B.R.C. 1981: $20.00.

(e) Sections 7-6-16, "Overtime Parking, Meters," 7-6-17, "Time Limit, Meter Parking," and 7-6-20, "Parking For More Than Seventy-Two Hours Prohibited," B.R.C. 1981: $15.00.

(f) All other sections for which no amount is specifically provided: $15.00.

(g) Where specific penalties are otherwise provided, those penalties apply.

Ordinance Nos. 4817 (1984); 4903 (1985); 5082 (1987); 5425 (1991); 5546 (1993); 5686 (1994); 5869 (1997); 5888 (1997); 7105 (2000); 7120 (2001); 7190 (2002); 7294 (2003); 7495 (2006).

7-6-3 **Late Fee.**

Whenever enforcement is initiated by issuance of a parking ticket, and the fine or penalty is not received by the municipal court or the owner or driver does not appear in the municipal court to set a hearing on the allegation within fourteen days of the date of issue, the fine or penalty shall be increased by a late fee of $15.00.

Ordinance Nos. 5686 (1994); 5888 (1997).

7-6-4 **Separate Infractions.**

(a) For each overtime parking infraction, a new and separate infraction occurs when a vehicle remains illegally parked for more than the maximum allowable time for parking after the issuance of the preceding parking ticket.

(b) For all other parking infractions, a new and separate infraction occurs when a vehicle remains illegally parked for more than two hours after the issuance of the preceding parking ticket.

7-6-5 **Initiation.**

(a) Enforcement of the provisions of this chapter may be initiated in any of the following ways:

(1) A parking ticket may be served by leaving it under the windshield wiper or otherwise attached to the vehicle, or handing it to the driver or owner if the driver or owner is present, or mailing it by first class or certified mail to the address of the owner of the vehicle as shown in the motor vehicle ownership records of the state of registration;

(2) A summons and complaint may be served on the driver of the vehicle as provided in the Colorado Municipal Court Rules of Civil Procedure;

(3) A summons and complaint may be served on the owner of the vehicle as provided in the Colorado Municipal Court Rules of Civil Procedure.

(b) No more than one fine or penalty may be collected for each infraction.

Ordinance No. 5617 (1994).

7-6-6 **Regulations Not Exclusive.**

No traffic control sign imposing a time limit on parking relieves any person from the duty of observing other and more restrictive regulations prohibiting or limiting the stopping or parking of vehicles in specified places or at specified times.

7-6-7 **Misparking Vehicle Of Other Prohibited.**

No person shall move any vehicle not lawfully under such person's control into any area where parking or stopping is prohibited, leave such vehicle there, or leave such vehicle otherwise improperly parked. The penalty for violation of this section is a fine of $100.00.

7-6-8 **Parked On Wrong Side Of Street.**

On a two-way street vehicles shall be parked on the right-hand side of the street facing in the direction of travel. On a one-way street vehicles shall be parked facing in the direction of travel.

7-6-9 **Parked Too Far From Curb.**

Except where angle parking is permitted, vehicles shall be parked only in the position specified below:

(a) On a two-way street all vehicles with four or more wheels shall be parked with the right-hand wheels within twelve inches of the right-hand curb. On a one-way street vehicles parked on the right shall be parked in compliance with the rule for two-way streets, and vehicles parked on the left shall be parked with the left-hand wheels parallel to and within twelve inches of the left-hand curb.

(b) Vehicles with three or fewer wheels shall be parked with at least one wheel in compliance with subsection (a) of this section, and no part of the vehicle shall be more than six feet from the appropriate curb.

(c) In no case shall any vehicle be double parked.

7-6-10 **Obedience To Angle Parking Rules.**

(a) Upon any portion of a street where angle parking is indicated by a traffic control device, no vehicle shall be parked other than at the angle to the curb so indicated and with the front of the vehicle facing the curb and within twelve inches of it.

(b) No vehicle shall be parked in an angle parking zone if it exceeds twenty feet in length or eight feet in width, including cargo or load.

7-6-11 Right Angle Parking Permit.

Notwithstanding the provisions of this chapter, vehicles may be parked at right angles to the curb for the purpose of loading or unloading merchandise if in accordance with a permit issued by the city manager. Upon application therefor in such reasonable form as the manager requires, the manager shall issue such a permit if the manager finds that no reasonable alternative exists and that traffic on the street, including sidewalks, will not be unreasonably obstructed considering the frequency, duration, and nature of the parking and of the traffic in the area. The manager may place such reasonable restrictions on the permit as in the manager's discretion are deemed appropriate to minimize interference with traffic.

7-6-12 Unattended Motor Vehicle.

(a) No motor vehicle shall be stopped unattended without the engine being stopped, the ignition being locked, and the key being removed from the ignition. But this subsection does not apply to commercial delivery vehicles licensed as trucks by the Colorado Department of Revenue.

(b) A driver who stops and leaves a vehicle unattended shall set the brake thereon in an effective manner. If the vehicle stands on any grade, such driver shall also turn the front wheels to the curb in such a manner as to prevent the vehicle from rolling away. The penalty for violation of any provision of this subsection is a fine of not less than $10.00 nor more than $100.00.

7-6-13 Stopping Or Parking Prohibited In Specified Places.

(a) No vehicle may be stopped or parked:

(1) On a sidewalk or within the sidewalk area. For the purposes of this section, the far edge of a sidewalk parallel and adjacent to a roadway is presumed to be the property line;

(2) Within an intersection;

(3) On a crosswalk;

(4) On a roadway in such a manner or under such conditions as to leave available fewer than ten feet of width of the roadway of an alley or seven feet from the centerline of a street for the free movement of vehicular traffic;

(5) Upon any bridge or other elevated structure upon a street or within a street tunnel or underpass;

(6) On or within five feet of any railroad tracks;

(7) On any street with two or more lanes for moving traffic in both directions or on any state highway;

(8) In the area between the roadways of a divided street, including crossovers;

(9) On a bike lane or path;

(10) In a clearly marked fire lane;

(11) At any place on a street where a traffic control sign prohibits stopping; or

(12) Within the sidewalk area, except that a single vehicle may be stopped or parked at a right angle to the street within the sidewalk area on a paved driveway connecting a curb cut with an area of permitted off-street parking of a detached dwelling unit if no part of such vehicle is over or in the street or sidewalk and the driver has the express or implied permission of an occupant of the dwelling served by such driveway so to park. This exception applies only to driveways which were in existence on September 1, 1988[1]. For the purposes of this subsection, the far edge of a sidewalk parallel and adjacent to a roadway is the property line.

(b) No vehicle may be parked:

(1) On a roadway in or within five feet of a public or private driveway or junction;

(2) When a fire hydrant is within ten feet of the curb, on a roadway within five feet of that point on the curb closest to the hydrant;

(3) On a roadway within twenty feet of a crosswalk or intersection;

(4) On a roadway within thirty feet of any flashing beacon or signal, stop sign, yield sign, or traffic control signal located at the side of the roadway;

(5) Within fifty feet of the nearest rail of a railroad grade crossing;

(6) In a bus stop;

(7) At any place on a street where a traffic control sign prohibits parking; or

(8) In a manner that obstructs the commencement or ongoing operation of a public construction, maintenance, or repair project, or a street closure, after seventy-two hours' advance notice of the parking prohibition and the time it is effective has been conspicuously posted and reasonable efforts have been made to maintain notice on the site.

(c) The provisions of this section are limited or modified by and are expressly subject to any parking meter, pay station, or traffic control device regulating stopping or parking a vehicle.

Ordinance Nos. 5156 (1988); 5241 (1989); 5920 (1997); 7190 (2002); 7294 (2003).

7-6-14 **Unauthorized Parking Prohibited.**

(a) No vehicle shall be parked upon any public or private property without the express or implied consent of the owner, lessee, or occupant of the property or for a time period in excess of or in a manner other than that for which consent was given by such person.

(b) For the purposes of this section, there is an implied consent to park in areas set aside for parking on any private or public property except on property used as a single-family residence, but such implied consent is deemed revoked with respect to any person who has parked a vehicle or has allowed a vehicle to remain parked in disregard of or contrary to the direction or intended function of any of the following:

(1) A parking attendant, a card or coin-operated gate, or any other means calculated to bar or otherwise control entrance onto or use of the property by unauthorized vehicles;

(2) Parking meters or pay stations located on the property;

[1]This exception to a parking prohibition has no effect on off-street parking requirements found in the land use title of this code, e.g., subsection 9-9-6(d)(1), B.R.C. 1981 (required parking may not be within front yard setback and must be on lot).

(3) Signs or pavement markings located on the property indicating a limitation or prohibition on parking thereupon or that a parking fee must be paid, if the signs or markings:

(A) Clearly indicate, in not less than one-inch-high lettering on a sign or twelve-inch-high lettering or symbols on the pavement, the limitation, prohibition, or fee schedule and method of payment;

(B) Are located in or near the area where the limitation, prohibition, or fee applies; and

(C) Are located so as to be seen by an ordinarily observant person; or

(4) Any other method of express revocation of implied consent communicated directly to the owner or driver of the vehicle by the owner of the property or the owner's authorized agent.

(c) No complaint shall issue for a violation of this section unless signed by the owner or lessee of the entire real property or any agent authorized by the owner or lessee.

(d) This section does not apply to parking on public streets or to parking regulated by section 7-6-13, "Stopping Or Parking Prohibited In Specified Places," 7-6-15, "Overtime Parking, Signs," 7-6-16, "Overtime Parking, Meters," 7-6-17, "Time Limit, Meter Parking," 7-6-18, "Parking In Space Required," 7-6-22, "Parking In Handicapped Space Prohibited," or 7-6-25, "Parking In City Employee Lot Prohibited," B.R.C. 1981.

Ordinance Nos. 5546 (1993); 7294 (2003).

7-6-15 **Overtime Parking, Signs.**

(a) When a traffic control sign is in place giving notice thereof, no vehicle shall remain parked for longer than the time designated thereon on any day except Sundays and holidays.

(b) When a traffic control sign is in place giving notice thereof, within a neighborhood permit parking zone established pursuant to section 2-2-15, "Neighborhood Permit Parking Zones," B.R.C. 1981, no vehicle shall remain parked for longer than the time specified on the sign unless a valid permit for that zone, issued pursuant to chapter 4-23, "Neighborhood Parking Zone Permits," B.R.C. 1981, is continuously displayed in the proper position on such vehicle. In addition:

(1) If the sign limits parking within the zone to no more than a specified length of time within the zone during any specified period of time, then no vehicle shall be parked anywhere within the zone in violation of that restriction without a proper permit properly displayed.

(2) If the sign prohibits parking within the zone, then no vehicle shall be parked within the zone without a proper permit properly displayed.

Ordinance Nos. 4966 (1986); 5720 (1995); 5869 (1997).

7-6-16 **Overtime Parking, Meters.**

(a) No vehicle shall be parked in a space regulated by a parking meter when no unexpired time is displayed on the meter except during those times indicated on the meter when no time need be displayed or when the vehicle is displaying a valid handicapped parking permit in accordance with subsection 2-2-11(f), B.R.C. 1981, and regulations issued thereunder.

(b) No vehicle shall be parked in a space regulated by a pay station except during the time purchased from the pay station, except during those times indicated on the pay station when no time need be displayed or when the vehicle is displaying a valid handicapped parking permit in accordance with subsection 2-2-11(f), B.R.C. 1981, and regulations issued thereunder. If the pay station requires that a receipt be displayed on the vehicle, no vehicle shall be parked in a space regulated by a pay station without displaying a receipt showing unexpired time on the dashboard of the vehicle, face up, in a position where it may readily be read from outside the vehicle.

Ordinance Nos. 5233 (1989); 7294 (2003).

7-6-17 **Time Limit, Meter Parking.**

(a) No vehicle shall remain parked in a space regulated by a parking meter for longer than the maximum time that can be purchased on the meter at one time, except during those times indicated on the meter when no time need be displayed.

(b) No vehicle shall remain parked in a space regulated by a pay station for longer than the maximum time that can be purchased from the station at one time, except during those times indicated on the station for which payment is not required.

Ordinance No. 7294 (2003).

7-6-18 **Parking In Space Required.**

Every vehicle parked in a metered parking zone, a space governed by a pay station, or in a parking lot of a public authority shall be parked entirely within one individual parking space as indicated by traffic control markings.

Ordinance No. 7294 (2003).

7-6-19 **Applicability Of Certain Parking Limits.**

The provisions of sections 7-6-15, "Overtime Parking, Signs," 7-6-16, "Overtime Parking, Meters," 7-6-17, "Time Limit, Meter Parking," and 7-6-18, "Parking In Space Required," B.R.C. 1981, apply to parking in lots owned or operated by the city, including those of any general improvement district established pursuant to chapter 8-4, "General Improvement Districts," B.R.C. 1981, and to metered parking, pay station regulated parking, and free but time-limited parking on streets.

Ordinance Nos. 5039 (1987); 5686 (1994); 7294 (2003).

7-6-20 **Parking For More Than Seventy-Two Hours Prohibited.**

(a) No vehicle shall be parked upon any street for more than seventy-two hours without being moved or for the principal purpose of storage for more than seventy-two hours.

(b) Proof that the vehicle's odometer shows movement of no more than two-tenths of a mile during a period of at least seventy-two hours shall constitute prima facie evidence of violation of this section.

Ordinance No. 5686 (1994).

7-6-21 **Parking In Loading Zone Prohibited.**

(a) No vehicle shall be parked in a loading zone for any purpose or period of time except:

(1) In a passenger loading zone, for the visible loading or unloading of passengers for a period not in any case to exceed three minutes; or

(2) In any other loading zone, for the visible unloading and delivery or pick-up and loading of property for a period not in any case to exceed thirty minutes, or such shorter time indicated by a traffic control sign, or loading or unloading of passengers for a period not in any case to exceed three minutes.

(b) All alleys in a district zoned BT, BC, BR, or I are a loading zone. On all other streets, traffic control signs indicate loading zones.

Ordinance No. 5686 (1994).

7-6-22 **Parking In Handicapped Space Prohibited.**

(a) No vehicle shall be parked in a space designated for handicapped parking by any sign or pavement marking using the term "handicapped," displaying a wheelchair symbol, or otherwise reasonably indicating designation for handicapped parking, unless the vehicle displays a placard or license plate issued by the Colorado Department of Revenue pursuant to section 42-4-1208, C.R.S., as amended, based upon a finding that the individual has an impairment that substantially limits such person's ability to move from place to place.

(b) This section applies to all spaces designated for handicapped parking on public property and on private property. The designation of such spaces by a private property owner or lessee has the same effect as designation by public authority and operates as a waiver of any objection to enforcement by peace officers.

Ordinance No. 5848 (1996).

7-6-23 **Parking For Certain Purposes Prohibited.**

(a) No vehicle shall be parked upon any street:

(1) For the principal purpose of displaying such vehicle for sale or displaying advertising;

(2) For selling merchandise from such vehicle except in accordance with the terms of a permit issued under section 4-18-2, "Sidewalk Sale Permit Required," B.R.C. 1981;

(3) For greasing or repairing such vehicle, except repairs necessitated by an emergency;

(4) While inoperable; or

(5) On property of a public authority or private property open to the use of the public for parking:

(A) Without displaying a valid, current license plate recognized under the laws of the State of Colorado, and

(B) Without displaying the license plate or plates in the location or locations required by the laws of the state, territory, or country which issued the license plate or plates displayed.

(b) No vehicle shall be parked upon any private property within any required yard abutting a street. "Required yard" means the minimum front yard setback for principal buildings, the minimum side yard setback from a street for all buildings, and the minimum front and side yard setbacks from major roads set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981.

(1) As an exception to this prohibition, within districts zoned RR-1, RR-2, RE, or RL-1, two vehicles may be parked on a paved or improved driveway which serves as access to required off-street parking provided on the lot in accordance with sections 9-9-6, "Parking Standards," and 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981.

(2) This subsection does not apply to recreational vehicles parked or stored in accordance with subsection 9-9-6(h), B.R.C. 1981.

Ordinance Nos. 4817 (1984); 5039 (1987); 5546 (1993); 5660 (1994); 5930 (1997); 7294 (2003).

7-6-24 **All-Night Parking Of Truck Prohibited.**

No vehicle with a gross vehicle weight of six thousand pounds or more shall be parked on any street in any district of the city zoned RR-1, RR-2, RE, RL, RM, RMX, RH-1, RH-2, RH-3, RH-4, RH-5, MH, P, or A for more than thirty minutes between 8:00 p.m. and 7:00 a.m. The penalty for a first violation of this section is $10.00. The penalty for a second violation of this section by the same vehicle or the same registered owner of a vehicle is $20.00. The penalty for a third and any subsequent violation of this section by the same vehicle or the same registered owner of a vehicle is $30.00.

Ordinance Nos. 5187 (1989); 5930 (1997); 7522 (2007).

7-6-25 **Parking In City Employee Lot Prohibited.**

(a) No vehicle shall be parked in a city employee parking lot except one bearing a valid parking sticker or parking tag issued by the city manager and in accordance with the manager's administrative instructions or one owned by the city.

(b) "City employee parking lot" means any lot designated by sign as city employee parking.

Ordinance No. 5686 (1994).

7-6-26 **Hooded Parking Meter.**

(a) No person shall place any hood, sack, or covering or any sign restricting use of any parking meter head over, upon, or around any parking meter head, remove any parking meter hood or sign, or otherwise indicate or show that the parking regulations of the city are suspended, without first obtaining a permit therefor from the city manager under section 4-18-8, "Parking Meter Hood And Sign Permits," B.R.C. 1981. The penalty for violation of any provision of this subsection is a fine of not less than $10.00 nor more than $100.00.

(b) No vehicle shall be parked at a hooded or signed parking meter except one authorized under a permit issued under section 4-18-8, "Parking Meter Hood And Sign Permits," B.R.C. 1981.

7-6-27 Special Regulations For Parking In Parks And Open Space.

No vehicle shall be parked in any park, parkway, recreation area, or open space:

(a) In a manner that blocks or impedes travel on or into a designated fire road or other emergency access;

(b) Contrary to posted signs;

(c) Between 11:00 p.m. and 5:00 a.m. in open space and mountain parks or 12:00 midnight and 5:00 a.m. in other parks, parkways, recreation areas, and the Panorama Point or Halfway House parking lots; or

(d) In an area for which a parking permit is required without properly displaying a valid permit in accordance with chapter 4-24, "Parks and Open Space Parking Permits," B.R.C. 1981.

Ordinance Nos. 5546 (1993); 7443 (2006).

7-6-28 Bicycle Parking.

(a) No person shall park a bicycle or electric assisted bicycle in such a way as to:

(1) Cause an obstruction to or impede the flow of traffic or of pedestrians on public or private sidewalks;

(2) Hinder or restrict access to handrails or ramps;

(3) Lock the bicycle to a tree, parking meter post or pay station serving a space designated for handicapped parking, or fire hydrant;

(4) Park on a roadway except in an area designated for bicycle parking; or

(5) Leave the bicycle locked to a pole or post owned or leased by a public authority for more than twelve consecutive hours.

(b) Persons stopping or parking bicycles or electric assisted bicycles shall obey all the provisions of this chapter regulating those activities on roadways, but are exempt from other provisions of this chapter unless specifically mentioned, notwithstanding their status as vehicles.

Ordinance Nos. 5546 (1993); 5920 (1997); 7021 (1999); 7294 (2003).

7-6-29 Parking Bicycle On The Mall.

No person shall lock, attach, lean, or support any bicycle or electric assisted bicycle on any structure, apparatus, display, plant life, or building on the mall, or any building on the perimeter of the mall, except bicycle racks provided for such use.

Ordinance Nos. 5546 (1993); 7021 (1999).

TITLE 7 REGULATION OF VEHICLES, PEDESTRIANS, AND PARKING

Chapter 7 Towing And Impoundment

Section:

7-7-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by prohibiting the storage of abandoned or inoperable vehicles on public property or private property and to establish procedures for removing from such property any vehicle that is abandoned or inoperable, obstructs traffic, is so defective as to pose a safety hazard, is involved in criminal conduct, or whose impoundment is otherwise authorized.

7-7-2 Authority Of City To Impound Vehicle.

(a) A peace officer is authorized to remove or cause to be removed a vehicle from any public or private property when:

(1) A vehicle is situated in a manner that obstructs the normal movement of traffic or creates a hazard to other traffic on a public street, public alley, or public parking lot and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;

(2) A vehicle being driven on a street is so defective as to pose an imminent hazard to the public safety;

(3) A vehicle is found unattended and situated in a manner that obstructs the commencement or ongoing operation of a public construction, maintenance, or repair project or street closure; seventy-two hours' advance notice of the parking prohibition, the time it is effective, and that vehicles will be towed away at the owner's expense has been conspicuously posted and reasonable efforts have been made to maintain notice on the site;

(4) The driver of a vehicle is taken into custody by the police department;

(5) Removal of a vehicle is necessary in the interest of the public health or safety because of fire, flood, snow, storm, or other emergency, and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;

(6) There is probable cause to believe that the operator's license of the driver of a vehicle is suspended, revoked, denied, or cancelled;

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(7) There is probable cause to believe that a vehicle is stolen;

(8) A vehicle blocks ingress to or egress from a public or private driveway, and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;

(9) (A) A vehicle has been found upon a street, public parking lot, or other public property in a signed "tow away zone," and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;

(B) A vehicle has been found parked at a metered parking space on a street or a metered parking space in a public parking lot for seventy-two or more hours without being moved, there is a warning on the parking meter or a sign which indicates that such a vehicle may be towed, and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;

(10) Impoundment is authorized by sections 2-6-7, "Parking Infraction Office And Scofflaw List," and 2-6-8, "Booting," B.R.C. 1981, except that if, but for a ticket or tickets issued to the vehicle while it was being operated under a lease whose term was less than thirty days, impoundment or immobilization of such vehicle would not have been authorized under said sections, then no such vehicle shall be impounded or immobilized under the authority of this paragraph after the municipal court has been notified of such lease;

(11) A vehicle is parked in a space designated for handicapped parking pursuant to section 7-6-22, "Parking In Handicapped Space Prohibited," B.R.C. 1981, without displaying the placard or license plate required by that section; such space is also designated as a "tow away" space by any sign or pavement marking on or near the space using the term "tow away," displaying a tow away symbol, or otherwise reasonably indicating that vehicles illegally parked in such space or spaces will be towed away; and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;

(12) There is probable cause to believe that a vehicle is being vandalized or its parts are being stolen, and reasonable inquiries have been made on abutting properties in an effort to locate the person in possession of the vehicle; or

(13) Towing is authorized by subsection 8-3-6(b), B.R.C. 1981, concerning towing of vehicles from any posted "tow away" no-parking zone within any park, parkway, recreation area, or open space to clear off-street parking areas after designated hours of operation and to clear designated fire roads and other emergency access routes.

(b) Within seventy-two hours of the time that a motor vehicle is impounded pursuant to subsection (a) of this section, the city manager shall give notice by certified or first class mail to the registered owner of such motor vehicle:

(1) That the motor vehicle has been removed and impounded;

(2) Of the reason therefor;

(3) Of the location of the vehicle;

(4) That the vehicle owner has a right to contest the validity of the impoundment by requesting a prompt hearing within fifteen days from the date on which such notice is mailed;

(5) That if the vehicle is not claimed by the owner or the owner's authorized agent and any accrued removal and storage charges are not paid in full within thirty days of the date on

which the notice is mailed, the vehicle will be sold. If the vehicle has been appraised pursuant to section 2-4-7, "Disposition Of Motor Vehicles," B.R.C. 1981, at a reasonable market value of less than $200.00, the notice shall so state and shall indicate that the period for payment and reclaiming of the vehicle before sale is fifteen days;

(6) If the vehicle is not registered in Colorado, or if the license plate or vehicle identification number is expired, altered, or missing, the city manager shall send the notice required in this section as soon as reasonably practicable, but without regard to the seventy-two-hour limit;

(7) If the vehicle was impounded pursuant to sections 2-6-7, "Parking Infraction Office And Scofflaw List," and 2-6-8, "Booting," B.R.C. 1981, the notice shall also specify the total amount of fines, late fees, scofflaw fees, and administrative impound fees which must also be paid before the vehicle may be reclaimed; and

(8) If the vehicle was reclaimed from impoundment or a hearing concerning the impoundment was set before the notice required by this section was sent, then no such notice need be given.

(c) Nothing in this chapter shall be deemed to restrict the authority possessed by any peace officer under other provisions of law to seize any motor vehicle or part thereof if it is or contains evidence or is an instrumentality of a crime. Such provisions include, without limitation, the authority to seize a vehicle when there is probable cause to believe that a vehicle has been involved in a hit and run accident or contains stolen parts[1], or when a search of a vehicle has been authorized by court order. The release of any vehicle so seized shall be governed by the provisions of law under which it was seized[2]. When such vehicle is released pursuant to such provisions, its owner shall be notified and shall not be liable for the towing or storage charges attributable solely to such seizure, but shall be liable for such costs to the extent attributable to any charge which arose concurrently under this chapter. Any vehicle not retrieved within seventy-two hours of notice under this subsection shall be deemed abandoned, and the city manager shall dispose of such vehicle in accordance with section 2-4-7, "Disposition Of Motor Vehicles," B.R.C. 1981.

(d) This section does not apply to bicycles[3].

Ordinance Nos. 4903 (1985); 4917 (1985); 5546 (1993); 5686 (1994); 5920 (1997); 7190 (2002).

7-7-3 **Abandoned And Inoperable Vehicle.**

(a) Any vehicle left in one location upon any public property or on any private property, without the consent of the property owner, for a continuous period of more than seventy-two hours constitutes an abandoned vehicle, which is a public nuisance. Proof that the vehicle's odometer shows movement of no more than two-tenths of a mile during a period of at least seventy-two hours shall constitute prima facie evidence that the vehicle was left in one location.

(b) Any inoperable vehicle or any parts thereof left on any public property or on any private property other than the person's property, without the consent of the property owner, constitutes an inoperable vehicle, which is a public nuisance[4].

[1]42-5-107, C.R.S.
[2]Rule 41(e) Colorado Rules of Criminal Procedure.
[3]See section 7-7-9, "Abandoned Bicycle," B.R.C. 1981, for provisions concerning impoundment of bicycles.
[4]See Bacik v. Commonwealth, 434 A. 2d 860 (Pa 1981).

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(c) If a peace officer has probable cause to believe that a vehicle left unattended on public or private property is an abandoned or inoperable motor vehicle, the officer shall leave under the windshield wiper or otherwise attach to the vehicle a conspicuous warning notice that:

(1) States the date and the time that the notice was attached to the motor vehicle;

(2) Orders removal of an inoperable vehicle, as prescribed by subsection (b) of this section, or the moving of an abandoned vehicle, as prescribed by subsection (a) of this section, from the location within seven days of the notice;

(3) Warns that, if the vehicle is still parked in violation of subsection (a) or (b) of this section after seven days from the date of the notice, it may be impounded by order of the police department and that the vehicle owner will be liable for the expenses of such impoundment; and

(4) Advises the person in possession of the vehicle that such person has a right to a prompt hearing to determine whether or not the vehicle has been parked in violation of subsection (a) or (b) of this section, if such person requests such hearing within seven days from the date and time that such notice is attached to the vehicle.

(d) Within forty-eight hours of the time that a notice is attached to a vehicle under subsection (c) of this section, the city manager shall give written notice by certified or first class mail to the registered owner of the vehicle containing all of the information described in subsection (c) of this section. The notice shall also advise the owner that if the vehicle is towed and is not claimed by the owner or the owner's authorized agent and the amount of any accrued removal and storage charges and the impoundment fee are not paid within thirty days from the date and time that the vehicle is impounded, the vehicle will be sold. If the vehicle has been appraised pursuant to section 2-4-7, "Disposition Of Motor Vehicles," B.R.C. 1981, at a reasonable market value of less than $200.00, the notice shall so state and shall indicate that the period for payment and reclaiming of the vehicle before sale is fifteen days.

(e) If the vehicle is not registered in Colorado, or if the license plate or vehicle identification number is expired, altered, or missing, the city manager shall send the notice required in this section as soon as is reasonably practicable, but without regard to the forty-eight-hour limit.

(f) If an abandoned or inoperable vehicle or any parts thereof is still parked in violation of subsection (a) or (b) of this section after seven days from the date and time that the notice prescribed by subsection (d) of this section is attached to the vehicle, a peace officer may cause the vehicle and parts thereof to be removed and impounded by a towing carrier, unless a hearing requested pursuant to section 7-7-7, "Hearing," B.R.C. 1981, is pending or unless a hearing officer has determined that the vehicle is not parked in violation of this section.

(g) A vehicle or parts impounded pursuant to this section shall be released to its owner when payment to the city of an administrative impoundment fee of the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, and payment to the towing carrier of the costs of towing and storage, unless ordered released as a result of a hearing held pursuant to subsection 7-7-7(f), B.R.C. 1981.

(h) This section does not apply to bicycles[1].

Ordinance Nos. 4917 (1985); 5686 (1994); 5760 (1995); 5920 (1997).

[1]See section 7-7-9, "Abandoned Bicycle," B.R.C. 1981, for provisions concerning impoundment of bicycles.

7-7-4 Inoperable Vehicle On Private Property.

(a) Any inoperable motor vehicle parked, stored, or left or permitted to be parked, stored, or left upon any private property within the city for a period longer than thirty days constitutes a public nuisance. But nothing in this section applies to an antique vehicle, a vehicle in an enclosed building, a vehicle on the premises of a business enterprise that services and repairs such vehicles, a vehicle in an appropriate storage place or depository maintained for impounded vehicles, or a vehicle deemed inoperable solely because it lacks a current license plate or validation sticker.

(b) Whenever the city manager has probable cause to believe that an inoperable vehicle is on private property in violation of subsection (a) of this section, the manager shall give written notice by certified mail to the owner and the lessee or occupant of the property, if known, declaring the existence of the nuisance, ordering such persons to remove the vehicle or request a hearing within seven days from the date the notice is mailed, and stating that failure to remove the vehicle or request a hearing within such seven-day period will result in the vehicle being removed and impounded and expenses being assessed jointly and severally against the owner and the lessee or occupant of the property.

(c) If an inoperable vehicle has not been removed from private property within seven days of the date on which the notice prescribed by subsection (b) of this section is mailed to the owner and the lessee or occupant of the property, a peace officer may, after obtaining an administrative search warrant from the municipal court, cause the vehicle to be removed and impounded by a towing carrier, unless a hearing requested pursuant to section 7-7-7, "Hearing," B.R.C. 1981, is pending or unless a hearing officer has determined that the vehicle was not parked, stored, or left on private property in violation of subsection (a) of this section.

(d) If the city manager is able to determine from license plate or vehicle identification number information the name and address of the registered owner of the vehicle, and the notice prescribed in subsection (b) of this section was not sent to the owner of the vehicle, then the manager shall give written notice by certified or first class mail to the registered owner of the vehicle advising the owner that if the vehicle is towed and is not claimed by the owner or the owner's authorized agent and the amount of any accrued removal and storage charges and the administrative impoundment fee are not paid within thirty days from the date and time that the vehicle is impounded, the vehicle will be sold. If the vehicle has been appraised pursuant to section 2-4-7, "Disposition Of Motor Vehicles," B.R.C. 1981, at a reasonable market value of less than $200.00, the notice shall so state and shall indicate that the period for payment and reclaiming of the vehicle before sale is fifteen days.

(e) A vehicle impounded pursuant to this section shall be released to its owner when payment to the city of an administrative impoundment fee of the amount specified in section 4-20-55, "Court And Vehicle Impoundment Costs, Fees, And Civil Penalties," B.R.C. 1981, and payment to the towing carrier of the costs of towing and storage, unless ordered released as a result of a hearing held pursuant to subsection 7-7-7(f), B.R.C. 1981.

Ordinance Nos. 4917 (1985); 5686 (1994); 5760 (1995).

7-7-5 Private Towing And Impounding Of Vehicle Parked Without Authorization On Private Property.

(a) The owner or lessee of real property or an agent authorized by the owner or lessee may cause any motor vehicle, parked on such property without the permission of the owner, lessee, or occupant of the property, to be removed or impounded by a towing carrier, but, except on property used as a single-family residence, only if any applicable requirements of subsection

7-6-14(b), B.R.C. 1981, and subsection (b) of this section have been met. It is not necessary that a citation be issued for violation of section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, for a vehicle to be removed or impounded pursuant to this section.

(b) Except on property used as a single-family residence, the owner, lessee, or occupant of real property or an agent thereof, prior to causing the removal and impoundment of a motor vehicle from any area set aside for motor vehicle parking on such person's property, shall provide clear notice on signs or pavement markings meeting the requirements of paragraph 7-6-14(b)(3), B.R.C. 1981, that unauthorized vehicles will be towed away at the owner's expense.

(c) A vehicle parked on private property in violation of section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, is subject to immediate towing under state law as an abandoned vehicle on private property if the provisions of subsection (b) of this section are also met. Furthermore, any motor vehicle left unattended on private property for a period of twenty-four hours or longer without the consent of the owner or lessee of such property or the owner's or lessee's legally authorized agent is also subject to immediate towing under state law as an abandoned vehicle on private property.

(d) Vehicles towed pursuant to this section are privately impounded. All actions by the towing carrier and others shall be in accordance with and pursuant to the state statutes governing private tows of abandoned vehicles.

(e) Disputes concerning the propriety of impoundments under this section shall be settled by the parties involved in the civil courts, and the city shall not be a proper party defendant in any such suit.

Ordinance Nos. 4917 (1985); 5039 (1987); 5686 (1994).

7-7-6 **Lien Of Towing Carrier.**

A towing carrier that has removed or impounded a vehicle pursuant to this chapter has a possessory lien upon such vehicle for all costs of towing and storage unless a hearing officer orders the vehicle released pursuant to section 7-7-7, "Hearing," B.R.C. 1981.

Ordinance No. 5039 (1987).

7-7-7 **Hearing.**

(a) The owner of a vehicle impounded by or at the request of the city pursuant to this chapter or a person in possession of a vehicle at the time it was so impounded is entitled to a hearing regarding the impoundment, if such person requests a hearing within fifteen days from the date the notice of impoundment was mailed or within fifteen days of reclaiming the vehicle from impoundment if no notice was mailed and if such person had no hearing prior to the time of the impoundment. The hearing shall be conducted before a judge or a hearing officer appointed by the presiding judge of the municipal court within five city business days of the time of request for the hearing, unless the person requesting the hearing waives the five-day requirement. If a person requests a hearing and secures the release of the vehicle pursuant to subsection (b) of this section, and a summons and complaint or parking ticket has been issued which alleges a violation of this title which formed the basis of the impoundment, the hearing officer may schedule the hearing provided by this section to coincide with the trial of the infraction or may continue the hearing to such time. Within forty-eight hours of a request for a hearing under this section, the hearing officer shall obtain from the responsible city department the records concerning the impound, and shall determine from these records,

and from any supplementary affidavits as the responsible department may provide, whether or not probable cause existed for the impoundment of the vehicle. If the hearing officer determines that no probable cause existed for the impoundment based on these written materials, the officer shall so find and shall issue a final order that the vehicle shall be released immediately to the person entitled to possession and shall assess the costs of removal and impoundment against the city. Copies of such order shall be provided to the responsible city department and mailed to the person requesting the hearing. If the hearing officer determines that probable cause existed, the hearing officer shall so notify the responsible city department and the person requesting the hearing at the hearing, but such a finding shall not change the burden of proof at such hearing.

(b) A person who requests a post-impoundment hearing may obtain the release of the vehicle prior to the hearing by posting a bond in the amount of the towing and storage charges due as of the date of the request plus $25.00 in administrative costs. If such person fails to appear at the date and time of the scheduled hearing, the hearing request shall be dismissed with prejudice, and the bond amount shall be forfeited to the city.

(c) Except as otherwise provided in this section, the judge or hearing officer shall conduct the hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The party requesting the hearing bears the burden of establishing that such person has the right to possession of the vehicle. The city bears the burden of establishing the validity of the proposed or completed impoundment. The standard of proof is a preponderance of the evidence.

(d) Failure of any person to request an impoundment hearing within the time provided or attend any such hearing constitutes a waiver of the right to such hearing and a determination of all issues then existing as supporting the impoundment or immobilization.

(e) At a hearing prior to the impoundment of a vehicle allegedly parked in violation of section 7-7-3, "Abandoned And Inoperable Vehicle," or 7-7-4, "Inoperable Vehicle On Private Property," B.R.C. 1981, the hearing officer shall determine whether the vehicle is parked in violation of such section. If the hearing officer so finds, the officer shall order the vehicle removed and impounded and assess the costs thereof against the vehicle.

(f) At a hearing following the impoundment of a vehicle pursuant to section 7-7-2, "Authority Of City To Impound Vehicle," 7-7-3, "Abandoned And Inoperable Vehicle," or 7-7-4, "Inoperable Vehicle On Private Property," B.R.C. 1981, or immobilization of a vehicle pursuant to section 2-6-8, "Booting," B.R.C. 1981, the hearing officer shall determine whether the vehicle was subject to impoundment under section 2-6-8, "Booting," or 7-7-2, "Authority Of City To Impound Vehicle," B.R.C. 1981, or was parked in violation of section 7-7-3, "Abandoned And Inoperable Vehicle," or 7-7-4, "Inoperable Vehicle On Private Property," B.R.C. 1981. If the hearing officer so finds, the officer shall assess the costs of removal and impoundment, including, without limitation, any administrative impound fee, against the vehicle. If the hearing officer does not so find, the officer shall order the vehicle released immediately to the person entitled to possession and shall assess the costs of removal and impoundment against the city.

(g) This section does not apply to bicycles[1].

Ordinance Nos. 4879 (1985); 4917 (1985); 5686 (1994); 5920 (1997).

[1]See section 7-7-9, "Abandoned Bicycle," B.R.C. 1981, for provisions concerning impoundment of bicycles.

7-7-8 **Failure To Claim Vehicle.**

If a vehicle, other than a bicycle, that has been impounded by the city pursuant to this chapter is still under impoundment seventy-two hours from the time at which notice prescribed by this chapter has been mailed to the registered owner and the owner has not requested a hearing pursuant to section 7-7-7, "Hearing," B.R.C. 1981, or obtained the release of the vehicle by paying accumulated removal and impoundment charges, the vehicle shall be deemed abandoned, and the city manager shall dispose of such vehicle in accordance with section 2-4-7, "Disposition Of Motor Vehicles," B.R.C. 1981. But disposal shall be stayed if a timely request is made for a hearing as provided by this chapter.

Ordinance Nos. 4917 (1985); 5686 (1994).

7-7-9 **Abandoned Bicycle.**

Every bicycle left at any place for such times and under such circumstances as to cause the bicycle reasonably to appear to be abandoned or parked in such manner as to cause an immediate safety hazard or an obstruction to entry or exit to a building or an area constitutes a public nuisance. If the person in possession of the bicycle is not present or is unwilling or unable to provide for its immediate removal, any peace officer may remove and impound the bicycle. The city manager shall dispose of bicycles impounded under this section in accordance with section 2-4-6, "Disposition Of Property Other Than Motor Vehicles," B.R.C. 1981.

7-7-10 **Authority To Move Vehicle.**

Whenever any peace officer finds a vehicle stopped upon a street or alley in violation of any of the provisions of chapter 7-6, "Parking Infractions," B.R.C. 1981, or finds a vehicle obstructing a construction, maintenance, or repair project or a street closure on a public street, such officer is authorized, without limitation, to move or require the driver or person in charge to move the vehicle, if practicable, to a nearby position where it can be readily found by its driver and where it does not violate any provision of chapter 7-6, "Parking Infractions," B.R.C. 1981, and does not interfere with a project or closure.

TITLE 8

PARKS, OPEN SPACES, STREETS, AND PUBLIC WAYS

8-1-1

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 1 Local Improvements[1]

Section:

8-1-1 Legislative Intent.

(a) Charter section 106 provides that the city council may create local improvement districts to construct public improvements that confer special benefits upon land. If, however, the owners of a majority of all property benefited and subject to an assessment protest against the formation of the district, the council may create a district only if the city bears at least one-half of the costs of the improvements.

(b) The purpose of the chapter is to establish procedures by which the city council may create local improvement districts for the construction, installation, reconstruction, renewal, and replacement of local improvements that confer special benefit upon land, as authorized by charter section 106. The purpose of local improvement districts is to enhance the city's ability to provide public improvements by assessing all or part of the cost of the improvements against the properties that specially benefit. Public improvements that may be constructed, installed, reconstructed, renewed, or replaced by means of a local improvement district include, without limitation, improvements to the water, wastewater, flood control, and storm drain utility systems; streets, roadways, and alleys; medians, curbs, gutters, and sidewalks; street lights; landscaping; bicycle ways; and parking. The construction or installation of more than one such improvement may be accomplished as one project under the provisions of this chapter.

(c) Property against which assessments for local improvements may be levied must be specially benefited by the improvements, as demonstrated by factors such as increased market value; improved access; improved safety; adaptability of land to an economically more profitable use; enhanced livability; decreased maintenance cost; and increased recreational opportuni-

[1]Adopted by Ordinance No. 4630. Derived from Ordinance Nos. 2476, 3570, 3710, 4072, 4112.

ties. Although the method for computing assessments may vary according to the type of improvement, all assessments must be fair, equitable, and consistent with the benefit that the assessed land receives.

8-1-2 **Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Affected property" means land, regardless of improvements thereon, that is proposed to be or is assessed under this chapter.

"Costs of the project" means all costs incurred in accomplishing the construction, installation, reconstruction, renewal, or replacement of improvements, including acquisition of right-of-way and associated administrative costs, including, without limitation, engineering, clerical, inspection, managerial, fiscal, legal, collection, printing, and postage costs.

"Local improvement district" or "district" means a geographical area in the city designated by the city council and composed of land to be assessed to accomplish a local improvement project.

"Local improvement project" or "project" means a project initiated under this chapter to construct, install, reconstruct, renew, or replace public improvements through the establishment of a local improvement district.

"Special benefit" means enhancement to land including, without limitation: increased market value; improved access; improved safety; adaptability to more profitable use; enhanced livability; decreased maintenance cost; or increased recreational opportunities. Special benefit is distinguished from the general benefit that an improvement provides to the entire community.

"Special feature" means any improvement requested by an affected property owner in addition to the basic improvements to be included in the district, such as concrete driveways, or any improvement built of a more costly material from that of the improvements included in the district, such as decorative paving.

8-1-3 **Initiation Of Local Improvement Project By City Manager.**

(a) If the city manager proposes to establish a district to accomplish a local improvement project or if a petition is filed requesting the city council to establish a local improvement district, the manager shall define the project boundaries and scope, estimate costs, propose a method for computing assessments and allocating costs between the city and benefited land, prepare preliminary assessment rolls, and follow the procedures prescribed in this section.

(b) After providing such notice as deemed appropriate, the city manager may hold a meeting to inform affected property owners about the proposed project and proposed assessments and to obtain their comments thereon.

(c) No more than thirty nor less than fifteen days before the city council hearing prescribed by section 8-1-5, "Council Hearing On Proposed Project And District Formation," B.R.C. 1981, the city manager shall publish in a newspaper of general circulation in the city a notice including the following information:

(1) The date, time, and place of the council hearing;

(2) The general nature of the improvements proposed and the total estimated costs of the project;

(3) The amount of the estimated costs proposed to be paid by the city;

(4) The general geographical area proposed to be assessed;

(5) The proposed method of computing assessments;

(6) The affected properties, described by address or legal description, the owner's name, and the assessments proposed to be levied against the affected properties;

(7) Notice that the council may increase the proposed assessments contained in the notice when adopting the ordinance establishing the district;

(8) Notice that the final assessments, if levied, may be increased up to a maximum of fifteen percent over the preliminary assessments contained in the ordinance establishing the district if costs of construction or land acquisition exceed estimated costs, if there are other unforeseen costs, or if errors are made in determining the assessments;

(9) Notice that an affected property's final assessment, if levied, may exceed the preliminary assessment in the ordinance establishing the district by the cost of any special feature requested by the owner of such property;

(10) Notice that assessments will be levied, if at all, by ordinance when the project is substantially complete, that assessments will be due and payable within thirty days after the effective date of the ordinance, and that interest and penalties will be assessed for late payment;

(11) If it is proposed that assessments can be paid in installments, the proposed number of installments, the time in which the proposed installments shall be paid, and the proposed interest rate;

(12) If it is proposed that assessments may be deferred, the proposed terms of the deferral and the schedule for interest payments on any large parcel deferrals (as provided in section 8-1-19, "Deferred Payment," B.R.C. 1981);

(13) A statement that protests against and objections to the proposed project may be made as follows:

(A) Affected property owners have a right as provided under charter section 106 to protest the creation of a location improvement district. Any such protest must be submitted to the city manager in writing not less than one day before the hearing prescribed by section 8-1-5, "Council Hearing On Proposed Project And District Formation," B.R.C. 1981. The protest must describe the affected property, be signed by affected property owners or persons authorized in writing on behalf of such property owners, and be clearly identified as a protest.

(B) An objection is a complaint against or criticism of the proposed project by an affected property owner. Any such owner may object at the council hearing prescribed by section 8-1-5, "Council Hearing On Proposed Project And District Formation," B.R.C. 1981, or in writing at or before such hearing. The objection must describe the specific ground on which it is based.

(14) The place and times where persons may inspect the written material, including the draft ordinance proposed to be adopted at the council hearing prescribed by section 8-1-5,

"Council Hearing On Proposed Project And District Formation," B.R.C. 1981, that are furnished to the council by the city manager before such hearing; and

(15) The place and times where the plans and specifications for the project will be available for review and the name and telephone number of a person on the city staff who may be contacted for information about the project.

(d) No more than thirty nor less than fifteen days before the city council hearing prescribed by section 8-1-5, "Council Hearing On Proposed Project And District Formation," B.R.C. 1981, the city manager shall deposit in the mail a notice containing the information in subsection (c) of this section, except that the notice may include the individual property's assessment rather than a listing of all proposed assessments. The notice shall be sent by first class mail to the legal record owner of each affected property at the address recorded on the most recent quarterly microfiche property tax assessment roll of the Boulder County Assessor.

(e) If the city manager provides either the published or the mailed notice required by this section with respect to a particular property, such property may be included in the district and subject to final assessment.

(f) If the published notice required by this section omits an affected property and if the city manager fails to mail notice to the owner of such property as required by this section, and if such owner receives actual notice of the existence of the proposed project or of the project, the affected property may be included in the district and subject to final assessment. Within seven days after receiving actual notice, such property owner may file a protest or objection with the city manager, who shall forward it to the city council for its consideration. If the protest is filed after adoption of the ordinance establishing the district, the council shall dissolve the district if such protest plus others previously registered represent the owners of a majority of all property benefited and constituting the basis of assessment and if the city does not bear at least fifty percent of the costs of the project; or in such circumstance, the council may exclude the property from the district and proceed with the project.

Ordinance No. 4879 (1985).

8-1-4 Initiation Of Local Improvement Project By Petition.

(a) If the city manager does not initiate a project, the owners of more than fifty percent of the square footage of land constituting a proposed local improvement district may by petition request the city council to establish a local improvement district in order to accomplish a local improvement project.

(b) The petition shall be filed with the city manager and shall contain a description of the project, the properties affected, the names of the owners of the properties, and the square footage of the affected properties.

(c) After receiving a petition meeting the requirements of this section, the city manager shall follow the procedures prescribed by section 8-1-3, "Initiation Of Local Improvement Project By City Manager," B.R.C. 1981.

8-1-5 Council Hearing On Proposed Project And District Formation.

(a) The city council shall hold a public hearing to consider adoption of an ordinance to establish a local improvement district and authorize construction.

(b) At such hearing, the city manager shall inform the city council of the manager's compliance with the provisions of subsections 8-1-3(c) and (d), B.R.C. 1981, and shall provide to the council any protests or written objections filed before the council hearing, the manager's response thereto, if any, and the manager's other comments on the project, if any.

(c) All affected property owners and members of the general public may present their views and objections to the city council at the hearing.

(d) The city council may continue the hearing from time to time and need not provide further notice of any hearing so continued.

(e) The city council shall rule upon the sufficiency and validity of any protests filed in accordance with subsection 8-1-3(c), B.R.C. 1981, and shall incorporate its finding of validity and sufficiency into any ordinance it adopts to establish a local improvement district.

8-1-6 Ordinance Establishing District And Ordering Improvements.

(a) If the city council decides to establish a local improvement district and proceed with local improvements, it shall adopt an ordinance that includes:

(1) A finding that notice and public hearing requirements of this chapter have been met;

(2) A finding that the protests filed under subsection 8-1-3(c), B.R.C. 1981, if any, were not sufficient to prevent the establishment of the district;

(3) An order limiting the amount by which final assessments can exceed preliminary assessments, as prescribed by section 8-1-7, "Ceiling On Assessments," B.R.C. 1981;

(4) A finding that the local improvement project is in the public interest and that special benefits are anticipated to result to the affected properties;

(5) An order establishing the method of computing assessments;

(6) An order prescribing preliminary costs of the project and apportioning the costs between the city and affected properties;

(7) An order approving the planned improvements;

(8) An order authorizing construction of the improvements;

(9) Approval of an attached preliminary assessment roll showing the item number; the county recorder's reception number; legal description of affected properties; their owners; mailing and property addresses; and the preliminary assessments; and

(10) Approval of an installment schedule for the payment of assessments, if any, including the number of installments, the time in which the installments shall be paid, and the proposed interest rate.

(b) The city council may also approve deferred payment plans, if any, and a schedule for interest payments on any large parcel deferrals in the ordinance establishing the district.

(c) If the city council fails to adopt the proposed ordinance establishing a local improvement district, such action shall not bar proceedings for the same or a similar improvement from being proposed and considered at any time in the future.

(d) Except as the city council may otherwise provide by ordinance, assessments for water and sanitary sewer lines, storm sewers, paving, curb, and gutter shall be payable in not more than twenty substantially equal semiannual payments of principal and interest, amortized over the total payment period. Except as the council may otherwise provide by ordinance, sidewalk assessments for separate sidewalk projects shall be payable in not more than ten substantially equal semiannual payments of principal and interest, amortized over the total payment period.

(e) The city council shall establish the installment interest rate after considering the nature and location of the project and the then current prime interest rate, but the interest rate shall in no event be less than the highest interest rate to be borne by the bonds, if any, of the local improvement district.

8-1-7 **Ceiling On Assessments.**

(a) Final assessments shall not be levied against affected properties in an amount greater than the preliminary assessments set forth in the ordinance establishing the district, except that assessments may exceed such preliminary assessments by a total maximum of fifteen percent if:

(1) Actual construction costs, land acquisition costs, or other costs of items not foreseen at the time of the preliminary assessment exceed estimates; or

(2) There are errors made in determining the assessments.

(b) No final assessment shall be levied in an amount greater than the preliminary assessment unless the provisions of subsection (a) of this section are provided in the notice prescribed by subsection 8-1-3(c), B.R.C. 1981.

(c) Notwithstanding the provisions of subsection (b) of this section, a final assessment may be levied upon an affected property in an amount greater than the preliminary assessment by the cost of any special feature requested by the owner of such property.

8-1-8 **Construction Of Improvements.**

The city manager shall implement the order contained in the ordinance prescribed by section 8-1-6, "Ordinance Establishing District And Ordering Improvements," B.R.C. 1981, authorizing construction of the improvements and may let a contract for such construction if the manager deems it desirable. The manager may reject a contract that exceeds costs estimated in the ordinance establishing the district and resubmit the project for bids.

8-1-9 **Appeal From Ordinance.**

(a) No action challenging the findings and actions of the city council in adopting the ordinance establishing a local improvement district shall be brought unless the person has first asserted a protest or an objection in compliance with the requirements of this chapter.

(b) No such action may be commenced later than thirty days from the date of the final city council action on the ordinance.

8-1-10 **Final Assessment Proceedings.**

(a) After the local improvements have been substantially completed, the city manager may hold a meeting to obtain comments from affected property owners about the project and inform them of the final assessments proposed to be levied against affected properties.

(b) After ascertaining the costs of the project and holding a meeting, if any, the city manager shall propose to the city council an ordinance levying assessments that are computed according to the method approved in the ordinance establishing the district.

(c) No more than thirty nor less than fifteen days before the city council hearing prescribed by section 8-1-11, "Council Hearing To Levy Final Assessments," B.R.C. 1981, the city manager shall publish in a newspaper of general circulation in the city a notice including the following information:

(1) The date, time and place of the city council hearing;

(2) The general nature and location of the improvements that have been constructed;

(3) The total project cost;

(4) The affected properties and the amount proposed to be paid by the city and the amounts proposed to be assessed against individual affected properties;

(5) The method of computing assessments;

(6) The opportunity for affected property owners to file objections to assessments against their properties as prescribed by subsection 8-1-11(b), B.R.C. 1981;

(7) The fact that affected property owners may present evidence on their objections at the council hearing prescribed in subsection 8-1-11(a), B.R.C. 1981, but only if they file written objections with the city manager in the manner prescribed by subsection 8-1-11(b), B.R.C. 1981;

(8) The name and telephone number of a person on the staff of the city who is available to answer questions;

(9) The installment schedule for the payment of assessments, if any, including the proposed number of installments, the time in which the proposed installments shall be paid, and the proposed interest rate;

(10) If it is proposed that assessments may be deferred, the proposed terms of the deferral and the schedule for interest payment on any large parcel deferrals;

(11) The place and times where persons may inspect the written materials, including the draft ordinance proposed to be adopted at the council hearing prescribed by subsection 8-1-11(a), B.R.C. 1981, that are furnished to the council by the city manager before such hearing;

(12) The fact that affected property owners who do not wish to object to the assessments may comment on the project at the council hearing;

(13) Notice that assessments to be levied in the final assessment ordinance may be increased up to a maximum of fifteen percent over preliminary assessments adopted in the ordinance establishing the district if costs of construction or land acquisition exceed estimated costs, if there are other unforeseen costs, or if errors are made in determining the assessment; and

(14) Notice that an affected property's final assessment, if levied, may exceed the preliminary assessment adopted in the ordinance establishing the district by the cost of any special feature requested by the owner of such property.

(d) No more than thirty nor less than fifteen days before the city council hearing prescribed in subsection 8-1-11(a), B.R.C. 1981, the city manager shall deposit in the mail a notice containing the information in subsection (c) of this section, except that the notice may include the individual property's assessment rather than the entire assessment roll. The notice shall be sent by first class mail to the legal record owner of each affected property at the address recorded on the most recent quarterly microfiche property tax assessment roll in the office of the Boulder County Assessor.

(e) If the city manager provides either the published or the mailed notice required by this section with respect to a particular property, the city council has jurisdiction to levy the assessments with respect to such property.

(f) If the published notice required by this section omits an affected property and if the city manager fails to mail notice to the affected property owner as required by this section but the owner of such property receives actual notice of the hearing on the ordinance levying assessments, the property may be subject to final assessment. Such property owner may file an objection to the assessment at the hearing without following the procedures required by subsection 8-1-11(b), B.R.C. 1981.

8-1-11 **Council Hearing To Levy Final Assessments.**

(a) After the local improvements are substantially completed the city council shall hold a hearing on an ordinance to levy assessments.

(b) Any affected property owner may object to the proposed assessment by filing a written objection at the office of the city manager no fewer than five days before the date of the city council hearing. Any such objection shall identify the specific issues raised and the grounds therefor, the witnesses who will present evidence at the hearing and the general nature of their testimony, the name of the affected property owners, and a description of the affected property. Failure to comply with these procedures waives any objection to the assessment and constitutes a consent to its levy.

(c) The city manager shall inform the city council of the manager's compliance with the provisions of subsections 8-1-10(c) and (d), B.R.C. 1981, and shall provide to the council any written objections received, and the manager's response thereto, if any, and the manager's other comments on the project, if any.

(d) Affected property owners who have filed written objections as provided in subsection (b) of this section may present evidence at the hearing in support of their objections and may respond to oral or written comments of the city manager.

(e) Affected property owners who do not wish to object to their assessments may comment on the project at the hearing.

(f) The city council may continue the hearing from time to time and need not provide further notice of any hearing so continued.

8-1-12 **Ordinance Levying Final Assessments.**

The city council shall levy final assessments for a local improvement project by an ordinance that includes:

(a) A finding that notice and public hearing requirements of this chapter have been met;

(b) A finding that the method of computing assessments is that adopted in the ordinance enacted under section 8-1-6, "Ordinance Establishing District And Ordering Improvements," B.R.C. 1981;

(c) A finding that each affected property against which an assessment is levied has been specially benefited at least to the extent of the assessment;

(d) Findings resolving any issues raised through written objections filed as prescribed by subsection 8-1-11(b), B.R.C. 1981;

(e) The installment payment schedule, if any, as adopted in the ordinance establishing the district;

(f) The interest rate to be charged for installment payments, if any, and for past due payments, which rate shall not be higher than that adopted in the ordinance establishing the district;

(g) Approval of plans for deferred payments, if any, that may be offered to property owners, as authorized by section 8-1-19, "Deferred Payment," B.R.C. 1981, and the schedule for interest payments on any large parcel deferrals; and

(h) Approval of an attached final assessment roll, including the information prescribed by paragraph 8-1-6(a)(9), B.R.C. 1981, and any adjustments or reductions thereto.

8-1-13 **Levying Assessments; Special Benefit.**

Except as the city council may otherwise provide in the ordinance creating a special improvement district, the following standards will be observed in apportioning the costs of the improvements between the city and the property owners, and among the property owners:

(a) The portion of the total cost of the project to be defrayed by special assessments shall be apportioned on a front foot, area, zone, or other equitable basis that is consistent with the special benefits that the property derives from the improvement.

(b) The city will contribute fifty percent of the cost of local improvements, but property owners will pay one hundred percent of the cost of installing water and sanitary sewer improvements and the cost of any special features. In no event shall assessments exceed the special benefits accruing to affected properties.

(c) For street and sidewalk improvements, the property owner's contribution will vary according to the zoning classification of the property, consistent with special benefits, as follows:

(1) For street improvements, properties zoned RR-1, RR-2, RE, RL, RMX, and RM will be assessed no more than fifty percent of the cost of a residential collector street, as defined by the Boulder Valley Comprehensive Plan, even if a larger street is constructed, and properties zoned MU-1, MU-3, RH-1, RH-2, RH-3, RH-4, RH-5, BT, BC, BR, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IM, IG, IMS, and P will be assessed no more than fifty percent of the cost of a collector street as defined by such plan, even if an arterial street, as defined by such plan, is constructed.

(2) For sidewalk improvements, properties zoned RR-1, RR-2, RE, RL, RMX, and RM will be assessed fifty percent of the cost of the sidewalk actually built up to a maximum of a five-foot-wide sidewalk. If the affected property owner requests larger than a five-foot-wide sidewalk, such property owner shall pay one hundred percent of the cost of any width over five feet. Properties zoned MU-1, MU-3, RH-1, RH-2, RH-3, RH-4, RH-5, BT, BC, BR, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IM, IG, IMS, and P will be assessed fifty percent of the cost of the sidewalk actually built that is required by city standards. If the affected property owner requests a wider sidewalk, such property owner shall pay one hundred percent of the cost of such additional width.

(d) If as part of a local improvement project the city council determines to make design or structural changes in an existing improvement that otherwise meets city standards, the city will bear one hundred percent of the costs of such change.

(e) If a sidewalk adjacent to a water or sewer service line fails, the city shall provide for the repair and replacement of the concrete sidewalk section or sections immediately adjacent to the service line for two years from the date of service line installation, if it appears that the sidewalk failure has been caused by the service line installation and if the abutting property owner notifies the city manager of the sidewalk failure in writing within two years from the date of the service line installation.

Ordinance Nos. 4831 (1984); 5930 (1997); 7522 (2007).

8-1-14 **Credit For Existing Improvements.**

If an item of improvement that was scheduled to be constructed, installed, reconstructed, renewed, or replaced through a district already exists on or adjacent to an affected property and meets city standards at the time that the district is established, the city manager shall credit an amount against the assessment for the affected property that would otherwise have been the assessable cost for the item of improvement if the city had been required to build such item.

8-1-15 **Appeal From Final Ordinance.**

(a) No person may seek judicial review of the city council action adopting the ordinance levying final assessments for local improvement projects unless the person has first asserted an objection to the assessment in compliance with the requirements of this chapter.

(b) No such action may be commenced later than thirty days from the date of final city council action on the ordinance.

(c) If any court of competent jurisdiction sets aside any final assessment upon a property, the city council may make a new assessment for that property following procedures generally in compliance with those in this chapter. But the council need not comply strictly with notice and other procedural requirements so long as affected property owners are afforded due process of law.

8-1-16 **Assessments Create Liens; Lien Priority Established.**

(a) All assessments levied under this chapter along with interest thereon and penalties for default in payment thereof constitute a debt due to the city and a lien upon the affected property from the effective date of the final assessment ordinance.

(b) An assessment lien is a first and prior lien against the affected property superior to all other assessment liens subsequently filed and all other liens, claims, encumbrances, and titles, whether or not prior in time; except that an assessment lien is subordinate to any lien for general tax and is extinguished if the affected property is sold on account of the non-payment of such general tax.

8-1-17 When Lump Sum Payment Due.

(a) All assessments, other than those to be paid in installments or to be deferred, if any, are due and payable without demand by the city within thirty days after the effective date of the assessment ordinance.

(b) If the city council has not authorized installment payments in the final assessment ordinance, interest on lump sum assessments will accrue at a rate set forth in the final assessment ordinance from a date thirty days after the effective date of the final assessment ordinance. A penalty of one and one-half percent per month on the lump sum will be added if the assessment is not paid on the date it is due. The city manager may collect overdue lump sum payments under the procedure prescribed in section 8-1-18, "Installment Payments And Delinquent Assessments," B.R.C. 1981, for collection of overdue installment payments.

(c) If an assessment is not paid in full when due as required by subsection (a) of this section, the affected property owner shall be deemed to have elected to pay in installments under section 8-1-18, "Installment Payments And Delinquent Assessments," B.R.C. 1981, if the city council has authorized installment payment in the final assessment ordinance.

8-1-18 Installment Payments And Delinquent Assessments.

(a) The first installment payment of principal and interest in arrears is due and payable within thirty days after the effective date of the final assessment ordinance. Each succeeding installment payment is due and payable according to the schedule prescribed by the final assessment ordinance.

(b) A penalty of one and one-half percent per month on the outstanding principal and accrued interest shall be added if an installment is not paid on the date it is due. The city manager may waive the penalty if the owner demonstrates good cause. Interest shall accrue on unpaid and overdue principal, but not on overdue interest.

(c) If an affected property owner fails to pay an assessment or installment within thirty days of the date on which it is due, the whole amount of unpaid principal, accrued interest, and penalty becomes due and payable.

(d) If an affected property owner has refused or neglected to pay any installment assessment within thirty days of the date on which it is due, or to pay the whole assessment in districts where installments have not been authorized, the city manager shall, at least once each year, but no sooner than December first of each year, certify the amount of the principal, interest, and penalties due and unpaid together with ten percent of the delinquent amount for costs of collection to the county treasurer to be assessed and collected in the same manner as general taxes are assessed and collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981, but no additional hearing is required.

(e) No fewer than fifteen days before certifying such delinquent amounts to the county treasurer, the city manager shall deposit in the mail to the last known owner of the affected property as shown on the current records of the Boulder County Assessor a notice that the

amount is due, the date on which it will be certified to the county for collection if not sooner paid, and that the owner should contact the city if payment has been made.

(f) At any time before the date a delinquent assessment is certified to the county treasurer for collection, but not thereafter, the affected property owner may pay the amount of all delinquent installments, accrued interest thereon, and any penalty imposed thereon and may thereafter pay in installments as if the default had not occurred.

(g) At any time an affected property owner may pay the whole unpaid principal together with the interest accrued to the next installment payment date and any accrued penalties.

(h) In addition to certifying due and unpaid assessments to the county, the city manager may use any other available remedies to collect such assessments.

8-1-19 **Deferred Payment.**

(a) The city council may, in either the ordinance establishing the district or the final assessment ordinance, authorize deferral of assessment payments for property owners of low income or those owning large parcels who meet the conditions prescribed by this section.

(b) An affected property owner whose family income does not exceed eighty percent of the Boulder County median income, as determined by the Federal Department of Housing and Urban Development, and whose assets, other than the affected property, do not exceed $20,000.00, may defer payment of the assessment. If an owner meets such standards, the assessment will remain as a lien on the property to be paid to the city when the property is sold or transferred. Unless otherwise provided in the final assessment ordinance, interest accrues at the rate approved in the final assessment ordinance and shall be paid when the principal is paid.

(c) In districts where assessments are computed on an adjusted front footage basis, an owner of a parcel of property that has an adjusted front footage of more than two hundred feet and that is occupied by the owner as a single-family residence may defer payment of that portion of principal of the assessment exceeding that applicable to one hundred feet adjusted front footage. In districts where assessments are computed on a square footage basis, the owner of a parcel of property that is fifteen thousand square feet or more and that is occupied by the owner as a single-family residence may defer payment on that portion of the principal of the assessment exceeding that applicable to seven thousand five hundred square feet. Such deferral may be for a period not to exceed ten years, as prescribed by the final assessment ordinance. The entire deferred principal is due and payable without demand at the earlier of: 1) the date so prescribed; 2) the date on which the property is sold, subdivided, or transferred; or 3) the date on which additional structures are built on the property. The affected property owner shall pay the portion of the assessment not deferred in full or in installments. The owner shall pay periodic interest on the deferred amounts at the rate and on the schedule approved in the final assessment ordinance.

(d) Except as otherwise provided by ordinance, no deferred payments will be authorized in local improvement districts for which bonds are issued, unless bonds are not issued to fund the improvements for which assessment deferral is authorized.

(e) Before the date on which the assessment or the first installment is due, an applicant for deferred assessment shall apply therefor and the city manager shall approve or deny the application.

(f) An affected property owner whose payment is deferred may at any time pay the whole unpaid principal together with the interest accrued.

8-1-20 **Interest-Free Period.**

Full payment of assessments may be made within thirty days after the effective date of the final assessment ordinance without penalty or payment of interest. There is no interest-free period for assessments paid in installments.

8-1-21 **Special Assessment Certificates.**

(a) The city manager shall, upon request that complies with the requirements of subsection (c) of this section, issue special assessment certificates that set forth the existence or non-existence of:

(1) A local improvement district, established by ordinance, in which is located a designated lot, tract, or parcel of real property located within the city, together with preliminary assessments, but for which a final assessment ordinance has not yet been adopted; and

(2) A special assessment lien on a designated lot, tract, or parcel of real property located within the city.

(b) If a special assessment certificate indicates that a designated property is either subject to an assessment lien or located within a local improvement district for which no final assessment ordinance has yet been adopted, the certificate shall indicate:

(1) The principal amount of the lien including principal, interest, and penalties, if any, or the amount of the preliminary assessment;

(2) The purpose for which the assessment was levied or the district was formed; and

(3) If a district has been formed but no assessment levied, the fact that the preliminary assessment may change.

(c) Any person may apply for a special assessment certificate from the city manager by providing the street address of the real property in question and its legal description and by paying the fee specified in section 4-20-12, "Local Improvement District Fees," B.R.C. 1981.

(d) A special assessment certificate shall cover only one parcel of property, which for purposes of this section shall be deemed to be all contiguous parcels owned by the same person.

(e) The information on a special assessment certificate that an assessment lien does not exist upon designated real property is conclusive and binding upon the city. The owner of the real property that is the subject of a special assessment certificate indicating that no assessment lien exists thereon is not liable for the payment of any such assessment. However, the city is not bound by the accuracy of any information concerning special assessments conveyed to any person orally or in any other manner than by the special assessment certificate authorized by this section.

Ordinance No. 5525 (1992).

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 2 Streets And Sidewalks[1]

Section:

8-2-1 Legislative Intent.

The purpose of this chapter is to establish the responsibilities of the city and property owners for maintenance, construction in, and use of the public rights-of-way[2].

8-2-2 Streets And Sidewalks.

The city manager may subdivide any of the streets or public highways of the city to roadways, gutters, parks, and sidewalks. The portion of the street between the gutter lines is designated as the roadway. The sidewalk is that part of the street, avenue, or parkway in the city that lies between the property line and the inner edge of the established curb line, located and designated by the city manager. The remaining portion, if any, of the street between the property line and the gutter line or outer edge of the drainage ditch shall be used for park purposes and shall be maintained and may be improved as such by the abutting property owner.

8-2-3 Datum Plane Or Bench Mark.

The following point is established as the datum plane or bench mark from which are measured the grades of streets and the grades of sidewalks of the city:

[1]Adopted by Ordinance No. 4709. Derived from Ordinance Nos. 1734, 1864, 2195, 2948, 2977, 3077, 3474, 3979, 4129, 4279, 4335, 1925 Code.
[2]See also chapter 8-5, "Work In The Public Right-Of-Way And Public Easements," B.R.C. 1981.

A concrete bench mark with a bronze cap located between the two front sidewalk entrances of the municipal building at 1777 Broadway, Boulder, Colorado 80302, whose elevation is five thousand three hundred forty-five and nine-tenths feet or sixteen hundred twenty-nine and four-tenths meters above sea level.

8-2-4 **Removal Of Landmarks Prohibited.**

No person shall remove any stones, grade or line stakes, or other landmark placed by any person authorized to do so by the city manager.

8-2-5 **Dangerous Places To Be Fenced.**

(a) No owner of property adjacent to or surrounding any city right-of-way shall fail to enclose with fences or walls all holes, depressions, excavations, or other dangerous places that are below the natural or artificial grade of the adjacent right-of-way or to fill such holes in order to prevent damage to passers-by.

(b) If the city manager finds that any hole, depression, excavation, or any other dangerous place exists on private property adjacent to city right-of-way in the city, the manager may require that the owner or occupant of such property fence or fill the dangerous condition. The manager shall notify the property owner of the duty to fence or fill and that such person has thirty days from the date of the notice to complete such work. The manager may extend the time limit if weather would impede the work. Notice under this subsection is sufficient if it is mailed first class to the address of the last known owner of property on the records of the Boulder County Assessor.

(c) If a property owner fails to complete the work as required by the notice prescribed by subsection (b) of this section, the city manager may perform the work and charge the cost thereof to the property owner.

(d) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

8-2-6 **Adjacent Owners' Duty To Maintain Sidewalks.**

(a) No owner of property within the city shall fail to maintain the sidewalk on or adjacent to the owner's property in good repair and safe, unobstructed condition.

(b) If the city manager finds that any portion of a sidewalk does not meet the standards prescribed in section 8-2-17, "When Sidewalks Are To Be Constructed Or Reconstructed," B.R.C. 1981, the manager may require that the owner of the sidewalk or property adjacent to the sidewalk repair or replace the non-complying portion to bring it into conformity with city standards.

(c) If the city manager determines to proceed under subsection (b) of this section, the manager shall notify the property owner of the duty to repair or replace, that such owner has thirty days from the date of the notice to commence such repair or replacement and has sixty days from the date of the notice to complete such repair or replacement, and that the city will share in the cost of the work as provided in subsection (e) of this section. The manager may include in the notice, as an alternative, an agreement whereby the city will make the repairs

within twelve months, and the owner will pay to the city as its share of the costs as provided in subsection (e) of this section the amount specified in the agreement within thirty days of completion of the repairs, as determined by the manager. The manager may extend the time limit if weather would impede the work. Notice under this section is sufficient if it is mailed first class to the address of the last known owner of property on the records of the Boulder County Assessor, or hand delivered to an owner.

(d) If the property owner fails to commence or complete repair or replacement as required by the notice prescribed by subsection (c) of this section, or to sign and return to the city manager an agreement included in such notice as provided in subsection (c) of this section, the manager may perform the repair or replacement and charge the costs thereof, plus up to fifteen percent for administrative costs, to the property owner.

(e) With the prior agreement of the city manager, and subject to the availability of sufficient appropriated funds for the purpose, the city will share in the cost of the repair or replacement in an amount equal to fifty percent of the cost that the city would have incurred to perform the work.

(f) If any person fails or refuses to pay when due any charge imposed under this section, including any agreed charge, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance No. 5660 (1994).

8-2-7 **Duty To Maintain Ditches, Drainage Ponds, And Streets.**

No person, other than the city, who owns a ditch, drainage pond, or street shall fail to maintain it in good repair and in a safe and unobstructed condition.

8-2-8 **Discharging Water Prohibited.**

(a) No owner, lessee, or occupant of property shall cause or permit water to flow upon any sidewalk, street, alley, or other public right-of-way:

(1) So as to impair the use of such place;

(2) When the weather is such that the water may be frozen into ice;

(3) Where the drainage is such that it may create a hazard to persons or property; or

(4) Where it may cause damage to any public property or facility.

(b) If the city manager finds that any person has caused or permitted water to flow upon any such public grounds in violation of this section, the manager may require that such person correct the violation.

(c) The city manager shall notify such person of the duty to correct the violation and that such owner has a specified time to complete such correction, established by the manager according to the severity of the violation, the hazard to public health, safety, or welfare, and the time reasonably necessary to correct the violation. Notice under this subsection is sufficient if it is either personally delivered to such person or, if the person is the owner of property from

which the water is discharged, deposited in first class mail addressed to the last known owner of such property in the records of the Boulder County Assessor.

(d) If any person so notified fails to correct the violation, the city manager may perform the work and charge the costs thereof to the person.

(e) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

8-2-9 **Bridges Over Ditches And Drains.**

(a) No person owning or excavating any ditch or drain across any public street, sidewalk, or alley shall fail to construct a temporary bridge over such ditch or drain of a width determined by the city manager to be necessary for public safety and convenience during the excavation.

(b) No person owning or excavating any ditch or drain across any public street, sidewalk, or alley shall fail, within five days of completing such excavation, to construct a permanent bridge over such ditch or drain of a width conforming to the city's capital improvements plan for streets.

(c) No person owning such a bridge shall fail to maintain it in good repair.

8-2-10 **Deposit Of Dirt And Material On Streets And Alleys Prohibited.**

(a) No person shall litter, track, deposit, or cause to be littered, tracked, or deposited, sand, gravel, rocks, mud, dirt, or any other debris or material, except snow, upon any street or alley or any portion thereof.

(b) No person owning or operating trucks and other vehicles shall fail to clean such vehicles to eliminate their tracking or depositing, sand, gravel, rocks, mud, dirt, or any other debris or material, except snow, upon any street or alley or any portion thereof.

(c) No person shall plow, shovel, or otherwise deposit or cause to be deposited any snow upon any street or alley or any portion thereof. It is a specific defense to a charge of violating this subsection that the snow was shoveled or swept directly from a sidewalk in front of a residence in a residential zone, and that the snow so deposited did not impair the use of the street by vehicular traffic. The provisions of this subsection do not apply to persons brushing off snow which has accumulated naturally upon a motor vehicle parked on or driven upon a street or alley.

(d) If the city manager finds that any person has violated the provisions of subsection (a), (b), or (c) of this section, the manager may notify the person or an employer of such person of the duty to remove any sand, gravel, rocks, mud, dirt, snow, or any other debris or material so deposited within twenty-four hours from the date of the notice. Notice under this subsection is sufficient if hand delivered to the person or an employer of such person. No such notice shall be required if the city manager determines that an emergency exists.

(e) If the person so notified fails to remove the debris as required by the notice prescribed by subsection (d) of this section, or if the city manager determines that an emergency exists, the

city manager may remove the debris or cause it to be removed and charge the costs thereof to the person violating the provisions of this section.

(f) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(g) No person shall fail or refuse to comply with the notice of the city manager prescribed by subsection (d) of this section.

(h) Each day any sand, gravel, rocks, mud, dirt, snow, or any other debris or material are present upon any street or alley or portion thereof constitutes a separate offense.

Ordinance No. 4895 (1985).

8-2-11 **Duty To Maintain Walkway Around Obstructed Portions Of Sidewalks.**

Whenever in the construction, rebuilding, or repairing of any building or structure it is necessary to blockade, obstruct, or remove the adjacent sidewalk, no person in charge of such work shall fail to build and maintain a sound and substantial walkway meeting the requirements of the City of Boulder department of public works, *Work Area Traffic Control and Safety Handbook*, July 1980, around the obstructed portion of such sidewalk.

8-2-12 **Street And Gutter Obstructions Prohibited.**

Repealed.

Ordinance No. 7224 (2002).

8-2-13 **Duty To Keep Sidewalks Clear Of Snow.**

(a) No private owner, agent appointed pursuant to section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult occupant of a single-family dwelling, a duplex, a triplex, or a fourplex shall fail to keep all public sidewalks and walkways abutting the premises such person owns, leases, or occupies clear of snow, ice, and sleet, as provided in this section. Such persons are jointly and severally liable for such responsibility, criminally and administratively. Such persons shall remove any accumulation after any snowfall or snowdrift as promptly as reasonably possible and no later than 12:00 noon of the day following the snowfall or snowdrift. Such persons shall remove the snow from the full width of all sidewalks and walkways, except those with a width exceeding five feet, which must be cleared to a width of at least five feet.

(b) If the city manager finds that any portion of a sidewalk or walkway has not been cleared of snow as required by subsection (a) of this section and that a hazardous condition exists, the manager shall notify the owner, agent appointed pursuant to section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, the lessee leasing the entire premises, or any adult occupant of a single-family dwelling, a duplex, a triplex, or a fourplex that such person must remove the snow within the time limits prescribed by subsection (a) of this section. Notice under this subsection is sufficient if hand delivered or telephoned to such person, or, if reasonable efforts to give notice by hand delivery at the premises and by telephone to all such persons fail, by posting on the premises.

(c) If the person so notified fails to remove the snow as required by the notice prescribed by subsection (b) of this section, the city manager may cause the snow removal to meet the requirements of this section and charge the costs thereof, plus an additional amount up to $25.00 for administrative costs, to the person so notified and the owner, jointly and severally. If the owner or the owner's agent was not previously notified pursuant to subsection (b) of this section, the manager shall so notify the owner by certified or first class mail of this charge and the circumstances surrounding it at this time, and such an owner shall be entitled to a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, to contest such charges. Lack of previous notice shall not be a defense in such a hearing.

(d) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance No. 5660 (1994).

8-2-14 **Vaults And Cellars To Be Covered.**

(a) No person shall dig or cause to be dug a vault in any street, alley, or sidewalk in the city, except under the terms of a permit or lease issued under chapter 8-6, "Public Right-Of-Way And Easement Encroachments, Revocable Permits, Leases, And Vacations," B.R.C. 1981.

(b) No person shall keep or leave open or cause to be left or kept open any cellar door, grating, or other covering of any vault or cellar in or along any street, sidewalk, or alley in the city or fail to maintain any such door, grating, or other covering.

8-2-15 **Location Of Pipes And Conduits.**

No person shall excavate for or lay any water, gas, or sewer pipe, except service connections to abutting properties, or any wire, cable, or conduits in or upon any street, alley, or public highway of the city, except upon a line or in a place located and designated by the city manager.

8-2-16 **Attaching Devices To Public Property Prohibited.**

No person shall attach any object to any city property or locate any object on city property in such a manner as to damage the city property, obstruct public right-of-way, or interfere with the function of the city property.

8-2-17 **When Sidewalks Are To Be Constructed Or Reconstructed.**

(a) Sidewalks shall be constructed in any area of the city where:

(1) Sidewalks are necessary to provide adequate and safe routes for school children to and from their dwellings and to and from educational facilities;

(2) Pedestrian traffic is not adequately accommodated by existing sidewalks;

(3) No sidewalks are in existence; or

(4) The health, welfare, and safety of the public require that adequate sidewalks be provided for the public convenience.

(b) Any existing sidewalks, or portions thereof, shall be reconstructed or replaced:

(1) Where any vertical displacement of the adjoining sidewalk section exceeds three-quarters of an inch;

(2) Where any lateral displacement of adjoining sidewalk exceeds one inch;

(3) Where the surface condition of the sidewalk has deteriorated, cracked, settled, or chipped, so as to create or constitute a hazard or unsafe condition to the public;

(4) Where the transverse slope of the sidewalk exceeds one inch per foot or in which the combination of transverse or longitudinal grade is insufficient for adequate drainage of the sidewalk;

(5) Where the sidewalk is less than four feet wide in any residential zoning district in the city and less than six feet wide in any business or industrial zoning district in the city, if the sidewalk or any portion thereof constitutes a hazard to pedestrian safety; or

(6) Where there is not at least a five-foot transition in the direction of the sidewalk on any sidewalk adjacent to a driveway.

(c) If any existing sidewalk consists of sandstone and the abutting property owner requests that it be retained, the city manager shall retain such sandstone sidewalk if the stones or slabs are at least two inches thick; are set in a base of concrete not less than four inches or compacted subgrade not less than six inches thick; have all sections grouted to the base to provide a uniform surface grade throughout all portions of the sidewalk; have no longitudinal joints; and are at least four feet by two feet in size. Only a concrete base is allowed over a curb cut or at driveways.

8-2-18 **Permit For Sidewalk Construction Required.**

(a) No person other than a contractor in the right-of-way licensed under chapter 4-6, "Contractor In The Public Right-Of-Way License," B.R.C. 1981, shall construct, reconstruct, repair, or replace any sidewalk, curb, gutter, curbwalk, or any portion thereof.

(b) Notwithstanding the provisions of subsection (a) of this section, an owner-occupant of property may perform work on the sidewalk behind the curb if such owner first obtains from the city manager a permit to do so under this subsection.

(1) An applicant for a sidewalk construction permit shall apply therefor on forms furnished by the city manager that contain the name of the owner of the property abutting the sidewalk, a description of the lot or parcel of ground in front of which the construction is to be performed, and a statement that the construction will be performed in accordance with the requirements of this code and the plans, specifications, and grades approved by the city.

(2) The applicant shall deposit with the city an amount sufficient to pay the city for its engineering, testing, and inspection costs.

(3) The applicant shall also deposit into an escrow with the city funds sufficient to cover the cost of the work to restore the sidewalk to its original condition, which will be refunded to the applicant after the work is completed and the city has accepted it.

8-2-19 Sidewalk Construction On Corner Lots.

All sidewalks constructed abutting corner lots shall be continued to the point of connection with street crossings and shall contain handicapped ramps or smooth transitions to the street crossing grade.

8-2-20 Material And Specifications For Sidewalk, Curb, And Gutter.

All sidewalks, curbs, and gutters ordered to be constructed, reconstructed, repaired or replaced shall be composed of either stone, brick, or cement and shall be constructed, rebuilt, repaired, or replaced according to the City of Boulder *Design And Construction Standards*.

Ordinance No. 5986 (1998).

8-2-21 Grade Of Sidewalks, Curbs, And Gutters, Inspection, And Approval.

(a) All sidewalks, curbs, and gutters that are constructed, rebuilt, repaired, or replaced shall be laid to the grade established on the plans submitted to the city manager and approved by the manager.

(b) When any sidewalk, curb, or gutter is constructed, rebuilt, replaced, or repaired, the person performing such work shall apply to the city manager to inspect it. If upon inspection the manager finds that such work meets city specifications, the manager shall approve and accept the work.

8-2-22 Sidewalk Required Prior To Issuance Of Building Permit.

(a) Any person who applies for a building permit or permits for a new building or structure or for an addition, alteration, or repair whose cost within any twenty-four-month period exceeds twenty-five percent of the value of the existing building or structure, regardless of the zone, on a lot where sidewalks meeting the requirements of this chapter do not exist, shall submit plans to construct sidewalks, indicating the location of the sidewalk as it extends along the length of the applicant's property.

(b) For purposes of this section, the city manager shall determine the value of the existing building or structure based upon the current data and information available to the manager.

(c) The manager shall determine whether the sidewalk plans meet the standards for sidewalks of this chapter.

(d) Sidewalks shall be constructed in accordance with the plans as finally approved by the city manager and before the occupation of the building.

(e) The applicant for the building permit shall agree in writing that before or after the construction of the sidewalk the applicant will grant to the city an easement for use by the public as a right-of-way for sidewalk purposes of the area in which the sidewalk lies, if such area is not already in the public right-of-way.

(f) Notwithstanding any other provisions of this section, a building permit may be issued when a plot plan is submitted indicating the location and alignment of the sidewalk along the length of the applicant's property but before construction plans are submitted or a sidewalk is constructed if:

(1) The land being built upon fronts on a street that is not improved to acceptable city standards and the applicant signs an agreement, satisfactory to the city attorney, to construct the sidewalk whenever the city manager determines that it is needed by the area residents and the general public, considering the improvement of the street fronting the land and the existence of sidewalks or portions of sidewalks on the property and the area adjacent to the land and the property in the vicinity of the land; or

(2) The city manager determines that the construction of sidewalks is not immediately necessary to protect area residents for the public safety and the applicant signs an agreement and covenant running with the land, satisfactory to the city attorney, to construct the sidewalk when the city manager determines, based on the density of population of the immediate area, the neighborhood needs, the condition of the sidewalk fronting the land, and the existence of sidewalks or portions of sidewalks on the property in the area adjacent to the land and the property in the vicinity of the land, that the needs of area residents and the general public require sidewalk construction.

(3) The applicant under either paragraph (f)(1) or (f)(2) of this section shall, before a building permit is issued, grant to the city an easement for the right-of-way of the sidewalk to be constructed at a later time. The easement shall provide for immediate use of the easement area before sidewalk construction by the public as a right-of-way for sidewalk purposes.

8-2-23 **Alley Paving Required Prior To Issuance Of Building Permit.**

(a) Whenever any person applies for a building permit or permits for a new building or structure adjoining an unpaved alley or for an addition, alteration, repair, or replacement whose cost within any twenty-four-month period exceeds twenty-five percent of the value of the existing building or structure:

(1) The applicant in a business, industrial, or high density residential zoning district shall submit plans for the paving of any alley adjoining the property and shall agree to pave such alley in conformity with the requirements of the City of Boulder *Design And Construction Standards*; or

(2) The applicant in a medium density residential zoning district shall agree to pave the alley abutting the property when the city manager determines, based on the density of use of the alley, the needs of the neighborhood, and the particular problems of dirt, dust, and potholes, that the needs of the area residents and the general public require the alley to be paved.

(b) For purposes of this section, the city manager shall determine the value of the existing building or structure based upon current data and information.

(c) Upon the determination that the plans for alley paving required by paragraph (a)(1) of this section meet the requirements of this code, the city manager shall approve the plans.

(d) Alleys shall be paved according to the plans approved by the city manager and shall be completed before the occupation of the building.

Ordinance No. 5986 (1998).

8-2-24 **Transportation Excise Tax.**

Repealed.

Ordinance Nos. 5216 (1989); 6039 (1998).

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 3 Parks And Recreation[1]

Section:

8-3-1 Legislative Intent.

The purpose of this chapter is to prescribe rules of conduct for the use of the city parks, parkways, recreation areas, and open space lands in addition to the rules proscribing general offenses throughout the city in title 5, "General Offenses," B.R.C. 1981.

8-3-2 Applicability.

Unless otherwise provided, this chapter applies to all parks, parkways, recreation areas, and open space belonging to the city or within the possession and control of the city, whether located within or without the corporate boundaries of the city.

8-3-3 City Manager May Issue Rules.

(a) The city manager may adopt rules for the management, operation and control of city parks, parkways, recreation areas, and open space, and for the use and occupancy, management, control, operation, care, repair, and maintenance of all structures and facilities thereon and all land on which they are located and operated. The manager may adopt rules, including, without limitation, for:

[1]Adopted by Ordinance No. 4730. Amended by Ordinance Nos. 4740, 4745. Derived from Ordinance Nos. 1356, 1867, 2021, 2421, 2513, 3096, 3404, 3242, 3616, 3681, 3879, 3892, 3904, 4119, 4142, 4356, 4480, 4488, 4509, 1925 Code.

(1) Preservation of property, vegetation, wildlife, signs, markers, buildings or other structures, and any object of scientific or historic value or interest;

(2) Restriction on or limitation of the use of any area or trail according to time, type, and manner of activities;

(3) Prohibition of conduct that may reasonably be expected to interfere substantially with the use and enjoyment of parks, parkways, recreation areas, and open space by the general public or that constitutes a nuisance;

(4) Maintenance of reasonable and necessary sanitation, health, and safety;

(5) Place, time, and manner of camping and picnicking, if allowed;

(6) Place, time, and manner of operating boats and vehicles, if allowed;

(7) Control and limitation of fires and designation of places where fires are permitted; and

(8) Other requirements that are reasonable and necessary for the preservation and management of parks, parkways, recreation areas, and open space.

(b) No person shall violate any rule issued by the city manager under this section.

(c) The manager shall post rules issued under this section at the place where they are to be enforced. If the rule is not so posted, it may still be enforced if the person had actual knowledge of the rule, was given a copy of the rule upon applying for or receiving a permit or license, was advised of the rule by a city employee, or was ordered by a peace officer to cease conduct violative of the rule.

Ordinance Nos. 5053 (1987); 5497 (1992).

8-3-4 **Fires.**

(a) In addition to the requirements of section 5-4-10, "Fires On Public Property," B.R.C. 1981, no person shall start, maintain, or cause to be started or maintained any fire in or on any park, parkway, recreation area, or open space, between the hours of 11:00 p.m. and 6:00 a.m. without first having obtained a permit therefor from the city manager.

(b) The city manager may post signs within any park, parkway, recreation area, or open space during periods of fire danger directing that no fires may be built, started, or maintained. No person shall build, start, or maintain a fire in any park, parkway, recreation area, open space, or portion thereof in violation of a sign prohibiting such acts.

(c) No person shall leave any park, parkway, recreation area, or open space without first having completely extinguished any fire that such person started or maintained.

8-3-5 **Wildlife Protection.**

(a) No person shall hunt, trap, net, impede, harass, molest, chase, kill, or remove any wildlife or livestock or damage, destroy, or remove any nest, burrow, or animal dwelling from any park, recreation area, or open space, or other property of the city, including, without limitation, any street or other right-of-way controlled or maintained by the city, except pursuant to a written permit from the city manager for scientific purposes, or pursuant to the provisions of chapter 6-1, "Animals," B.R.C. 1981, or when necessary to protect the public health, safety,

and welfare or except for hunting and trapping allowed by the city manager in designated areas for game management. As to livestock, this prohibition does not apply to any lessee of such property managing its livestock on the leasehold, nor to any person driving herds of livestock along streets.

(b) No owner or keeper of a dog shall negligently allow or direct such dog to harass wildlife or livestock, whether or not the wildlife is actually injured by such dog, within any park, recreation area, or open space, or other property of the city, including, without limitation, any street or other right-of-way controlled or maintained by the city. This prohibition does not apply to any lessee of such property using a working dog to control livestock on the leasehold.

(c) The provisions of this section do not apply to the felonious hunting or taking, or soliciting the same, of big game, eagles, or endangered species or to detaching or removing trophy or other selected parts with the intent to abandon the carcass[1].

Ordinance Nos. 5858 (1997); 5866 (1997); 7321 (2005).

8-3-6 **Vehicle Regulation.**

(a) No person, other than persons authorized by the city manager, shall:

(1) Fail or refuse to comply with any lawful order or direction of any park patrol officer authorized and instructed to direct traffic in any park, parkway, recreation area, or open space and on the public roads and parkways therein;

(2) Fail to comply with any traffic control device in a park, parkway, recreation area, or open space regulating the operation of motor vehicles;

(3) Drive a motor vehicle within any park, parkway, recreation area, or open space, in excess of the posted speed limit. If no speed limit is posted, then no person shall drive a motor vehicle in a park, recreation area, or open space in excess of twenty miles per hour;

(4) Drive a motor vehicle within or upon any part of a park, parkway, recreation area, or open space, except on designated roadways, parking areas, or areas that the city manager designates as temporary parking areas;

(5) Remove or relocate any barricade, barrier, or other device erected to control motor vehicle traffic in a park, parkway, recreation area, or open space; or

(6) Drive a non-motorized vehicle upon any area in mountain parks or open space property except a trail or roadway designated and posted for that use by the city manager or a paved or graveled roadway open to motorized vehicles.

(b) The city manager may post "tow away" no-parking zones within any park, parkway, recreation area, or open space to clear off-street parking areas after designated hours of operation and to clear designated fire roads and other emergency access routes. Vehicles parked in violation of such traffic control devices may be towed and impounded pursuant to the provisions of chapter 7-7, "Towing And Impoundment," B.R.C. 1981.

Ordinance No. 5546 (1993).

[1]See subsection 33-6-117(a), C.R.S.

8-3-7 **Regulation Of Horses And Livestock.**

(a) No owner, agent, employee, operator, or concessionaire of any commercial horse stable, riding school, or livery shall use any park, parkway, recreation area, or open space for grazing or pasture of livestock without first obtaining a permit from the city manager.

(b) Except pursuant to a lease with the city, no owner, agent, employee, operator, or concessionaire of any commercial horse stable, riding school, or livery shall use any park, parkway, recreation area, or open space for training, riding, or trail riding activities of customers without first obtaining a permit from the city manager, completing an application that includes the amount of use, times, and dates of use, trails or areas to be used, and other details of the use, and paying the fee prescribed by section 4-20-40, "Horse Concession Park Use Fee," B.R.C. 1981.

(c) No person shall ride or lead horses on any landscaped park or recreation area except upon a public equestrian trail so designated by the city manager.

8-3-8 **Fees.**

(a) The city manager may impose fees for recreational activities open to the public conducted by the city that the manager determines are reasonably necessary to recover the costs of such activities.

(b) Admission fees to the city recreation centers, pools, golf course, and Boulder Reservoir are those prescribed by section 4-20-41, "Park And Recreation Admission Fees," B.R.C. 1981. The city manager may establish discounted fees for group rates and promotional purposes in addition to those specified in that section.

(c) No person shall fail to pay a fee prescribed by this code for the use of a recreation center, pool, golf course, or Boulder Reservoir.

Ordinance Nos. 5187 (1989); 5425 (1991).

8-3-9 **Glass Bottles Prohibited.**

No person shall carry or possess any glass bottle or other glass container, except one containing prescription medication, in any city park, parkway, recreation area, or open space.

Ordinance No. 4964 (1986).

8-3-10 **Hitting Golf Balls Prohibited.**

No person shall drive or hit golf balls in any park, parkway, recreation area, or open space, except at a place designated and posted for that use by the city manager.

8-3-11 **Sledding In Open Space And Mountain Parks Prohibited.**

No person shall sled, toboggan, or slide in any recreation area or open space or mountain park, except on roadways, designated trails, or other areas designated and posted for that use by the city manager.

Ordinance No. 7348 (2004).

8-3-12 Authority Of Park Patrol Officers.

(a) Park patrol officers are authorized to enforce all provisions of this code, other ordinances of the city, and rules issued thereunder regulating conduct in any city park, parkway, recreation area, or open space and to perform other duties delegated to them by the city manager.

(b) After satisfactorily completing a training course approved by the Colorado Law Enforcement Training Academy, park patrol officers shall be commissioned with authority to enforce such laws and rules, protect park patrons and property, and carry firearms.

(c) A park patrol officer may stop any person who the officer reasonably suspects is committing, has committed, or is about to commit in a city park, parkway, recreation area, or open space a violation of this code, other ordinance of the city, or regulation issued thereunder. The officer may require that person to give his or her name and address and an explanation of his or her actions.

(d) When an officer has so detained a person and reasonably suspects that the officer's personal safety requires it, the officer may conduct a pat-down search of that person for weapons.

8-3-13 Permits For Concerts And Sound System Required.

(a) No person shall operate any public address system or other amplified sound system in a park, parkway, recreation area, or open space under circumstances reasonably expected to draw an audience of fifty or more people, without first obtaining a permit from the city manager under this section.

(b) No person shall stage a concert of live or recorded music by an individual, band, or orchestra intended for or which can reasonably be expected to draw an audience of fifty or more people in a city park, parkway, recreation area, or open space without first obtaining a permit from the city manager under this section.

(c) An applicant for a permit shall file an application at least two days before the requested day of the concert along with a security deposit of $100.00. The application shall be signed by at least one adult resident of the city and, if the permit requested is for a live concert, the individual performer, band leader, or orchestra leader shall also sign the application, and shall contain:

(1) The name and address of the individual or organization sponsoring the concert;

(2) The name, address, and telephone number of the individual in charge of the concert;

(3) The park or recreation area or portion thereof for which the permit is requested;

(4) The nature of the source of the music;

(5) The day and hours for which the permit is sought; and

(6) An estimate of the anticipated attendance.

(d) Upon receiving an application, the city manager shall:

(1) Verify the accuracy of the information;

(2) Review the schedule of park or recreation area use to determine whether there is a conflict with prior applications or scheduled activities of the parks and recreation depart-

ment, which have priority; if there is a conflict, the manager will notify the applicant to permit amendment of the application to avoid the conflict;

(3) Review the requested site of the concert to determine whether or not the available seating, parking, and sanitation facilities are adequate for the proposed use; and

(4) Review the proposed time of the concert and the estimated attendance and consider other relevant circumstances to insure that the security deposit is adequate to protect against possible damage to city property and defray costs of restoration of the premises to a neat and orderly condition. The manager may require a deposit beyond the $100.00 if the manager determines that $100.00 is insufficient. The manager may also return the security deposit upon the determination that it is not necessary to protect the interests of the city.

(e) If the applicant fulfills the requirements prescribed by this section, the city manager shall issue a permit unless the proposed concert would exceed the available seating, parking, and sanitation facilities. Each permit is subject to the following conditions:

(1) The applicant takes all reasonable steps to protect city facilities and property, including flora and fauna, against damage;

(2) The applicant cleans and restores the premises to a neat and orderly condition;

(3) The applicant charges no admission for the concert unless it is a city parks and recreation department sponsored event;

(4) The applicant is responsible to assure that the noise emanating from the music source complies at all times with the standards prescribed by chapter 5-9, "Noise," B.R.C. 1981;

(5) The applicant is responsible to assure that all members of the band or orchestra comply with all applicable state and city laws; and

(6) The applicant insists at all times that the members of the audience comply with all applicable state and city laws.

(f) The city manager may revoke a permit issued under this section at any time during the course of the concert for breach of any of the conditions prescribed by subsection (e) of this section. The manager shall thereafter afford the permittee an opportunity to contest the revocation under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. If the manager revokes the permit, the concert must cease immediately. No person shall continue a concert after a permit has been revoked.

(g) No permit issued under the provisions of this section will expire later than 11:00 p.m.

(h) After the concert and during working hours, each permittee under this section shall contact the city manager to inspect the area used in the concert. If no damage has been done and the area has been properly cleaned, the manager shall return the security deposit. If the permittee has failed to meet the obligations prescribed by this section, the manager shall retain a sum from the deposit sufficient to cover the damage or restore the premises to a neat condition. If the security deposit does not completely indemnify the city for damage or cleaning costs necessary to restore the area, the permittee shall not fail to pay forthwith to the city a sum to cover these extra costs.

Ordinance Nos. 5187 (1989); 5497 (1992).

8-3-14 **Permits For Organized Events.**

(a) No person shall organize, promote, or stage a recreational, athletic, or social event intended for or which can reasonably be expected to draw an attendance of fifty or more participants and spectators in any park, parkway, recreation area, or open space without first obtaining a permit from the city manager under this section.

(b) An applicant for a permit shall file an application at least fourteen days before the requested day of the event along with a security deposit of $100.00. The application shall be signed by at least one adult resident of the city and shall contain:

(1) The name and address of the individual or organization sponsoring the event;

(2) The name, address, and telephone number of the individual in charge of the event;

(3) The site for which the permit is requested;

(4) The type of event and a complete description of the planned activities;

(5) The day and hours for which the permit is sought; and

(6) An estimate of the anticipated attendance.

(c) Upon receiving an application, the city manager shall:

(1) Verify the accuracy of the information;

(2) Determine whether there is a conflict with prior applications or scheduled city activities, which have priority; if there is a conflict, the manager will notify the applicant to permit amendment of the application to avoid the conflict;

(3) Review the requested site of the event to determine whether or not the available seating, parking, and sanitation facilities are adequate for the proposed use; whether or not the event would conflict with any law, ordinance, code, rule or regulation, resource management, or environmental policy; and whether or not the event would unduly interfere with the general public use of the site; and

(4) Review the proposed time of the event and the estimated attendance and consider other relevant circumstances to insure that the security deposit is adequate to protect against possible damage to city property and defray costs of restoration of the premises to a neat and orderly condition. The manager may require a deposit beyond the $100.00 if the manager determines that $100.00 is insufficient. The manager may also return all or a portion of the security deposit upon the determination that it is not necessary to protect the interests of the city.

(d) If the applicant fulfills the requirements prescribed by this section, the city manager may issue a permit if the event is appropriate for the site, the infrastructure of the site will support the event without environmental or resource damage, and the public benefit from the proposed event exceeds its detriments. Each permit is subject to the following conditions:

(1) The applicant takes all reasonable steps to protect city facilities and property, including flora and fauna, against damage;

(2) The applicant cleans and restores the premises to a neat and orderly condition;

(3) The applicant charges no admission for the event unless it is a city sponsored event;

(4) The applicant is responsible to assure that the noise emanating from the event complies at all times with the standards prescribed by chapter 5-9, "Noise," B.R.C. 1981;

(5) The applicant is responsible to assure that all participants and spectators comply with all applicable state and city laws; and

(6) The applicant insists at all times that all participants and spectators comply with all applicable state and city laws.

(e) The city manager may revoke a permit issued under this section at any time during the course of the event for breach of any of the conditions prescribed by subsection (d) of this section. The manager shall thereafter afford the permittee an opportunity to contest the revocation under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. If the manager revokes the permit, the event must cease immediately. No person shall continue an event after a permit has been revoked.

(f) No permit issued under the provisions of this section will expire later than 11:00 p.m.

(g) After the event and during working hours, each permittee under this section shall contact the city manager to inspect the area used in the event. If no damage has been done and the area has been properly cleaned, the manager shall return the security deposit. If the permittee has failed to meet the obligations prescribed by this section, the manager shall retain a sum from the deposit sufficient to cover the damage or restore the premises to a neat condition. If the security deposit does not completely indemnify the city for damage or cleaning costs necessary to restore the area, the permittee shall not fail to pay forthwith to the city a sum to cover these extra costs.

(h) This section applies only to areas for which an entry fee is not normally charged.

Ordinance Nos. 4879 (1985); 5187 (1989); 5497 (1992).

8-3-15 **Regulation Of Boulder Reservoir And Coot Lake.**

(a) No person shall enter or be present at the Boulder Reservoir or Coot Lake during any times when the area is designated by the city manager as closed to the general public.

(b) No person shall use an automobile at the Boulder Reservoir or Coot Lake except upon established roadways or park in other than designated parking areas, or use snowmobiles, hovercraft, motorcycles, or any other motor-powered vehicle off of the established roadways except when specifically authorized by the city manager.

(c) No person operating a boat on the Boulder Reservoir shall fail at all times to operate the craft in a manner that is safe for the operation of all other boats and passengers and does not interfere with other boats on docks or on shore.

(d) No person shall operate a boat on the Boulder Reservoir unless it carries a U.S. Coast Guard-approved life jacket, life vest, or flotation ski belt for each person on board.

(e) No person shall swim in the Boulder Reservoir except in designated areas marked with rafts and buoyed rope except as swimming is incidental to waterskiing, surfboarding, or sailing.

(f) Repealed.

(g) The city manager may suspend the privilege of any person to use the Boulder Reservoir or Coot Lake who has violated any provision of this code, an ordinance of the city, or a rule at

the reservoir or lake if such person's conduct constitutes a hazard to the health, safety, or welfare of the users of the reservoir or lake.

(1) The suspension period shall be reasonably related to the severity of the offense and its danger to public health, safety, and welfare.

(2) The manager shall provide notice to the offender that the suspension is effective and an opportunity for a hearing thereafter to contest the suspension, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(3) No person shall violate any order of the city manager suspending the privilege of using the reservoir or the lake.

Ordinance No. 4879 (1985).

8-3-16 **Boulder Reservoir Boat Permits Required.**

(a) No person shall enter the Boulder Reservoir premises with, launch, or operate a power or sail-driven boat on the Boulder Reservoir without first obtaining a permit from the city manager under this section and displaying the permit upon entering the gate with the boat.

(b) An applicant for a permit shall provide the person's name and address, the state registration number of the boat, and an insurance certificate as prescribed by subsection (c) of this section and pay the fee prescribed by regulations issued by the city manager.

(c) An applicant for a power driven boat permit shall file with the city manager a certificate signed by a qualified agent of an insurance company evidencing the existence of valid and effective policies of public liability and damage insurance with a minimum limit of $100,000.00 for injury to any one person in any single occurrence and $300,000.00 for an injury to two or more persons in any single occurrence, the limits of such policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, and a copy of an endorsement placed on each policy requiring ten days' notice by mail to the manager before the insurer may cancel the policy for any reason.

(d) The manager shall issue to each permittee a separate identification number or card, to be carried at all times in the boat by the owner or operator. The permittee shall affix the identification number to the boat in figures at least three inches high.

(e) The city manager may deny issuance of a permit upon a determination that:

(1) The applicant has failed to supply any of the information required on the application;

(2) The applicant has failed to obtain the required insurance;

(3) The applicant has failed to pay the required permit fee; or

(4) The applicant has repeatedly failed to follow the rules of the reservoir and would create danger to the public health, safety, or welfare if the applicant were to engage in such offensive conduct after the permit were issued.

(f) If the city manager denies a permit application under this subsection, the manager shall notify the applicant in writing stating the specific grounds for the denial. The applicant may thereafter appeal the denial of the application to the manager under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The hearing officer on the appeal shall not be the same individual who denied the permit application.

(g) In addition to any other provisions of this code or other ordinance of the city, the city manager may suspend or revoke a permit issued under this section, if:

(1) The permittee violates any provision of this chapter;

(2) The required insurance has been cancelled or voided; or

(3) The permittee was engaging in hazardous or annoying behavior, including, without limitation, driving on the reservoir while under the influence of liquor, rocking a boat, overloading, scuffling, steering at another boat, throwing spray into other boats or persons on shore, cutting or tangling fishing lines, or running dangerously close to cones, buoys, rowboats, sailboats or any other boats.

(h) If the manager finds one of the grounds in subsection (g) of this section exists, the manager shall determine whether to revoke the permit for the remainder of its term or suspend it for a shorter period according to the severity of the disqualification and its effect on public health, safety and welfare.

(i) Before the hearing required in subsection (j) of this section, the city manager may suspend a permit for up to twenty days, if the manager determines that the suspension is in the interest of public health, safety, and welfare.

(j) Except for such emergency suspension, no such suspension or revocation is final until the permittee has been given the opportunity for a hearing to contest the suspension or revocation under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

Ordinance Nos. 4908 (1985); 5187 (1989); 5497 (1992).

8-3-17 **Swimming And Boating In Certain Waters Prohibited.**

(a) No person shall swim in any pond, lake, stream, reservoir, or other body of water owned or controlled by the city. It is a specific defense to a charge of violating this subsection that a person was wading or using a raft or other flotation device on Boulder Creek or other stream. It is a specific defense to a charge of violating this subsection that the person was swimming in the Boulder Reservoir or in any body of water owned by the city at which a lifeguard is on duty at the site and where the Boulder County Health Department has approved the water for swimming.

(b) No person shall operate any boat powered by an outboard or inboard motor or a sailboat exceeding fourteen feet in length or a hand-powered boat exceeding seventeen feet in length on any lake, pond, stream, reservoir, or other body of water owned or controlled by the city, except the Boulder Reservoir.

8-3-18 **Park Land Acquisition And Development Fees.**

Repealed.

Ordinance Nos. 5044 (1987); 6039 (1998).

8-3-19 **Public Nudity Prohibited.**

(a) No person ten years of age or older shall be in or within five hundred feet of the shore of Coot Lake or any adjacent street with any portion of the anus, vulva, penis, or scrotum exposed to the view of another.

(b) This prohibition does not extend to:

(1) Persons undergoing bona fide emergency medical examination or treatment; and

(2) Persons whose exposure was not voluntary.

8-3-20 **Fixed Hardware Prohibited.**

No person engaged in rock climbing in a park, recreation area, or open space shall place or attach any object on such land unless the object is inherently capable of removal for reuse by reasonable effort, unless done pursuant to a written permit from the city manager.

Ordinance No. 5389 (1991).

8-3-21 **Tents And Nets Prohibited.**

No person shall erect any tent, net, or structure in a park or recreation area located outside the corporate limits of the city, or on any open space land, unless done pursuant to a written permit or contract from the city manager. The prohibitions of this section do not apply to developed and landscaped city parks located outside the city limits, if they are designated by the manager as such city parks.

Ordinance No. 5497 (1992).

8-3-22 **Reservation Of Park And Recreation Facilities.**

The city manager may establish and from time to time change a schedule of available times and fees for reservation of facilities for which a fee is normally charged within parks and recreation centers by persons for no more than five consecutive days for social or athletic use as appropriate to the facility. The manager may also require a reasonable damage deposit for such use. After the reservation is over and during working hours, the person required to post a deposit under this section shall contact the city manager to inspect the area used. If no damage has been done and the area has been properly cleaned, the manager shall return the deposit. If the person has failed to meet this obligation, the manager shall retain a sum from the deposit sufficient to cover the damage or restore the premises to a neat condition. If the deposit does not completely indemnify the city for damage or cleaning costs necessary to restore the area, the person shall not fail to pay forthwith to the city a sum to cover these extra costs.

Ordinance No. 5497 (1992).

8-3-23 **Delegation Concerning Leases, Licenses, And Permits.**

Pursuant to charter section 164, the parks and recreation advisory board is delegated the authority to approve any lease, license, or permit in or on park lands whose term does not exceed three years, as may be recommended to it by the city manager.

Ordinance No. 5706 (1995).

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 4 General Improvement Districts[1]

Section:

8-4-1 Legislative Intent.

The purpose of this chapter is to provide the procedures by which the city council may establish districts within the city to acquire, construct, install, operate, or maintain public improvements and facilities, or for the purpose of providing any service not otherwise prohibited by law, subject to the requirements of charter section 106, and by which such districts may operate.

Ordinance No. 7053 (2000).

8-4-2 Definitions.

(a) The following words used in this chapter have the following meanings, unless the context clearly indicates otherwise:

"Charges" means any rates, fees, tolls, or charges imposed by a district.

"District elector" means a person who is registered to vote in city general elections, as shown on the records of the Boulder County Clerk and Recorder, and who:

[1]Adopted by Ordinance No. 5025. Derived from Ordinance Nos. 3515, 3585, 3626, 3886, 4324, 4398, 4590.

8-4-2

(1) Resides within the district, proposed district, or area to be included, as shown on such election records; or

(2) Owns taxable real or personal property within the district, proposed district, or area to be included, as shown on the records of the Boulder County Assessor.

"Improvement district" or "district" means a taxing unit created within the city for the purpose of acquiring, constructing, installing, operating, or otherwise providing and maintaining for the special benefit of the district the public improvements or services specified in the initiating petition, which may include, without limitation, parking and off-street parking facilities, land, landscaping, sidewalks, benches, and other streetside amenities, but shall not include improvements or services inconsistent with subsection 31-25-603(1), C.R.S.

"Net effective interest rate" of a proposed issue of bonds means the net interest cost of such issue, divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of such proposed bonds to their respective maturities.

"Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on such bonds from their date of issue to their respective maturities, less the amount of any premium above par or plus the amount of any discount below par at which said bonds are being sold or have been sold.

"Owns" means to have any undivided fee interest in the property which is shown on the records of the Boulder County Assessor. If there are multiple owners, including, without limitation, joint tenants, tenants in common, tenants by the entireties, and contract purchasers of real property obligated to pay ad valorem taxes thereon, of any property shown as a single property on the records of the Boulder County Assessor, there shall be deemed to be only one owner of that property for the purpose of calculating the total number of district electors. The signature, on a petition or consent, by any otherwise qualified person with such an ownership interest shall bind the property so long as any other owner does not object in writing to the city council within fourteen days after the filing of the petition. If there are multiple owners, only one otherwise qualified person may vote as a district elector-owner or a property owner of such property in district elections, and then only after signing an affidavit stating that all other owners have consented to the person casting the ballot for the property.

"Property owner" means a person who owns, or an entity which owns, taxable real or personal property within the district, or an agent authorized in writing by such person or entity to sign consents for petitions.

"Records of the Boulder County Assessor" means the records as of the date of the submission of the petition for the purposes of determining petition majorities, as of the date of signing for the purpose of validating signatures to petitions, and as of the thirtieth day before an election for the purpose of determining eligibility to vote therein.

"Records of the Boulder County Clerk and Recorder" means the records as of the date of the submission of the petition for the purposes of determining petition majorities, as of the date of signing for the purpose of validating signatures to petitions, and as of the thirtieth day before an election for the purpose of determining eligibility to vote therein.

"Taxable real or personal property" means property subject to ad valorem taxation, as shown in the records of the Boulder County Assessor.

(b) Whenever the terms "publication" or "publish" are used in this chapter, they mean publication once during each of three consecutive weeks in a newspaper of general circulation in the district. It is not necessary that publication occur on the same day of the week in each of the three weeks, but no fewer than fourteen days must pass between the first and the last publication.

Ordinance Nos. 5051 (1987); 5922 (1997); 7053 (2000).

8-4-3 **Petition To Initiate District.**

(a) A district may be initiated under this chapter in either of the two following ways:

(1) A majority of the district electors may file with the city manager a petition to initiate a general improvement district. At any time up through the day of the city council hearing thereon, the fee owners of any taxable real or personal property located within the proposed district who are not district electors may file their written consent to be included within the district. If the value of the taxable real or personal property within the proposed district owned by the district electors who signed the petition and by the persons filing written consent is at least one-half of the total value of the taxable real and personal property in the district as determined by the city manager, the city council shall hold a hearing on the petition, as prescribed by section 8-4-5, "Hearing," B.R.C. 1981.

(2) A petition containing the signatures of not less than thirty percent of district electors or two hundred district electors, whichever is less, may file with the city manager a petition to initiate a general improvement district, in which case the city council shall hold a hearing on the petition, as prescribed by section 8-4-5, "Hearing," B.R.C. 1981. Such a petition shall, in addition to any other required allegations, contain a statement that either:

(A) The boundaries of the proposed district include at least one hundred electors of the district;

(B) The boundaries of the proposed district include at least one elector of the district for each five acres of land included within the proposed district; or

(C) The petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed district.

(3) No person who signs a petition to initiate a district or files a consent to be included in a proposed district may thereafter withdraw his or her name from such petition or consent.

(b) The petition shall contain at least the following information:

(1) The name of the proposed district, which shall be composed of the words "City of Boulder," a name descriptive of the proposed district, and the words "General Improvement District;"

(2) A general description of the improvements or services to be acquired, constructed, installed, provided, operated, or maintained within or for the district;

(3) The estimated cost of the proposed improvements, land, maintenance, services, and incidental costs and expenses;

(4) An estimate of the indebtedness, if any, proposed to be incurred;

(5) A description of the boundaries of the district or the territory to be included therein sufficiently specific to enable a resident or property owner to determine whether his or her residence or real or personal property is included within the district;

(6) An explanation as to how the proposed improvements or services will:

(A) Confer a general benefit on the district; and

(B) Result in benefits to the area of the district distinct in kind or extent from any benefits accruing to the city as a whole;

(7) The names of three district electors who represent the petitioners and who have the power to enter into agreements relating to the organization of the district that will be binding upon the district, if created;

(8) A request that the district be formed;

(9) The signatures of district electors or assenting property owners;

(10) The voting address of district electors;

(11) The address of any property of district electors within the district;

(12) The address of the property within the district for which consent is being given;

(13) The date of signing of each signature; and

(14) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be. Signatures verified by a notary public shall also be deemed to meet this requirement.

(c) The petition may also contain limitations on the authority of the board of directors.

(d) No petition need be rejected merely because of alleged defects if it contains the number of signatures required by subsection (a) of this section. At any time the city council may permit the petitioners' representatives to amend the petition to conform to the facts by correcting any errors in the description of the territory or in any other particular. Similar petitions or duplicate copies of the same petition for the formation of one district may be filed and together will be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed are considered the same as though filed with the first petition, but no signature on a petition shall be valid if it is dated more than one hundred eighty days prior to the date the petition is filed with the city manager.

(e) If the board of directors of a district proposes to expand its power or responsibility beyond that set forth in the petition to initiate the district, it may do so only after the filing of a petition requesting such expansion that meets the applicable requirements of this section, and following the applicable procedures of sections 8-4-4, "Schedule Of Hearing And Notice Requirements," 8-4-5, "Hearing," 8-4-6, "Improvement District Ordinance," and 8-4-7, "Filing Ordinance," B.R.C. 1981, in reasonable conformance with the procedure under which the district was formed. In determining the sufficiency of such a petition, the total value of the taxable real and personal property in the district shall be the total valuation for assessment of all taxable property located within the territorial limits of the district as last certified to the secretary of the district by the Boulder County Assessor as required by state law[1].

Ordinance No. 7053 (2000).

[1]Section 39-5-128(1), C.R.S.

8-4-4 **Schedule Of Hearing And Notice Requirements.**

(a) Upon receiving a petition in the form prescribed by section 8-4-3, "Petition To Initiate District," B.R.C. 1981, the city manager shall refer it to the city council at the next regularly scheduled council meeting which is more than one week after the manager received the petition. The council shall by resolution schedule a hearing on the matter for its next regularly scheduled meeting, or for a different meeting if there is good cause to do so. The manager shall publish notice of the hearing and the contents of the petition in the same manner as notice preceding final passage of an ordinance is published. The notice shall include a statement that all property in the district will be subject to a lien for all indebtedness to be incurred by the district, if formed, and the estimated amount of the proposed indebtedness.

(b) The city manager shall mail a copy of the notice prescribed by subsection (a) of this section by regular mail to each district elector and to each fee owner of taxable real or personal property in the district. The notice is sufficient if mailed to the last known address of the property owner on the records of the Boulder County Assessor or the last known address of the elector on the election records of the Boulder County Clerk and Recorder.

(c) The notices prescribed by this section constitute constructive notice to the qualified electors and property owners in the district and to all other interested persons of the contents of the petition, the date, time, and place of the hearing, and all other details relating to the proposed formation of the district.

(d) The city manager shall forthwith file copies of the notice prescribed by subsection (a) of this section with the Boulder County Assessor, the Boulder County Board of Commissioners, and the Colorado Division of Local Government, as required by state law[1].

8-4-5 **Hearing.**

(a) On the date fixed for the hearing or any subsequent date to which it is continued, the city council shall determine, as applicable, whether:

(1) The petition is in substantial compliance with the requirements of this chapter;

(2) The petition is signed by at least a majority of the district electors;

(3) The district electors signing the petition plus the owners of property within the district who have signed consents to be included therein own taxable real or personal property in the district having an assessed valuation of not less than one-half of the assessed valuation of all the taxable real and personal property in the district;

(4) No protest has been filed meeting the requirements of charter section 106;

(5) The proposed improvements or services will:

(A) Confer a general benefit on the district; and

(B) Result in benefits to the area of the district distinct in kind or extent from any benefits accruing to the city as a whole;

(6) The cost of the proposed improvements, land, services, incidental costs, and other expenses are reasonable when compared to the character and value of the property in the

[1]Subsection 39-1-110(1), C.R.S.

district, the estimated revenue to be produced, and the tax levies, rates, fees, tolls, and charges that are proposed to be levied upon the properties within the district;

(7) The method of payment of the bonds and other costs and expenses of the district is reasonable and appropriate to the type of improvements or services proposed and the present and future character and value of the property in the district;

(8) The creation of the proposed district is in the public interest and will not unreasonably duplicate or interfere with any municipal improvement already constructed or planned to be constructed within the limits of the district or service provided to the district; and

(9) The limitations, if any, on the authority of the board of directors set forth in the petition under the provisions of section 8-4-3, "Petition To Initiate District," B.R.C. 1981, are in the public interest and will not prevent the district from achieving its purposes and objectives.

(b) If the city council cannot make all of the findings prescribed by subsection (a) of this section which are applicable to the petition, it shall dismiss the petition. There is no right of appeal from an order dismissing a petition[1]. The council's findings of fact on any issue, including, without limitation, genuineness of signatures, are final and conclusive as to all parties in interest, whether appearing or not[2]. Nothing in this chapter shall be deemed to prevent the filing of a subsequent petition for similar improvements or for a similar district.

(c) Any district elector and any owner or lessee of taxable property in the district may testify at the city council hearing regarding the proposed district and improvements and services or submit written views at any time before the hearing.

(d) Notwithstanding any provision of chapter 2-7, "Code Of Conduct," B.R.C. 1981, no member of the city council or city employee is disqualified from performing any duty imposed by this chapter by reason of residence or ownership of property within any district or proposed district.

Ordinance No. 7053 (2000).

8-4-6 **Improvement District Ordinance.**

(a) If the city council makes the findings prescribed by subsection 8-4-5(a), B.R.C. 1981, concerning a district whose petition was filed under paragraph 8-4-3(a)(1), B.R.C. 1981, the council shall establish the district by an ordinance that: 1) resolves all issues of jurisdiction; 2) declares the district organized; 3) names the district according to the petition; 4) approves the petition; 5) sets forth details regarding the district as provided in the petition and the notice of hearing, including, without limitation, estimates of cost of the proposed improvements, land, services, and incidental costs and expenses, as adjusted, if any adjustments have been made, and minor changes, deletions, and adjustments that are made at the hearing; 6) imposes any limitations on the authority of the board of directors provided in the petition; and 7) includes other items that the council deems appropriate.

(b) Upon the effective date of the ordinance, the district shall be a public or quasi-municipal subdivision of the state, a taxing entity within the city, and a body corporate with the limited proprietary powers set forth in this chapter.

(c) The ordinance establishing the district finally and conclusively establishes the regular organization of the district against all persons, subject only to such judicial review as is provided by law[3].

[1]Subsection 31-25-607(2), C.R.S.
[2]Subsection 31-25-607(3), C.R.S.
[3]Subsection 31-25-607(5), C.R.S.

(d) If the city council makes the findings prescribed by subsection (a) of this section, concerning a district whose petition was filed under paragraph 8-4-3(a)(2), B.R.C. 1981, the council shall by ordinance adjudicate all questions of jurisdiction and, if the council intends that a district be formed, order that the question of the organization of the district and such other matters as the council deems appropriate including, but not limited to, the issuance of bonds or other matters for which voter approval is required under section 20 of article X of the Colorado Constitution, be submitted to the electors of the district at an election to be held for that purpose in accordance with the election provisions of this chapter. Unless otherwise required by section 20 of article X of the Colorado Constitution, such election may be held either at a special election held not less than sixty days after the adoption of the ordinance at a time specified by the council, or in conjunction with a regular municipal election, general election, ballot issue, or ballot question election. At an election held under this subsection, the electors of the district shall vote for or against the organization of the district and any other matters on the ballot. If a majority of the votes cast at the election are in favor of the organization, the governing body shall adopt an ordinance declaring the district organized, unless a majority does not also approve such financial questions as may be on the ballot, in which case the council may choose not to proceed with the district. If the ordinance declares the district organized, the applicable provisions of subsections (a), (b), and (c) of this section shall also apply.

Ordinance No. 7053 (2000).

8-4-7 **Filing Ordinance.**

(a) Within thirty days after the city council adopts an ordinance forming a district, the city manager shall file with the Boulder County Clerk and Recorder a copy of the ordinance in the manner that articles of incorporation for corporations are filed[1].

(b) No later than the first day of May following organization of the district, the city manager shall file with the Boulder County Commissioners and the Boulder County Assessor a notice that the district has been organized and that a tax will be levied for such year[2].

8-4-8 **City Council Is Governing Body Of District.**

(a) The city council is ex officio the board of directors of each district established under this chapter.

(b) The mayor is ex officio chair and president of the board of directors.

(c) The city manager is ex officio general manager of the district.

(d) The city manager is ex officio secretary of the board of directors and shall keep records of all board proceedings, minutes of all meetings, and certificates, contracts, and documents of all corporate acts, all of which are open to public inspection.

(e) The city manager is ex officio treasurer of the board of directors and the district, shall keep permanent records containing accurate accounts of all money received by and disbursed on behalf of the district, and may certify delinquent taxes, charges, and assessments of the district to the Boulder County Treasurer for collection pursuant to the provisions of section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

[1]Subsection 31-25-608, C.R.S.
[2]Subsection 39-1-110(1), C.R.S.

(f) The board of directors shall adopt a seal.

8-4-9 **District Board Meeting.**

(a) The board of directors shall hold meetings that are open to the public at the municipal building, Boulder, Colorado, or at such other place as the board designates and as often as the needs of the district require, after notice to each member of the board.

(b) Five members of the board constitute a quorum. The board may not meet without a quorum present.

(c) A majority vote of the directors present at a meeting is necessary to authorize any action of the board.

8-4-10 **Advisory Committee.**

(a) Those district electors named in the petition to represent the petitioners during organization constitute an advisory committee to the board of directors after the district is formed. The first district elector named in the petition shall serve for up to one year, until the board shall appoint successor members. Thereafter, the advisory committee shall consist of three persons who are district electors, owners of taxed real or personal property in the district, or designated representatives of such owners who are regularly employed in the district and two citizens at large who may or may not have such qualifications, serving terms of five years each. The initial terms shall be staggered to assure that one term expires in each year. The board shall fill any vacancy with a similarly qualified person.

(b) The advisory committee's duties shall be to:

(1) Act as liaison between the board and the district electors, property owners, residents, and other interested persons;

(2) Propose needed improvements and programs to the board for consideration;

(3) Make recommendations to the board concerning the budget of and any problems, questions, and other matters concerning the district; and

(4) Perform such other tasks as the board requests.

(c) The advisory committee shall:

(1) Hold regular monthly meetings, unless the board shall by resolution otherwise provide;

(2) Keep minutes of its meetings, which are publicly available;

(3) Appoint a moderator, vice-moderator, and secretary (who may be a city employee);

(4) Conduct its meetings under *Robert's Rules of Order*, Newly Revised (1981), unless the board or the committee adopts other rules of meeting procedure; and

(5) Hold all meetings open to the public, after notice of date, time, place, and subject matter of the meeting, and provide an opportunity for public comment at the meeting;

(d) A majority of the committee constitutes a quorum, and the committee shall act only on an affirmative vote of at least a quorum.

(e) The committee is authorized to:

(1) Hold special meetings at any time upon the call of a quorum or of the general manager and after at least twenty-four hours' notice to members and as much public notice as is practicable under the circumstances; and

(2) Establish procedures in aid of its functions.

(f) Committee members shall serve without pay, shall serve until their successors take office, and shall not hold any other office in the city, but the secretary may be a city employee.

(g) If a member of the committee is present at a meeting and refuses to vote, the member's vote shall be recorded in the affirmative. No member is excused from voting except on approving minutes of a meeting that the member did not attend or on a matter creating a conflict of interest under chapter 2-7, "Code Of Conduct," B.R.C. 1981, or on consideration of such member's conduct in the business of the committee.

(h) The board may remove committee members pursuant to the standards contained in paragraph 2-3-1(a)(2), B.R.C. 1981.

(i) The provisions of chapter 2-7, "Code Of Conduct," B.R.C. 1981, apply to committee members, but no member is disqualified from performing any duty imposed or provided by this chapter solely by reason of residence, employment, or ownership of property within the district.

(j) None of the provisions of this section apply to the City of Boulder Central Area General Improvement District. The Downtown Management Commission established by section 2-3-5, "Downtown Management Commission," B.R.C. 1981, shall serve in lieu of an advisory committee for CAGID, and shall have the duties set forth in subsection (c) of this section in addition to and not by way of limitation on those duties, powers, and functions delegated to the Downtown Management Commission elsewhere in this code.

Ordinance Nos. 5085 (1987); 5187 (1989); 5518 (1992).

8-4-11 **Powers Of The District.**

Each district established under this chapter has the following limited powers:

(a) To have perpetual existence, have and use a corporate seal, sue and be sued, and be a party to suits and proceedings;

(b) Except as may otherwise be provided in this chapter, to enter into contracts and agreements affecting the affairs of the district, including, without limitation, contracts with the United States and any of its agencies. Except in cases in which a district receives aid from an agency of the federal government, the district shall follow the procedures set forth in chapter 2-8, "Purchasing Procedures," B.R.C. 1981, and every reference therein to the city shall also be deemed to apply to each district;

(c) To borrow money and incur indebtedness, evidenced by certificates, warrants, notes, and debentures, and to issue negotiable bonds in accordance with the provisions of this chapter;

(d) To refund any bonded or other indebtedness of the district without an election and to issue refunding bonds, certificates, warrants, notes, or debentures in accordance with the provisions of this chapter;

(e) To acquire, construct, install, maintain, operate, improve, and repair the improvements contemplated by the initiating petition and provide the services so contemplated and all property, rights, or interests incidental or appurtenant thereto and to acquire and dispose of real and personal property and any interest therein, including, without limitation, leases and easements, in connection therewith;

(f) To manage, control, and supervise all of the business affairs of the district and the installation, construction, operation, replacement, maintenance, repair, and improvement of the property and improvements of the district and the provision of district services;

(g) To purchase or otherwise acquire all types of interests in real and personal property, both within and without the boundaries of the district, necessary or desirable for the exercise of the powers granted in this chapter; to have and exercise the power of eminent domain and dominant eminent domain, both within and without the boundaries of the district, and, in the manner provided by law for condemnation of private real or personal property for public use, to take any property necessary or desirable for the exercise of the powers granted in this chapter;

(h) To construct, install, repair, replace, operate, and maintain improvements across or along any public street, alley, stream, or watercourse, after obtaining approval from appropriate persons and agencies;

(i) To fix and from time to time to increase or decrease charges for any revenue-producing services or facilities, including, without limitation, user charges, minimum charges for the availability of services or facilities, and all other charges that the board deems appropriate, to prescribe interest, collection costs, and other charges for delinquencies, and to pledge the revenue derived therefrom for the payment of any indebtedness of the district;

(j) To prescribe and enforce rules for connecting with and disconnecting from and use of services and facilities for non-payment of charges therefor;

(k) To establish reasonable additional procedures and practices for collection of delinquent charges of the district;

(l) To adopt and amend bylaws consistent with United States and Colorado Constitutions, state and federal law, the charter, this code, and any other ordinance of the city to carry on the business of the district;

(m) To accept responsibility to maintain and repair public property located in but not owned by the district that the board finds benefits the district;

(n) To contract with the city to administer the district's program and operations;

(o) To copyright designs used for or by the district; and

(p) To have and exercise all rights and powers necessary, desirable, or incidental to or implied from the specific powers granted in this chapter; but the enumeration of such specific powers does not limit the powers necessary, desirable, or appropriate to carry out the purposes, objectives, or intent of this chapter.

Ordinance Nos. 5099 (1988); 7053 (2000).

8-4-12 Powers To Levy Taxes.

In addition to other means of providing revenue for a district established under this chapter, the board of directors may levy and collect ad valorem taxes on all taxable property within the district without limitation as to rate or amount. But such taxing authority does not limit the power of the district to issue obligations payable solely or in part from the income of revenue-producing facilities or services.

8-4-13 Rate Of Tax Levy; Budget; Fiscal Year.

(a) After considering all sources of revenue, the board of directors annually shall determine the amount of money necessary to be raised by an ad valorem tax levy on taxable property in the district and shall fix a rate of levy that, when levied upon every dollar of assessed valuation of taxable property within the district plus other revenues, will raise the amount required by the district during the ensuing fiscal year: 1) to fund the operating and maintenance expenses of the district and the costs of acquiring land and improvements and providing services for the district, and 2) promptly to pay in full when due all interest on and principal of bonds and other obligations of the district. If defaults or deficiencies occur, the district may make additional levies as provided in section 8-4-15, "Procedures For Imposing Charges," B.R.C. 1981. No later than the day set for certification of city tax rates by state law[1] each year, the board shall certify to the Boulder County Commissioners and the Boulder County Assessor the established tax rate for the following year so that the county may levy the district's tax when it levies county property taxes[2].

(b) Before establishing the tax rate and levy, the manager shall prepare and the board of directors shall adopt a budget under the state law procedures for local government adoption of budgets[3].

(c) The fiscal year of each district established under this chapter commences on the first day of January and ends on the last day of December each year. The fiscal year constitutes the district's budget year.

Ordinance Nos. 5090 (1987); 7053 (2000).

8-4-14 Levies To Cover Deficiencies.

In certifying annual levies, the board of directors shall take into account the maturing indebtedness for the current and subsequent year as provided in its contracts, maturing bonds, and interest on bonds and deficiencies and defaults of prior years, if any, and shall make ample provision for the payment thereof. The board may increase its tax levy in any year in order to produce sufficient revenues punctually to pay the annual installment on its contracts or bonds and interest thereon and to pay defaults and deficiencies from prior years, if any. The board may continue to levy such taxes until the district's indebtedness is fully paid or until the board has provided for payment as the indebtedness matures.

8-4-15 Procedures For Imposing Charges.

(a) At any time, the board of directors may determine and impose or redetermine and revise a schedule of charges for any services or facilities provided or furnished by the district, including, without limitation, user charges, minimum fees or charges, and charges against

[1]Section 39-5-128, C.R.S.
[2]Section 31-25-613, C.R.S.
[3]Part 29-1-103, C.R.S.

properties in the district for the availability of services and facilities. The board may also establish as part of such schedule reasonable penalties, interest, collection costs, and other charges for delinquencies in payment of such charges.

(b) In imposing charges against all properties in the district for the availability of services and facilities, the board may consider without limitation the following: 1) the distance from the services or facilities, 2) the square footage of the property, 3) the usable square footage of the structures occupying the property, 4) the character and nature of the property and structures, and 5) the nature of the actual use of the property and structures.

(c) Before the effective date of such schedule of charges, the board of directors shall hold a hearing to hear objections to such schedule. The general manager shall publish notice of the date, time, and place of the hearing describing briefly the type and amount of the proposed charges, the property or persons upon which they will be imposed, and the location where a copy of the entire proposed schedule is available for public inspection. This publication need only be made once.

(d) If charges against properties in the district for the availability of services or facilities are a part of the proposed schedule, the city manager also shall mail a copy of the notice prescribed by subsection (c) of this section to each district elector and to each fee owner of taxable real or personal property in the district. Such notice and mailing is sufficient if mailed to the last known address of the property owner on the records of the Boulder County Assessor or the last known address of the elector on the election records of the Boulder County Clerk and Recorder.

(e) At any time before its adoption, any person may register objections to such schedule of charges, specifically stating the ground of such objections and the exact part of the schedule to which the person objects.

(f) At the date, time, and place designated for the hearing or at the time to which it is continued, the board shall hear any evidence and argument that is offered concerning the schedule of charges, may amend such schedule as it deems appropriate, and shall adopt or reject such schedule, with or without amendment.

8-4-16 **Charges Are Lien; Foreclosure.**

(a) Charges are due and payable when a bill therefor is sent and delinquent if not paid within forty-five days thereafter. All unpaid charges imposed by a district under this chapter are a lien on the property served, which attaches on the date that notice thereof is filed with the Boulder County Clerk and Recorder by the district and which may be foreclosed in the same manner that mechanics' liens are foreclosed under state law[1]. The general manager shall file any action on a delinquent charge within one year of the date of the original bill.

(b) The general manager shall discontinue district services to and prohibit from using facilities of the district any person who is delinquent in paying any charges imposed under this chapter for such service or facility, and shall give notice complying with chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, to such person specifying the action taken. Any person aggrieved by such discontinuance may appeal to the board of directors, who shall conduct a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

[1]Paragraph 31-25-611(l)(k), C.R.S.

8-4-17 Reserve Fund.

Whenever the district has incurred any indebtedness, the board may levy taxes and collect revenues for the purpose of creating a reserve fund in an amount which the board determines to be appropriate, which may be used to meet the obligations of the district, for operating charges and depreciation, and to extend and improve the improvements of the district.

8-4-18 Authority For Board To Issue Bonds Or Negotiable Securities.

(a) To implement the purposes of this chapter, the board is authorized to issue negotiable bonds or other similar negotiable securities of the district in an amount that the board determines appropriate.

(b) Bonds issued under this chapter shall bear interest at a rate and shall be sold at a price so that the net effective interest rate of the issue of the bonds does not exceed the maximum net effective interest rate authorized, payable quarterly, semiannually, or annually. The board shall determine the form and terms of the bonds, including provisions for their sale, payment, and redemption, but the bonds shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from date of issuance[1]. If the board so determines, the bonds may be redeemable before their maturity, with or without paying a premium not to exceed three percent of principal. The bonds shall be executed in the name and on behalf of the district, signed by the presiding officer of the district, affixed with the district seal, and attested by the secretary of the board. But facsimile signatures and seals may be used as provided by part 11-55-101, C.R.S. The bonds shall be in such denominations as the board determines.

(c) The board may issue bonds for any purpose authorized in this chapter including, without limitation, refunding bonds.

(d) The board need not offer the bonds or obligations at public sale if the board determines that the costs of public sale outweigh its benefits. If the board authorizes public notice of sale inviting bids for bonds or obligations, it shall publish notice of the sale at least once during each week for two consecutive weeks in a newspaper of general circulation in the city and may also publish such notice in such other publications as the board directs. The board may reject any and all bids received and thereafter sell the bonds at private sale.

(e) No bonds issued by a district under this chapter constitute an indebtedness, obligation, or liability of the city. All bonds issued under this chapter shall contain a statement to that effect.

8-4-19 Bond Election.

(a) Whenever the board by resolution determines that in order to implement the purposes of the district it is necessary to create any general obligation debt, the board shall by resolution order that a proposal to issue such bonds or to create such indebtedness be submitted to the district electors and property owners at an election. Such an election may be held on any day permitted under law. The resolution submitting the proposal shall:

(1) State the purposes for which the indebtedness is proposed to be incurred, the estimated costs of the issuance of the bonds or incurring of the indebtedness, the maximum amount of the principal of the indebtedness to be incurred, the maximum term of the indebtedness, and the maximum net effective interest rate to be paid on such indebtedness, together with the

[1]Section 31-25-620, C.R.S.

ballot title and the applicable notice requirements under article X, section 20 of the Colorado Constitution;

(2) Fix the date upon which the election shall be held, the manner of holding it, the hours during which the polls shall remain open, and the method of voting for or against the proposal; and

(3) Designate the polling place or places and determine any other matters necessary to the conduct of the election.

(b) No election is required under this section for the issuance of revenue bonds or the incurring of other indebtedness that does not constitute a general obligation of the district.

(c) The board shall prescribe the form of the notice of election and the city manager shall cause it to be published in the manner provided in this chapter, the first publication to be no fewer than twenty days before the election. No later than ten days before a district election the city manager shall send a copy of the notice of election by first class mail to each district elector residing but not owning property within the district, as shown on the records of the Boulder County Clerk and Recorder, and to each property owner at the address shown on the most recent quarterly assessment roll, but no failure to mail or defect in the mailed notice shall affect the results or validity of the election if the required published notice has been given.

(d) The board shall cause the election to be conducted in substantially the same manner prescribed by chapter 13-1, "Elections," B.R.C. 1981, for holding bond or other general obligation indebtedness elections. The city manager shall prescribe the form of affidavits to be used should any person claim district elector status based upon ownership of taxable real or personal property within the district coupled with voter registration within the city, in cases where the records of the Boulder County Assessor are ambiguous as to the status of the titular owner. At the next regular or special meeting of the board following the election, the board shall canvass the returns thereof and declare the results.

(e) Defeat of a proposition at an election does not limit the authority of the board to submit the same or other propositions at subsequent elections called for that purpose.

(f) Any party wishing to contest the validity of any election held under this section shall do so not more than ten days after the votes cast at the election are canvassed. After such period, no person may directly or collaterally contest the validity of the election in any suit or other proceeding[1].

(g) Property owners, if natural persons, shall vote in person. A property owner which is not a natural person but which desires to vote shall authorize in writing some natural person of voting age to vote the assessed value of its property on its behalf. Such person shall sign an affidavit in the form provided by the city manager attesting to the existence of such written authority before being allowed to vote.

(h) The ballots cast by district electors and by property owners shall be kept separate and tallied separately. A district elector who is also a property owner may vote in each capacity.

(i) Persons voting as or on behalf of property owners shall declare on their affidavit the assessor tract, tax identification number, or other information sufficient to identify the real or personal property for which the ballot is cast, so that the election officials may calculate the assessed valuation of all properties being voted by that ballot. An election judge shall write such valuation on the ballot before the voter casts the ballot. The city manager shall provide copies of assessment records at the polls to assist voters.

[1]See 1-11-213(4), C.R.S.

(j) The ballots of district electors shall be secret, but the ballots of property owners shall not be.

(k) The secretary of the board shall serve as the clerk and chief judge of the election and shall appoint, from the electors of the city, up to ten judges per precinct, plus three additional judges to serve as judges of the absentee precinct. Such judges shall be compensated as are judges at regular city elections. The secretary may also appoint regular employees of the city to receive applications for and issue absent voter ballots. The secretary is authorized to establish a system whereby voter signature cards involving property ownership and any necessary affidavits may be filled out in advance of election day, but such information shall be verified on the county clerk's and assessor's records by the judges of the election before ballots are issued in the same way as other voters are issued ballots, and no voter shall be required to fill out any such documents before election day.

(l) If the returns disclose that a majority of the district electors voting on the ballot issue submitted at the bond election have voted in favor of the issue, and that property owners owning a majority of the assessed valuation of all property whose owners voted on such issue have also voted in favor of the issue, the district is authorized to act in accordance with the ballot issue.

(m) The board may combine a tax or revenue increase, or both, under section 8-4-20, "Election Under Article X, Section 20 Of Colorado Constitution," B.R.C. 1981, with a bond measure under this section which is to be supported by such increase. In such event the dual majority provisions of subsection (l) of this section shall apply to the ballot issue.

Ordinance Nos. 5033 (1987); 5051 (1987); 5922 (1997).

8-4-20 **Election Under Article X, Section 20 Of Colorado Constitution.**

(a) Whenever the board by resolution determines that in order to implement the purposes of the district an election is required under article X, section 20 of the Colorado Constitution, other than an election to create any general obligation debt, the board shall by resolution order that the ballot issue be submitted to the district electors at an election. Such an election may be held on any day permitted under law. The resolution submitting the ballot issue shall:

(1) State the text of the ballot issue and of the notice required under article X, subsection 20(3)(b) of the Colorado Constitution;

(2) Fix the date upon which the election shall be held; and

(3) Designate the polling place or places and determine any other matters necessary to the conduct of the election.

(b) The board shall prescribe the form of the notice of election and cause it to be published in the manner provided in chapter 13-1, "Elections," B.R.C. 1981, for ballot issues.

(c) The board shall cause the election to be conducted in substantially the same manner prescribed by chapter 13-1, "Elections," B.R.C. 1981, for holding ballot issue elections. The city manager shall prescribe the form of affidavits to be used should any person claim district elector status based upon ownership of taxable real or personal property within the district coupled with voter registration within the city, in cases where the records of the Boulder County Assessor are ambiguous as to the status of the titular owner. At the next regular or special meeting of the board following the election, the board shall canvass the returns thereof and declare the results.

(d) Defeat of a ballot issue at an election does not limit the authority of the board to submit the same or other ballot issues at subsequent elections called for that purpose.

(e) Any party wishing to contest the validity of any election held under this section shall do so not more than ten days after the votes cast at the election are canvassed. After such period, no person may directly or collaterally contest the validity of the election in any suit or other proceeding[1].

(f) The secretary of the board shall serve as the clerk and chief judge of the election and shall appoint, from the electors of the city, up to ten judges per precinct, plus three additional judges to serve as judges of the absentee precinct. Such judges shall be compensated as are judges at regular city elections. The secretary may also appoint regular employees of the city to receive applications for and issue absent voter ballots. The secretary is authorized to establish a system whereby voter signature cards involving property ownership and any necessary affidavits may be filled out in advance of election day, but such information shall be verified on the county clerk's and assessor's records by the judges of the election before ballots are issued in the same way as other voters are issued ballots, and no voter shall be required to fill out any such documents before election day.

(g) If the returns disclose that a majority of the district electors voting on any ballot issue submitted pursuant to this section alone at the election have voted in favor of the issue, the district is authorized to act in accordance with the ballot issue.

Ordinance No. 5922 (1997).

8-4-21 **Refunding Bonds.**

The district may refund any bonds that it has issued, without an election, by issuing bonds to refund, pay, and discharge all or any part of the outstanding bonds, including any interest on the bonds due or about to become due, for the purpose of: a) avoiding or terminating any default in the payment of interest on and principal of the bonds, b) reducing interest costs or effecting other economies, c) modifying or eliminating restrictive contractual limitations, or d) for any combination of these purposes. But such refund of outstanding bonds is subject to provisions concerning their payment and any other contractual limitations in the proceedings authorizing their issuance or otherwise pertaining to them. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this chapter for an original issue of bonds.

8-4-22 **Use Of Proceeds Of Refunding Bonds.**

The board shall either apply the proceeds of refunding bonds immediately to retire the bonds being refunded or place the proceeds in escrow in any banks within the state that are members of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation. The refunding bond proceeds may be used to defray incidental expenses to the extent that such have been capitalized. Any accrued interest and any premium pertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof or both interest and principal or may be deposited in a reserve for that purpose, as the board determines is appropriate. Any escrow established under this section need not be limited to proceeds of refunding bonds but may include other monies. Before being applied to the uses specified in this chapter, any proceeds in escrow may be invested or reinvested in bills, certificates of indebtedness, notes, or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America. Such proceeds plus any interest derived therefrom shall be retained in an amount sufficient to pay the principal, interest, premium, and charges of the escrow agent as such

[1]See 1-11-213(4), C.R.S.

obligations become due. No purchaser of any refunding bond issued under this chapter is responsible for the application of the proceeds thereof by the district or any of its officers, agents, or employees.

8-4-23 Limitation Upon Issuance Of Refunding Bonds.

No bonds may be refunded under this chapter unless the holders thereof voluntarily surrender them for exchange or payment or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. No maturity of any bond may be extended past fifteen years. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed the unaccrued costs of the bonds refunded, except to the extent that any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also be less than or equal to the principal amount of the bonds being refunded if provision is duly and sufficiently made to pay the refunded bonds.

8-4-24 Inclusion And Exclusion Of Additional Property In District.

(a) The boundaries of any district organized or being formed under this chapter may be changed in the manner prescribed by this section, but a change in the boundaries of an established district does not impair or affect its organization or its rights in or to property or any of its rights or privileges, nor does it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made. All property included within or excluded from an established district is thereafter subject to levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time the property was included or excluded.

(b) The owners of any property who wish it to be included in or excluded from the district may file with the board of directors a written petition requesting that such property be included in or excluded from the district. The petition shall:

(1) Describe the property to be included or excluded;

(2) State that the petitioners own the property;

(3) State the reasons for the proposed exclusion or inclusion;

(4) State any special terms and conditions of including or excluding the property; and

(5) Be verified.

(c) A group of not less than a majority of the district electors of an area who propose it to be included in a district may file a petition with the general manager to include an additional geographic area and additional real and personal property into the district. The petition shall contain:

(1) The name of the district within which the petitioners propose the area to be included;

(2) A description of the boundaries of the area proposed to be included in the district of sufficient specificity to enable a resident or property owner of the area to determine whether or not his or her residence or real or personal property is proposed to be included within the district;

(3) An explanation as to how the proposed inclusion will:

(A) Confer a general benefit on the area to be included; and

(B) Result in benefits to the area to be included distinct in kind or extent from any benefits accruing therefrom to the city as a whole. At any time after such a petition is filed and until the day of the board hearing thereon, the fee owners of taxable real or personal property located within the limits of the area proposed to be included who did not sign the petition may file their written consent to their properties being included within the district. The district electors signing the petition plus the owners of property within the area proposed to be included shall own taxable real or personal property having an assessed value of not less than one-half of the total assessed value of all the taxable real and personal property in the area proposed to be included.

(d) Upon receiving a petition under this section, the general manager shall establish a date, time, and place for a hearing on the petition and shall cause to be published a notice stating:

(1) That the petition has been filed;

(2) The names of the petitioners;

(3) A description of the property sought to be included or excluded;

(4) The request of the petitioners;

(5) The date, place, and time of the hearing on the petition; and

(6) That all interested persons and those objecting to inclusion or exclusion may appear at the hearing to show cause why the petition should not be granted, and that all such objections shall be made in writing and filed with the board at or before the date and time set for the hearing.

(e) The general manager shall mail a copy of the notice prescribed by subsection (d) of this section by regular mail to each elector of the district and of any area proposed to be included and to each fee owner of taxable real or personal property in the district and in any area proposed to be included. The notice is sufficient if mailed to the last known address of the property owner on the records of the Boulder County Assessor or the last known address of the elector on the election records of the Boulder County Clerk and Recorder. The manager shall also file copies of the notice prescribed by subsection (d) as provided in subsection 8-4-4(d), B.R.C. 1981.

(f) At the time and place provided in the notice prescribed by subsection (d) of this section or at such time certain to which the hearing is continued, the board of directors shall hear the petition and all written objections thereto by any person objecting to granting the petition. Any interested person who fails to appear and object waives the right to object and is deemed as consenting to the inclusion or exclusion specified in the petition.

(g) After the hearing on a petition to include property in the district, the board of directors shall grant, grant as modified, or deny it after determining whether:

(1) Granting the petition is in the best interest of the district; and

(2) The proposed inclusion will:

(A) Confer a general benefit on the area to be included;

(B) Result in benefits to the area to be included distinct in kind or extent from any benefits accruing therefrom to the city as a whole;

(3) Any special terms and conditions in the petition are reasonable; and

(4) If the petition was filed pursuant to subsection (c) of this section:

(A) The petition is signed by at least a majority of the district electors of the area proposed to be included;

(B) The district electors signing the petition plus the owners of property within the area proposed to be included who have signed consents to inclusion own taxable real or personal property therein having an assessed value of at least one-half of the total assessed value of all the taxable real and personal property in the area proposed to be included; and

(C) The board of directors may exclude some of the property sought to be included if it determines that including such property is not in the best interest of the district or if the property is not within the area to be generally benefited by inclusion in the district, but only if such exclusion does not result in loss of the required majorities.

(h) After the hearing on a petition to exclude property from the district, the board of directors shall determine whether granting the petition is in the best interest of the district and shall grant or deny it after determining whether the proposed exclusion will:

(1) Jeopardize the achievement of the district's purposes;

(2) Confer an undue benefit on the excluded property;

(3) Be unduly detrimental to the remainder of the district; or

(4) Be detrimental to the rest of the city.

(i) If the board grants a petition filed under this section, it shall do so by resolution and the general manager shall file certified copies thereof as provided in section 8-4-7, "Filing Ordinance," B.R.C, 1981. Thereafter the property or area and all taxable real and personal property located within the limits of the area are included in or excluded from the district. If the board rejects a petition filed under this section, it shall do so by resolution, declaring that the inclusion or exclusion would not be in the best interest of the district.

8-4-25 **Correction Of Faulty Notice.**

If the board finds that due notice was not given in any case where a notice is required by this chapter, the board shall order that due notice be given and shall continue the proceeding until such time as notice is properly given and then shall proceed as though notice had been properly given in the first instance.

8-4-26 **Dissolution.**

(a) Any district organized pursuant to this chapter may be dissolved after notice is given and a hearing held in the manner prescribed by subsections 8-4-4(a) and (b), B.R.C. 1981. After hearing any protests against or objections to dissolution, if the board determines that it is for the best interests of all concerned to dissolve the district, it shall so provide by ordinance, a certified copy of which shall be filed in the office of the Boulder County Clerk and Recorder. Upon such filing, the dissolution shall be complete.

(b) No district shall be dissolved until it has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities, or until funds are on deposit and available therefor.

(c) Upon dissolution, title to all property owned by the district shall vest in the corporate city of Boulder.

8-4-27 **Elections.**

Whenever the board determines to hold a district election it shall do so by resolution. If the resolution so provides, such election may be held using mail ballots, in which case the election shall also comply with the provisions of chapter 13-1, "Elections," B.R.C. 1981.

Ordinance Nos. 5642 (1994); 5667 (1994).

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 5 Work In The Public Right-Of-Way And Public Easements[1]

Section:

8-5-1 Legislative Intent.

The purpose of this chapter is to regulate the placement of structures and infrastructure, construction, excavation, encroachments, and work activities within or upon any public right-of-way or public easement, to assure public safety and to protect the integrity of the transportation system. To achieve this purpose, it is necessary to require permits, to establish permit procedures, and to fix and collect fees and charges. This chapter is intended to balance the public objectives for providing efficient, safe transportation routes with the use of public rights-of-way for city-owned and non-city-owned public utilities, including:

(a) Ensuring that the public safety is maintained and that public inconvenience is minimized.

(b) Protecting the city's investment in its infrastructure by establishing repair standards for surface improvements and pavement when work is accomplished.

(c) Facilitating work within the right-of-way and public easements through the adoption and implementation of standards for regulating the placement of infrastructure.

(d) Maintaining an efficient permit process.

(e) Conserving the limited physical capacity of the public rights-of-way and public easements held in public trust by the city.

(f) Assuring that the city can continue to fairly and responsibly protect the public health, safety, and welfare.

[1]Adopted by Ordinance No. 5919.

8-5-2 **Definitions.**

The following terms used in this chapter have the following meaning, unless the context fully indicates otherwise:

"Encroachment" means a private improvement, structure, utility or obstruction extending into or located within, above, or under any public right-of-way or public easement.

"Fence" means any artificially constructed barrier of wood, masonry, stone, wire, metal, or any other material or combination of materials erected to enclose, partition, beautify, mark, or screen areas of land.

"Infrastructure" means any public facility, system, or improvement including, without limitation, water and sewer mains and appurtenances, storm drains and structures, streets and sidewalks, trees and landscaping in public right-of-way, city-owned and non-city-owned utilities, and public safety equipment.

"Landscaping" means materials, including, without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non-living natural materials commonly used in landscape development, as well as attendant irrigation systems.

"Permittee" means the holder of a valid permit issued pursuant to this chapter.

"Public easement" means a public interest in land owned by another person that entitles the public to a specific limited use or enjoyment of said land for the use or installation, construction, reconstruction, repair, or maintenance of public infrastructure such as utilities, drainage systems, or transportation improvements.

"Standards" means design and construction standards as adopted by the city.

"Structure" means anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, fences, retaining walls, awnings, balconies, and canopies.

"Work" or "work activity" means any labor, construction, excavation, or storage of equipment or materials in the public rights-of-way or public easements, including, without limitation, construction of streets and all related appurtenances, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, and traffic signal devices. "Work" or "work activity" also means construction, maintenance, and repair of all underground structures such as pipes, conduit, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below the surface of any public right-of-way or public easement, and installation of overhead poles used for any purpose.

8-5-3 **Permit Required For Work In The Public Right-Of-Way And Public Easements.**

(a) Work In Right-Of-Way Or Public Easement Prohibited Without Permit: No person shall undertake or permit to be undertaken any work in the public right-of-way or a public easement without first obtaining a permit from the city as set forth in this chapter, unless such work is exempt under the provisions of section 8-5-17, "Work In The Public Right-Of-Way Or Public Easement Exempt From Required Permit," B.R.C. 1981, or involves sidewalk construction as permitted under section 8-2-18, "Permit For Sidewalk Construction Required," B.R.C. 1981.

(b) Display Of Permit: The permittee shall maintain the permit, along with associated documents including the approved engineering construction drawings or site plans, and applica-

ble traffic control or erosion control plans, on the job site and all documents shall be made available for inspection upon request by any officer or employee of the city.

(c) Work Consistent With The Permit: No permittee shall work in an area larger or at a location different from that specified in the approved permit. If it becomes necessary to work in a larger or different area than originally requested under the application, the permittee shall notify the city manager and file a supplementary application for the additional work within twenty-four hours.

(d) Permits Are Not Transferrable: Permits shall not be transferable or assignable. The permittee may subcontract the work to be performed under a permit provided that the holder of the permit shall be and remain responsible for the performance of the work under the permit and provide all insurance and financial security as required.

8-5-4 **Permit Application.**

An applicant for a permit to work in the public right-of-way or public easement under this section shall file a written application on a form provided by the city manager that includes the following:

(a) The date of application; the name and address of the applicant; the name and address of the developer, contractor or subcontractor licensed to perform work in the public right-of-way; the exact location of the proposed work; the type of existing public infrastructure includes, without limitation, street pavement, curb and gutter, sidewalks or utilities impacted by the work; the purpose of the proposed work; the dates for beginning and ending the proposed work; the measurements, quantities, itemization and total cost, including labor and materials, of the construction improvements and excavations for improvements that are to be owned and operated by the City of Boulder; and type of work proposed.

(b) Engineering construction drawings or site plans for the proposed work.

(c) A satisfactory traffic control and erosion protection plan for the proposed work.

(d) Evidence that the applicant has an effective license, including, without limitation, required insurance, deposits, bonding, and warranty to perform work in the public right-of-way or public easement, as prescribed under chapter 4-6, "Contractor In The Public Right-Of-Way License," B.R.C. 1981.

(e) A satisfactory plan of work, showing protection of the subject property and adjacent properties including the protection of shade and ornamental trees and the restoration of turf.

(f) Evidence that the applicant or its contractor is not delinquent in payments due the city on prior work, and that all orders issued by the city to the applicant, requiring the applicant to correct deficiencies under previous permits issued under this chapter, have been satisfied.

(g) Evidence that any financial guarantee required under section 9-2-20, "Required Improvements And Financial Guarantees," or 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981, have been provided in connection with the approved subdivision, site plan, or engineering construction drawings.

(h) Documentation that all permits required for the proposed work have been obtained including, without limitation, floodplain development permits, wetland permits, state highway access or utility permits, revocable right-of-way permits, and sewer and water utility permits.

(i) Pay the fees prescribed by section 4-20-6, "Public Right-Of-Way Permit And Contractor License Fees," B.R.C. 1981.

8-5-5 **Permit Contents.**

A permit issued under this section should state the right-of-way permit number, the date of issue and expiration; the name and address of the permittee, the name and address of the developer, contractor or subcontractor licensed to perform work under the permit; the location, nature, and purpose of the proposed work permitted; any conditions of approval, including, without limitation, inspection, testing, certification, and provision of as built drawings; the type of existing public infrastructure including, without limitation, street pavement, curb and gutter, sidewalks, trees and landscaping, or utilities impacted by the permit; references to the approved engineering construction drawings or site plans; references to any supplemental permits including, without limitation, wetland, floodplain development, state highway access or utility, revocable right-of-way and water and sewer utility permits required; and the amount of fees and deposits paid, and bonds filed by the permittee.

8-5-6 **Public Improvement Warranty.**

The applicant shall warrant all public improvements constructed under the approved permit as set forth in section 9-12-14, "Public Improvement Warranty," B.R.C. 1981. The applicant shall warrant the restoration of a public street excavated and filled with rock backfill material pursuant to subsection 8-5-12(c), B.R.C. 1981, for three years in conformance with the requirements set forth in section 9-12-14, "Public Improvement Warranty," B.R.C. 1981.

Ordinance No. 7088 (2000).

8-5-7 **Inspections.**

The permittee shall contact the city to schedule inspections for work completed within any public easement or right-of-way pursuant to an approved right-of-way permit, and shall not proceed with additional work until authorized by the city manager. If any stage of work under the permit is found by the city to be unsatisfactory, the permittee shall remedy, repair, or reconstruct said portion of the work found unsatisfactory prior to proceeding with new stages of the work.

Immediately upon completion of all work under a permit, the permittee shall notify the city to schedule an inspection and submit construction drawings of the completed construction and work as built, at which time city acceptance will be made if all work meets city standards. The warranty period begins upon acceptance of the work after the final inspection. Approximately thirty days prior to the expiration of the warranty, the city will perform an inspection of the completed work. If the work is still satisfactory, the financial guarantee for individual permit holders shall be returned less any amounts needed to complete work not done by the permittee.

8-5-8 **Public Safety And Nuisance.**

(a) Permittee's Responsibilities: No person who obtains a permit for work in the public right-of-way or public easement shall fail to maintain a safe work area, free of nuisance conditions. If the permittee fails to provide a safe work area free of nuisance conditions, the city may issue an order to make any repair necessary to eliminate any hazards or nuisances.

(b) Failure To Comply: If the permittee fails to correct a hazard or a public nuisance, the city may issue a stop work order and make any repair necessary to eliminate such hazard or

public nuisance. Any such work performed by the city shall be billed to the permittee at overtime rates. The permittee shall pay all such charges within thirty days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the city may, in addition to taking other collection remedies, seek reimbursement through the warranty guarantee. Furthermore, the permittee shall be barred from performing any work in the public right-of-way or public easement, and under no circumstance will the city issue any further permits of any kind to said permittee until such time that all outstanding charges have been paid in full. This remedy is in addition to any criminal action which the city may bring or pursue for violation of the chapter.

8-5-9 **Time Of Completion.**

All work covered by the permit shall be completed by the date approved on the application. Permits shall expire and be void if work has not commenced within thirty days after issued or as otherwise authorized in the permit after issuance. Unused funds guaranteed by letters of credit or cash deposited as a financial guarantee for individual permits will be returned after expiration and voiding of the permit.

8-5-10 **Traffic Control.**

The permittee shall provide traffic control measures to mitigate impacts on the transportation system that include the following:

(a) Traffic Control Plan Required: When it is necessary to impede or obstruct traffic, a traffic control plan prepared in conformance with the *Manual on Uniform Traffic Control Devices*, shall be submitted to the city prior to starting work. No permit will be issued until the plan is reviewed and approved by the city. No person shall interrupt access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital equipment unless permission is obtained from the city manager. Streets are to remain passable at all times, unless permission to close a street is approved by the city manager, as prescribed under section 2-2-11, "Traffic Engineering," B.R.C. 1981. It shall be the responsibility of the permittee to notify and coordinate all work in the public right-of-way with police, fire, ambulance, and transit organizations.

(b) Warning And Control Devices: The permittee shall illustrate on the permit the warning and traffic control devices proposed for use. At the direction of the city manager, such warning and control devices shall be increased, decreased, or modified. The *Manual on Uniform Traffic Control Devices*, Part IV, shall be used as a guide for all maintenance and construction signing. Traffic control devices, as defined in Part VI of the *Manual on Uniform Traffic Control Devices*, must be used whenever it is necessary to close a traffic lane or sidewalk. The permittee shall provide all traffic control devices. If used at night, the traffic control devices must be reflectorized and be illuminated or have barricade warning lights. Oil flares or kerosene lanterns are not allowed as a means of illumination.

(c) Flag Person Required: When necessary for public safety, the city manager will require the permittee to employ certified flag persons whose duties shall be to control traffic around or through the construction site.

8-5-11 Minimizing The Impacts Of Work In The Rights-Of-Way And Public Easements.

(a) Responsibility Of Permittee: The permittee shall conduct work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property.

(b) Location Of Utilities: Before any permittee begins work in any public right-of-way or public easement, it shall contact the Utility Notification Center of Colorado and make inquiries of all ditch companies, utility companies, districts, municipal departments, and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the Utility Notification Center of Colorado and request field locations of all facilities in the area at least forty-eight hours in advance of commencing work.

(c) Protection Of Utilities: The permittee shall support and protect all infrastructure, including, without limitation, pipes, conduits, poles, wires, or other apparatus which may be affected by the work from damage during construction performance of the work, or settlement of trenches subsequent to construction.

(d) Work Hours: Work activity performed in public right-of-way or public easements under a right-of-way permit may occur Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. No work shall be performed nor shall any traffic lane be closed to traffic during the hours of 7:00 a.m. to 8:00 a.m. or 4:30 p.m. to 5:00 p.m. on streets designated "collector" or greater in the adopted *Transportation Master Plan* without the approval of the city manager. Construction hours may be further modified by the city manager to minimize construction impacts on traffic flow along arterial and collector roadways, or to address environmental and safety concerns which may be associated with a right-of-way construction permit application.

(e) After Hours Work: The applicant may request permission to perform after hours work activity in a public right-of-way or public easement, subject to city approval considering the type of work to be performed, the public necessity to have the work performed outside of normal hours, and the potential inconvenience or annoyance the work may have on the general public and occupants of neighboring property. Any approval to permit after hours construction under an approved right-of-way construction permit shall be subject to approval of a sound level variance, if necessary, prescribed under chapter 5-9, "Noise," B.R.C. 1981, and the applicant's agreement to pay the fee for after hours inspection prescribed under subsection 4-20-6(g), B.R.C. 1981.

(f) Noise: The permittee shall comply with allowable noise levels prescribed under chapter 5-9, "Noise," B.R.C. 1981.

(g) Trash And Construction Materials: The permittee shall maintain the work site such that:

(1) Trash and construction materials are contained and do not blow off the construction site;

(2) Trash is removed from a construction site often enough so that it does not become a health, fire, or safety hazard; and

(3) Trash dumpsters, materials, storage trailers, or construction trailers shall not be placed in the right-of-way unless approved with the right-of-way permit.

(h) Dust And Erosion: The permittee shall use appropriate measures, such as watering and best management environmental practices, to control dust and erosion at the construction site.

(i) Deposit Of Dirt And Material On Roadways: The permittee shall comply with the requirements to eliminate the tracking of mud or debris upon any street or sidewalk as prescribed

under section 8-2-10, "Deposit Of Dirt And Material On Streets And Alleys Prohibited," B.R.C. 1981. Equipment and trucks used during construction, excavation or work activity shall be cleaned of mud and debris prior to leaving any work site.

(j) Use Of Street And Sidewalk Within The Right-Of-Way Or Public Easement: A permittee for a right-of-way construction permit shall:

(1) Make provisions for employee and construction vehicle parking so that neighborhood parking adjacent to a work site is not impacted;

(2) Obtain permission from the city manager to occupy public metered parking spaces and pay applicable parking reimbursement fees for any work activity that impacts public metered parking spaces, as set forth in section 4-18-8, "Parking Meter Hood And Sign Permits," B.R.C. 1981;

(3) Maintain safe traffic operations along all public streets in conformance with section 8-5-10, "Traffic Control," B.R.C. 1981;

(4) Maintain an adequate and safe unobstructed public walkway through or around the working construction site or blocked sidewalk in conformance with section 8-2-11, "Duty To Maintain Walkway Around Obstructed Portions Of Sidewalks," B.R.C. 1981;

(5) Clear all snow and ice hazards from public sidewalks or walkways through or around the work site by 12:00 noon following a snowfall in conformance with section 8-2-13, "Duty To Keep Sidewalks Clear Of Snow," B.R.C. 1981; and

(6) Secure all dangerous areas, such as trenches and excavations, with appropriate markers, barricades, and/or fencing.

(k) Protection Of Trees And Landscaping: The permittee shall protect trees, landscape, and landscape features as required by the city. All protective measures shall be provided at the expense of the permittee. Any damage to existing trees and landscaping shall be reported to the city manager for inspection. The permittee shall be required to complete any remedial action necessary to repair and restore damaged trees and landscaping, as determined by the city manager. Any trees and landscape materials which are damaged beyond repair or restoration shall be replaced at an equivalent value to the damaged material at the expense of the permittee.

(l) Protection Of Paved Surfaces From Damage: The permittee shall be responsible for any damage caused to any pavement by any work activity. Upon order of the city manager, the permittee shall repair all damage to the satisfaction of the city manager. Failure to repair such damage will result in the use of the permittee's performance bond, financial guarantee, or warranty by the city to repair any damage. To protect against pavement damage, backhoe equipment outriggers shall be fitted with rubber pads when used on pavement surfaces, and tracked vehicles are not permitted on paved surface unless specific precautions approved by the city manager are taken to protect the surface.

(m) Protection Of Property: The permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at their expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the public right-of-way and public easements.

(n) Cleanup: As the work progresses, all public rights-of-way, public easements, and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All cleanup operations shall be done at the expense of the permittee.

(o) Preservation Of Monuments: The permittee shall not disturb any surface monuments or survey hubs and points found on the line of work unless approval is obtained from the city manager. Any monuments, hubs, and points disturbed shall be replaced by a Colorado Registered Land Surveyor at the permittee's expense.

8-5-12 Standards For Repairs And Restoration Of Pavement Or Sidewalks.

(a) Permittee Responsibility: The permittee shall be fully responsible for the cost and actual performance of all work in the public right-of-way or public easement. The permittee shall do all work in conformance with city design and construction standards. All restoration work shall result in a pavement and sidewalk condition equal to or better than that which existed prior to construction. All streets and paved surfaces shall be restored within two weeks of their excavation. Where bike lanes and multi-use paths are reopened to the public prior to final restoration, a temporary, all-weather, hard surface patch shall be provided. No person shall fail to repair or restore any public improvement damaged, removed, or destroyed during the performance of any work under a permit issued pursuant to this chapter.

(b) Flowable Fill Required: Flowable fill backfill material, or an equivalent backfill material approved by the city manager that provides an incompressible, settlement-free, stable surface satisfying the design and construction standards adopted by the city, shall be used to restore all trenches that have been excavated in the paved or traveled portion of any public street or alley.

(c) Rock Backfill Material Permitted: The city manager may permit an applicant to use rock backfill material in lieu of flowable fill backfill material on streets that are designated "local" in the Transportation Master Plan, provided all of the following conditions are satisfied:

(1) Prior to issuance of a permit for work activity in the public right-of-way or public easement, the applicant must request and receive city manager approval for the use of the rock backfill material;

(2) The work activity requires trench excavation in excess of five feet in depth;

(3) The trench excavation is along a parallel alignment beneath the paved roadway or travel lane, and does not include any perpendicular or diagonal trench excavation across the paved roadway or travel lane;

(4) The type, gradation, placement, compaction, and testing of the rock backfill material shall meet or exceed all requirements specified in the design and construction standards adopted by the city; and

(5) The applicant shall warrant the restoration of the public street for a period of three years as set forth in section 8-5-6, "Public Improvement Warranty," B.R.C. 1981.

(d) Subsurface Or Pavement Failures: In the event that subsurface material or pavement over or immediately adjacent to any excavation should become depressed, broken, or fail in any way at any time after the excavation has been completed, the city manager will notify the permittee of the condition, location, and required remedy for the street failure, and the permittee shall repair or restore, or cause to be repaired or restored, the street failure to the satisfaction of the city manager within three days of such notice. The city manager may extend the time for the permittee to repair or restore the affected public street.

(e) Repair By The City: In the event that any person or permittee fails, neglects, or refuses to repair or restore any condition pursuant to the city manager's notice as set forth in subsection (d) of this section the city manager may repair or restore, or cause to be repaired or restored, such condition in such manner as the city manager deems expedient and appropriate pursuant to the following:

(1) Any such work performed by the city shall be billed to the permittee to recover the cost thereof plus up to fifteen percent of such cost for administration. The permittee shall pay all such charges within thirty days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the city may, in addition to taking other collection remedies, seek reimbursement through the warranty guarantee;

(2) The permittee shall be barred from performing any work in the public right-of-way or public easement, and under no circumstance will the city issue any further permits of any kind to said permittee, until such time that all outstanding charges have been paid in full; and

(3) Repair or restoration by the city in accordance with this subsection shall not relieve the permittee from liability for future failures at the site of the repair or restoration.

Ordinance No. 7088 (2000).

8-5-13 Construction And Restoration Standards For Newly Constructed Or Overlayed Streets.

(a) Prohibition Of Excavation In Newly Constructed Streets: No person shall excavate an area in the pavement of any public street for a period of three years from the completion of construction or resurfacing except in compliance with the provisions of this section.

(b) Application: Any application for a permit to excavate in a public street with surface paving less than three years old shall contain the following materials:

(1) All permit application requirements set forth in section 8-5-4, "Permit Application," B.R.C. 1981;

(2) Detailed and dimensioned engineering plans that identify and accurately represent the paved surface areas that will be impacted by the proposed excavation, including:

(A) The city blocks affected, including the side streets at the ends of the city blocks;

(B) The street width or alley width, including curb and gutter, over the total length of each city block affected;

(C) The location, width, length, and depth of the proposed excavation;

(D) The total area of existing street or alley pavement in each individual city block that will be impacted; and

(E) The total area of proposed street excavation in each individual city block that will be impacted by the proposed excavation; and

(3) A written statement addressing the criteria for approval.

(c) Criteria For Approval: No permit for excavation in the right-of-way shall be approved unless the city manager finds that:

(1) Boring or jacking under the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts;

(2) Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable;

(3) The proposed excavation cannot reasonably be delayed until after the three-year deferment period has lapsed; and

(4) The proposed excavation is necessary to remedy an immediate threat to the public safety or the restoration of a utility service.

(d) Exemptions For Emergency Operations: Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer utility service. City and non-city-owned utility companies with prior authorization from the city manager to perform emergency maintenance operations within the public right-of-way shall be exempted from obtaining the above specified prior written approval from the city manager. The utility company shall submit, as required by subsection (b) of this section, detailed engineering plans no later than five working days after initiating the emergency maintenance operation.

(e) Construction And Restoration Standards For Newly Constructed Or Overlayed Streets: For any excavation or opening in a public street or alley in the three-year period following new construction or overlay, trenches shall be filled with flowable fill backfill material, and the streets shall be repaired so as to not reduce the useful life of the pavement in accordance with design and construction standards adopted by the city.

(f) Remediation Requirement: If the total area of the proposed excavation exceeds fifteen percent of the total area of pavement within a block or involves a trench in excess of one hundred fifty feet in length, the applicant shall remediate the damage caused to the pavement. City and non-city-owned utility companies with prior authorization to perform emergency maintenance operations within the public right-of-way, as set forth in subsection (d) of this section, shall submit an engineering plan that complies with the standards set forth in subsection (b) of this section to the city no later than five working days after initiating the emergency maintenance operation. The city manager will review the remediation plan to determine if remediation will be required. Remediation will consist of a curb to curb grading profile and overlay, a centerline to curb grading profile and overlay, or a lane-line to curb grading profile and overlay, whichever is necessary in order not to decrease the average life expectancy of the street or alley surface.

(g) Impact Fee For Loss Of Useful Pavement Life: An applicant for a permit to excavate an area in the pavement of any public street with surface paving less than three years old shall pay an additional impact fee for loss of useful pavement life as set forth in section 4-20-6, "Public Right-Of-Way Permit And Contractor License Fees," B.R.C. 1981, prior to the issuance of a permit for work in the public right-of-way unless the applicant will be required to remediate pursuant to subsection (f) of this section.

8-5-14 **Relocation Of Facilities.**

If at any time the city requests a person or an owner of an improvement within a public right-of-way or public easement to relocate its facilities in order to allow the city to make any public use of public rights-of-way or public easements, or if at any time it shall become necessary because of a change in the grade or for any other purpose or reason of the improving, repairing, constructing, or maintaining of any street, public rights-of-way, or public easement, or reason of traffic conditions, public safety, or reason of installation of any type of structure of public improvement

the city or other public agency or special agency or special district, and any general program for the undergrounding of such facilities, to move or change such person's or owner's facilities within or adjacent to streets or rights-of-way in any manner, either temporarily or permanently, such person or owner shall thereupon, at such person's or owner's cost and expense, accomplish the necessary relocation, removal or change within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the city has notified the permittee that it intends to commence its work or immediately in the case of emergencies. If such person or owner fails to accomplish such work, the city or other public agencies or special district may perform such work at the owner's expense and the permittee shall reimburse the city or other agency within thirty days after receipt of a written invoice. Following relocation, all affected property shall be restored to, at a minimum, the condition which existed prior to construction at the owner's expense.

8-5-15 **Joint Location Of Utilities Required.**

An applicant for a permit shall cooperate in the planning, locating and construction of its improvements in joint utility trenches or common duct banks with other service providers and the city. The city will provide advance notice to an applicant when it plans to open a trench and each service provider shall provide notice to the city when it plans to open a trench. The service provider and the city will offer to make space available to the other, and to other persons who are subject to the same obligations, at a reasonable cost, consistent with applicable law and this chapter. For the purposes of this section, the city manager will presume that "reasonable cost" will provide the applicant for a permit the recovery of the additional costs of adding the improvements of the person wishing to co-locate utilities in a trench.

8-5-16 **Emergency Procedures.**

Any person maintaining facilities in the public right-of-way or public easement may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. Emergency work is defined to mean any work necessary to restore water, sewer, gas, phone, electric, and cable facilities. Repairs on other facilities in the public right-of-way may also be classified as emergency work by the city manager. The person doing the work shall apply to the city for a permit on the first working day after such work has commenced. No person performing emergency work shall fail to notify the city police and fire departments prior to commencing such work.

8-5-17 **Work In The Public Right-Of-Way Or Public Easement Exempt From Required Permit.**

The following work activities do not require a permit under this chapter:

(a) Public Projects: Maintenance and construction of public infrastructure by an employee or official of the city designated by the city manager, or a person under contract with the city and licensed under section 4-6-2, "License Required," B.R.C. 1981.

(b) Private Projects: Maintenance and construction of non-city-owned utilities by public utility companies, their employees or agents, in public utility easements less than fifteen feet in width where no city-operated utilities, transportation, or drainage system improvements are in place.

(c) Maintenance Of Landscaping And Surface Improvements: Maintenance by the adjacent property owner of landscaping and surface improvements located within a public easement, or within the public right-of-way as it abuts a property outside of any street section, behind

the curb and gutter or edge of pavement. "Maintenance" generally includes, without limitation, watering, mowing, raking, and weeding activities.

(d) Landscaping Materials: Planting by the adjacent property owner of landscaping materials located within a public easement, or within the public right-of-way as it abuts a property outside of any street section, behind the curb and gutter or edge of pavement, involving living materials with root systems that do not extend more than ten inches below grade or have mature heights exceeding thirty inches, non-living natural materials commonly used in landscape development for ground cover, not including any timber, rock, masonry or concrete retaining walls or elevated planting borders, and attendant irrigation systems, that do not extend more than ten inches below grade.

(e) Trees: Planting by the adjacent property owner of trees as set forth in section 6-6-3, "City Manager Will Supervise Planting," B.R.C. 1981.

8-5-18 **Revocation Of Permits.**

In addition to any other provisions of this code or other ordinances of the city, the city manager may suspend or revoke a permit issued under this chapter if:

(a) Violations:

(1) The permittee violates any condition of the permit or of any provision of this chapter;

(2) The permittee violates any provision of any other ordinance of the city or state law relating to the work;

(3) The permittee causes any condition or performs any act which constitutes or causes a condition endangering life or damage to property; or

(4) The permittee obtained the permit by fraud or misrepresentation.

(b) Suspension, Revocation And Stop Work Order: A suspension or revocation by the city manager, and a stop work order, shall take effect immediately upon notice to the person performing the work in the public right-of-way. Any suspension or revocation or stop work order may be appealed by the permittee to the city manager under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(c) Stop Work Order For Unauthorized Work: A stop work order may be issued by the city manager to any person or persons doing or causing any work to be done in the public right-of-way without a permit, or in violation of any provision of this chapter, or any other ordinance of the city.

(d) Compliance With Order Required: No person shall fail to comply with the conditions of an order suspending or revoking a permit or an order to stop work.

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 6 Public Right-Of-Way And Easement Encroachments, Revocable Permits, Leases, And Vacations[1]

Section:

8-6-1 Legislative Intent.

The purpose of this chapter is to regulate the placement of structures within or upon any public right-of-way or public easement and to establish standards and procedures for the vacation of any public easement or public right-of-way, in order to assure adequate and safe public access to the streets, appropriate utilization of public easements, and for the just disposition of property determined to be unnecessary to meet public needs.

8-6-2 Definitions.

The following terms used in this chapter have the following meanings, unless the context fully indicates otherwise:

"Encroachment" means a private improvement, structure, or obstruction extending into or located within, upon, above, or under any public right-of-way or public easement.

"Fence" means any artificially constructed barrier of wood, masonry, stone, wire, metal, or any other material or combination of materials erected to enclose, partition, beautify, mark, or screen areas of land.

"Landscaping" means materials, including, without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non-living natural materials commonly used in landscaped development, as well as attendant irrigation systems.

"Obstruction" includes, without limitation:

(a) A fence, hedge, or wall placed nearer than permitted by section 9-9-15, "Fences And Walls," B.R.C. 1981, to any public sidewalk or path[2];

[1]Adopted by Ordinance No. 5919.

[2]Section 9-9-15, "Fences And Walls," B.R.C. 1981, requires that fences, hedges, and walls be no closer than eighteen inches to sidewalks.

(b) Any landscaping, structure, or fence within the corner sight triangle specified in section 9-9-7, "Sight Triangles," B.R.C. 1981, or within its prolongation within the right-of-way, which does not comply with the requirements of that section;

(c) A tree or bush or other plant or a structure of any sort which projects beyond the property line of property abutting the right-of-way of any street, sidewalk, path, or alley onto or over the public right-of-way and obstructs the view of traffic, obscures any traffic control device, prevents pedestrian use of any part of a street, sidewalk, path, or alley, or otherwise constitutes a hazard to drivers or pedestrians. Without limitation, a dead bough of a tree located on a person's property but overhanging public property constitutes such a hazard[1];

(d) Cement, concrete, piping, or other material placed in a gutter to aid vehicles in driving over a curb or for any other purpose.

"Structure" means anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, fences, retaining walls, awnings, balconies, and canopies.

Ordinance No. 7224 (2002).

8-6-3 **Public Right-Of-Way And Public Easement Encroachments Prohibited.**

No person shall erect or maintain any building, structure, fence, barrier, post, landscaping, obstruction, or other encroachment within, under, above, or upon any public right-of-way, path, alley, or public easement without first obtaining permission from the city under this chapter unless exempt under the provisions of section 8-6-8, "Exempt Encroachments," B.R.C. 1981.

Ordinance No. 7224 (2002).

8-6-4 **Removal Of Public Nuisances.**

(a) Encroachments Are Public Nuisances: An encroachment placed upon or maintained within the public right-of-way or a public easement contrary to the terms of this chapter constitutes a public nuisance that may be removed or enjoined and abated by suit or other action by the city or any resident of the city.

(b) Order To Remove Encroachments: Whenever any encroachment exists or is located contrary to the provisions of this chapter or when the city manager revokes a permit or lease granted pursuant to this chapter, the manager will notify the person who made, located, caused, allowed or permitted the encroachment, or who owns or controls the premises or property adjacent to or for which such encroachment exists and order the person to remove the encroachment within such time that the city manager determines is reasonable under the circumstances. Notice under this subsection is sufficient if it is mailed first class to the address of the last known owner of property on the records of the Boulder County Assessor, or if given by personal service, or, in the case of a condition sufficiently dangerous to constitute an emergency, given orally in person or by telephone to the owner or the owner's authorized representative. The manager is additionally authorized to use the provisions of this section to correct violations on private property adjacent to the public right-of-way of section 9-9-7, "Sight Triangles," B.R.C. 1981, and of section 9-9-15, "Fences And Walls," B.R.C. 1981, where such structures or hedges are within eighteen inches of a roadway, sidewalk, or path, and such conditions shall be deemed encroachments.

[1]Section 42-4-114, C.R.S.

(c) City Manager May Remove Encroachments: If the person notified under subsection (b) of this section fails to comply with the order to remove the encroachment, the city manager may cause the encroachment or obstruction to be removed and may charge the cost thereof plus up to fifteen percent of such cost for administration to the person so notified. If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due any unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the County in the same manner as delinquent general taxes upon such property are collected, under the procedures prescribed by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981. This civil remedy is in addition to any criminal action which the city may bring or pursue for a violation of this chapter.

(d) Compliance With Order Required: No person shall place an encroachment in a public right-of-way or public easement in a manner contrary to the terms of this chapter, or fail to comply with an order to remove such an encroachment.

(e) Hearing: Any person notified of an order under subsection (b) of this section may request a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. If a timely request for a hearing is made, the manager may stay the order pending the hearing, or may opt to require the person to remove the obstruction, in which case the hearing officer may, if the initial order is found not to have been in compliance with the code, order the city to pay the reasonable cost of removal and, in a proper case, the reasonable cost to restore a structure or replace a plant.

Ordinance No. 7224 (2002).

8-6-5 Encroachment Investigation Fee.

Applicants for revocable permits or leases under section 8-6-6, "Requirements For Revocable Permits, Short-Term Leases, And Long-Term Leases," B.R.C. 1981, where approval of an existing encroachment is requested, shall pay the fee prescribed by subsection 4-20-20(b), B.R.C. 1981, to cover the additional costs associated with investigating the impacts of the existing encroachment. The city manager may waive this fee if the manager determines that the applicant has adequately demonstrated that the encroachment was installed by another, without the present owner's knowledge or consent, prior to the applicant's ownership of the property or pursuant to a validly issued building permit, if such was required for the type of encroachment involved.

8-6-6 Requirements For Revocable Permits, Short-Term Leases, And Long-Term Leases.

(a) Purpose And Scope: Public rights-of-way and public easements are held by the city in trust for public use to ensure the health, safety, and welfare of the residents of the city. The city council intends that all decisions regarding the granting of permission to place an encroachment into public right-of-way or public easements are legislative in nature. The city may determine from time to time at its discretion to issue a revocable permit, short-term lease, or long-term lease subject to the requirements set forth in this section for certain encroachments into public rights-of-way and public easements that do not adversely affect its present or future use.

(b) Application Requirements: An applicant for permission to encroach on public right-of-way or easement shall:

(1) File a written application on a form provided by the city manager that includes the following: the date, the name of the applicant, the exact location of the proposed encroachment or obstruction, a written statement describing why the encroachment is necessary, the type of encroachment or obstruction, and such other information as the city manager may deem necessary;

(2) File evidence of the liability insurance required by section 4-1-8, "Insurance Required," B.R.C. 1981; except that, for permits concerning land where the city's property interest is a utility easement only and that easement does not permit use by the general public for access or any other purpose, the maximum amount of insurance required shall be $100,000.00; and

(3) Pay the fee prescribed by section 4-20-20, "Revocable Right-Of-Way Permit/Lease Application Fee," B.R.C. 1981.

(c) Permit Or Lease Determination: The city manager will consult with the planning, real estate, fire, and police departments and utilities, development and inspection services, and transportation divisions of the public works department to determine whether the application should be processed as a revocable permit, a short-term lease or a long-term lease. The manager shall notify the applicant whether the application will be processed as a revocable permit under subsection (d) of this section or as a lease under subsection (e) or (f) of this section. The following factors weigh in favor of a lease:

(1) Permanency of the encroachment;

(2) Physical difficulty of removal;

(3) Likely need for city intervention if removal is required within ten days;

(4) Monetary value is created by the encroachment or the encroachment excludes the use of the public right-of-way by the general public; and

(5) The resultant benefit from the encroachment is commercial in nature, rather than personal.

(d) Revocable Permit: The city manager may issue a revocable permit for a period not to exceed three years, upon finding that:

(1) The encroachment is designed in a manner to be temporary in nature;

(2) The encroachment does not constitute a traffic or other hazard;

(3) The encroachment does not destroy or impair the public's use of the land for its intended purposes or serves a public purpose that cannot otherwise be accomplished without such minor impairment; and

(4) Encroachment on a sidewalk in commercial areas maintains a minimum clearance of eight feet vertically and horizontally of unobstructed pedestrian way. The requirements of this paragraph may be modified by the city manager if reasonable passage is provided on the sidewalk and the safety of pedestrians, bicyclists and motorists is not impaired.

(e) Short-Term Leases: The city manager may enter into a lease on public right-of-way or a public easement for encroachments that are temporary in nature, or easily removed, subject to the provisions of section 2-2-8, "Conveyance Of City Real Property Interests," B.R.C. 1981, upon finding that the standards for a revocable permit set forth in subsection (d) of this section have been met, and:

(1) A longer termed use of the public property for the specific term approved will not be contrary to the public interest and ultimate use of the public right-of-way or public easement;

(2) Adequate compensation is provided to the city throughout the lease term.

(f) Long-Term Leases: The city council may approve a long-term lease on public right-of-way or a public easement for encroachments that are permanent in nature subject to the provisions of section 2-2-8, "Conveyance Of City Real Property Interests," B.R.C. 1981, upon a finding that the standards for a revocable permit and a short-term lease set forth in subsections (d) and (e) of this section have been met, and there will be no public need for the leased area during the lease period.

The city council may add any conditions and terms to the lease to ensure that the city's real property interests are maintained and public improvements are fully restored upon revocation, termination, or expiration of the lease.

(g) Leases For Point-To-Point Telecommunication Conduit Crossings: The city manager is authorized to enter into a lease for a telecommunication conduit crossing public right-of-way pursuant to an approved right-of-way permit under chapter 8-5, "Work In The Public Right-Of-Way And Public Easements," B.R.C. 1981, which shall be leased by a single private user to provide a direct communication link between two properties. An applicant for a telecommunication conduit crossing shall meet the following criteria:

(1) The crossing shall be designed in conformance with requirements set forth in adopted city design and construction standards and shall meet all permitting requirements;

(2) The crossing conduit shall not interfere with any public use within the right-of-way;

(3) The maximum length of the crossing shall not exceed one hundred fifty feet and shall be substantially perpendicular to the right-of-way;

(4) The crossing includes the placement of an identification marker at each end of the conduit;

(5) The telecommunication link shall only be used to serve the needs of a single user;

(6) All construction costs and maintenance costs are paid by the applicant;

(7) The conduit shall become the property of the city;

(8) The approval and construction shall not create any legal interest on behalf of the applicant in the city's right-of-way;

(9) The lease for the applicant's use of the conduit shall be revocable at the request of the city or the applicant;

(10) The applicant shall indemnify the city for any losses that the city may incur related to the conduit encroachment into the right-of-way;

(11) The applicant shall hold the city harmless for any damage that the city may do while working on the right-of-way; and

(12) The cost of rent to the applicant under the lease shall be based on a "franchise fee equivalent" to be determined by the city and should be consistent with the amount a common telecommunications carrier would pay to the city.

(h) Mall Permit Required: Nothing in this section shall be deemed to waive or supersede the requirement to obtain a license or permit to place structures on the Downtown Boulder Mall, as required by chapter 4-11, "Mall Permits And Leases," B.R.C. 1981.

8-6-7 Revocation Of Revocable Permit And Order To Remove Encroachment.

(a) Revocation Or Order To Remove: The city manager may revoke, without cause, a permit or lease issued under this chapter at any time upon ten days' written notice.

(b) Encroachment Removal: Upon revocation of a permit under this chapter or a finding that the encroachment was made or located contrary to the provisions of this chapter, the manager will notify the person who made, located, caused, or permitted the encroachment, or who owns or controls the premises with which such encroachment is connected, and order such person to remove such encroachment within such time that the city manager determines is reasonable under the circumstances.

(c) Failure To Remove Encroachment: If the person notified under subsection (b) of this section fails to comply with the order to remove the encroachment or obstruction, the city manager may cause the encroachment to be removed and charge the costs thereof, plus up to fifteen percent of such costs for administration to any person so notified. If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due any unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected under the procedures prescribed by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(d) Compliance With Order To Remove: No person shall fail to comply with an order of the city manager to remove an encroachment.

8-6-8 Exempt Encroachments.

The following items are conditionally permitted to encroach on public rights-of-way or public easements without obtaining a revocable right-of-way permit or a lease, subject to an order to remove, without cause, by the city manager after ten days' notice:

(a) Landscaping: The following landscaping may be placed in the public right-of-way and easements by the owner or tenant of property immediately adjacent to the area in which the planting occurs, or separated from such area only by a sidewalk:

(1) Landscaping required pursuant to other sections of this code;

(2) Landscaping required pursuant to an approved landscape plan as part of a development review application;

(3) Landscaping which does not impair or impede the utility of the right-of-way or easement for its designated purpose including attendant irrigation systems so long as the landscaping does not create any encroachment or obstruction of sight distance, as set forth in section 9-9-7, "Sight Triangles," B.R.C. 1981, or within its prolongation within the right-of-way, or, if a hedge, is in conformance with section 9-9-15, "Fences And Walls," B.R.C. 1981;

(4) Encroaching landscaping planted or maintained in accordance with this subsection shall be maintained so that there is eight feet of overhead clearance above and eighteen inches of side clearance from any roadway, sidewalk, and path at all times of the year, except that

flowers and similar insubstantial plantings which have no capacity to impede pedestrian or bicycle traffic and are no higher than twelve inches may extend to the edge of the traffic facility. All plantings shall be made with the requirement of trimming to the standards of this code in mind; and

(5) Trees included as landscaping shall also be governed by the additional requirements of chapter 6-6, "Protection Of Trees And Plants," B.R.C. 1981.

(b) Bicycle Racks: Bicycle racks in the public right-of-way, the location of which has been specifically approved by the city manager. Bicycle racks in the public right-of-way are public improvements that shall be dedicated to the city and accepted by the city manager prior to installation.

(c) Fences: Fences in public utility easements, but not in public rights-of-way or public access or emergency access easements, that meet the following criteria:

(1) Are designed and constructed in conformance with section 9-9-15, "Fences And Walls," B.R.C. 1981, and subsection 10-5-2(bb), B.R.C. 1981;

(2) Do not obstruct or impede access to public utilities for construction, reconstruction, and maintenance by the city or authorized agents;

(3) Do not obstruct or impede the conveyance of surface runoff in drainage swales or drainageways;

(4) Maintain a six foot parallel separation from any city-owned and operated underground utility, including, without limitation, water, sewer, and storm sewer mains currently in place, except for easement crossings;

(5) Do not create any encroachment or obstruction of sight distance, as set forth in section 9-9-7, "Sight Triangles," B.R.C. 1981;

(6) Are designed and constructed with materials and in such a manner which permit ease of removal by the property owner or the city in the event such removal is necessary for the maintenance or proper use of the public easement; and

(7) Are covered by the property owner's homeowner's insurance policy at all times.

(d) Paving Material: Paving material or flatwork pursuant to an approved right-of-way construction permit under chapter 8-5, "Work In The Public Right-Of-Way And Public Easements," B.R.C. 1981.

(e) Retaining Walls: Retaining walls less than eighteen inches in height, that do not require a subgrade foundation for support.

Ordinance No. 7224 (2002).

8-6-9 Vacation Of Public Rights-Of-Way And Public Access Easements.

(a) Application Requirements: An applicant to vacate a public right-of-way or public access easement shall file a written request on forms furnished by the city manager and pay the fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981.

(b) City Manager To Review: The city manager shall review the requested vacation pursuant to the procedures specified in sections 9-4-2, "Development Review Application," and 9-4-3,

"Development Review Action," B.R.C. 1981, and if the manager determines that the criteria set forth in subsection (c) of this section have been met, shall advise the planning board of the pendency of such vacation pursuant to charter section 79, prior to submitting a vacation ordinance to the city council.

(c) Findings: Only after a finding that the following criteria have been met may the city council adopt an ordinance granting the requested vacation:

(1) The applicant must demonstrate that the public purpose for which an easement or right-of-way was originally acquired or dedicated is no longer valid or necessary for public use;

(2) All agencies and departments having a conceivable interest in the easement or right-of-way must indicate that no need exists, either at present or conceivable in the future, to retain the property as an easement or right-of-way, either for its original purpose or for some other public purpose unless the vacation ordinance retains the needed utility or right-of-way easement;

(3) The applicant must demonstrate, consistent with the Boulder Valley Comprehensive Plan and the city's land use regulations, either:

(A) That failure to vacate an existing right-of-way or easement on the property would cause a substantial hardship to the use of the property consistent with the Boulder Valley Comprehensive Plan and the city's land use regulations; or

(B) That vacation of the easement or right-of-way would actually provide a greater public benefit than retaining the property in its present status.

(d) State Law: Nothing in this chapter shall limit the city's authority in vacation proceedings pursuant to section 43-2-301 et seq., C.R.S.

(e) Cost Of Vacation: In addition to the fee required by subsection (a) of this section, the applicant for the vacation shall be responsible for all costs associated with the preparation of a legal description of the property to be vacated and recording fees for the vacation document.

8-6-10 **Vacation Of Public Easements.**

Vacation of city easements dedicated for any purpose, except public rights-of-way and access easements, may occur:

(a) Through the subdivision process; or

(b) By approval of the city manager upon a determination that no public need exists for such easement. If the city manager approves an easement vacation, it is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the city within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation.

8-6-11 **Private Signs On Public Property.**

(a) The city manager shall have no authority to grant permission to any private party to post a private sign on any public property, including, without limitation, the public right-of-way.

(b) This limitation shall not be construed to prevent posting of the following types of signs, provided all requirements of this section are satisfied:

(1) Private persons may post signs on public property over which they hold an easement, if such signs identify private utility property placed within the easement, or are allowed pursuant to section 9-9-21, "Signs," B.R.C. 1981, in access easements.

(2) Private persons may post signs on land leased from the city during the term of such lease and not inconsistent with the terms of such lease, provided that such signs would be allowed if placed on private property pursuant to section 9-9-21, "Signs," B.R.C. 1981, but the city manager may lease public land solely for the purpose of a sign only to an adjacent property owner who needs to place some, but not all, of the supports for the sign on public property, and otherwise complies with this chapter.

(3) Private persons may post signs on public property which are incidental to a special event for which specific permission to place temporary structures on or otherwise use the public property has been granted, consistent with any limitation on the size, number, location, or other physical features of such signs imposed in the permit. In determining limitations to be placed on posting signs in a permit on public property, the city manager shall be guided by the provisions of section 9-9-21, "Signs," B.R.C. 1981, as they would apply to limit the size, number, location, and other physical features of signs were the property to be private, but may make reasonable allowance for how the public property, because of its public uses, may differ from private property and thus render inappropriate such limitations. Unless specifically required in the permit, no separate sign permit under section 9-9-21, "Signs," B.R.C. 1981, is required for signs specifically addressed in such permit.

(4) The city manager may permit the posting on or over public property of temporary banners, signs, or other decorations that are in celebration of a special event or occasion occurring in Boulder, sponsored by the city, or connected to Boulder's history, including, but not limited to, an artistic, athletic, charitable, civic, cultural, seasonal, or historical event. Such banners, signs, or other decorations shall be permitted only as attachments to existing electroliers or other public poles and structures. Not more than ten percent of the surface area may be used to identify the name or logo of not more than two sponsoring persons or organizations. The city manager shall promulgate regulations pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, and shall specify maximum sizes, materials and installation requirements, acceptable banner vendors, insurance requirements, a list of acceptable public property locations that do not conflict with the intent of section 9-9-21, "Signs," B.R.C. 1981, and such other matters as the city manager may deem necessary or desirable. Such regulations shall also identify a system for allocating acceptable public property locations in the event applications for such permits exceed the available locations.

Ordinance Nos. 6017 (1998); 7463 (2006).

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 7 Cemeteries[1]

Section:

8-7-1 Legislative Intent.

(a) Columbia Cemetery is located between College and Pleasant Avenues immediately west of Ninth Street, and has also at times been called the Pioneer Cemetery or the Pioneer Gateway. It was established through the purchase by the Columbia Lodge No. 14, A.F. and A.M. (the Masons), in 1870, of ten acres for cemetery purposes on what was then the edge of town. In 1870 the Boulder Lodge No. 9, I.O.O.F. (the Odd Fellows) purchased an interest in the cemetery. In 1912 the Park Cemetery Association acquired title to the cemetery from the Masons and the Odd Fellows. The city took title to the Columbia Cemetery from the Association in 1966, when the Association could no longer financially support the site. The city accepted an administrators deed (the Association being in receivership at the time) with several reservations, including a requirement that only those persons possessing a deed to a plot were to be buried there in the future, and that sale of lots would cease. In 1977 the cemetery was designated as a landmark site by ordinance 4252, and in 1997 was listed on the National Register of Historic Places. This chapter is intended to supplement laws applicable to conduct on public property generally by establishing rules for conduct of persons while within or otherwise affecting the Columbia Cemetery. The cemetery is operated by the city principally for its traditional private purposes as a resting place for the dead, for those who are visiting these graves, for burials and grave side services, and for maintenance of the grounds. Because it was established in 1870, it is also a repository of the city's history, and its management is secondarily guided by preservation of its historic character for the public good.

(b) While the public is generally permitted on the cemetery subject to the law and the restrictions of this chapter where not inconsistent with its private and public purposes, the cemetery is not a public park and is not a public forum. It has no chapel or other building for gatherings of people, no significant area not already occupied by graves, and no place for parking vehicles.

[1]Adopted by Ordinance No. 7268.

(c) Unlike some cemeteries operated by other cities since their inception or nearly so, it is only recently as time is measured in the cemetery business that the city became the owner of this old cemetery. While burials in the cemetery are now infrequent, there are persons claiming rights in cemetery lots or grave spaces based on purchase long before the city owned the cemetery. Proof of such rights is often difficult, because some records believed to have existed have disappeared, the Masonic Lodge #14's deed book does not begin until 1887, it was not necessary by law to record purchases of cemetery lots or grave spaces, and some mortuaries did not specify exact locations of burials, sometimes simply saying "Potter's Field" or "Columbia Cemetery" for burial locations. Even where the records seem clear as to ownership of apparently unused grave spaces, there can still be uncertainty as to whether they are indeed empty. The council recognizes that some persons who may possess such rights, especially by inheritance, may have little if any proof of such rights, and it is intended that the city manager be vested with wide discretion to deal with these situations as the manager sees fit, considering such records as the city possesses, giving such weight to private records as is appropriate considering the source[1], and with appropriate consideration of the importance of the place of burial to the individuals involved while alive, and to their survivors balanced against the rights of other potential claimants for the space and the need for fair and businesslike operation of the cemetery.

(d) While it is often not immediately obvious to the casual visitor, many of the grave markers in the cemetery are fragile (despite being, in many cases, made of stone, metal, or other usually durable materials), and are subject to being overturned with little force. Significant restrictions on the use of the cemetery are necessary to prevent damage to these historic and venerated objects, and to guard against injury to persons from toppling grave markers.

8-7-2 **Definitions.**

As used in this chapter, the following words have the meanings given unless the context otherwise requires:

"Burial" means the permanent disposition of human remains by burial, including earth interment, under the ground, entombment, interment, or dispersal of cremated remains.

"Cemetery" means the Columbia Cemetery located between College and Pleasant Avenues immediately west of Ninth Street.

"Cremated remains" means the ashes of a body which has been cremated.

"Earth interment" means burial of a body, or portions of a body, which has not been cremated.

"Flat marker" means a flat marker made of metal, stone, or other durable material signifying that a person is buried there and set in the ground so it is flush with the ground or protrudes but slightly, and whose visible inscription is entirely upon the top. Flat markers are distinguished from upright markers because they have little tendency to be overturned due to their geometry and low center of gravity.

"Flower receptacle" means an urn or other container made of metal, stone, or other durable material not subject to shattering which is part of or is attached to a grave marker.

"Grave goods" means token objects temporarily placed on a grave as a token of remembrance or respect.

[1]The council particularly recognizes the dedicated work of Mary McRoberts in collecting information on the cemetery.

"Grave marker" means a flat or upright marker over a grave space, and includes, without limitation, headstones, tombstones, grave stones, memorials, monuments, monoliths, nameplates, rocks, urns, inscriptions, or any other physical object used to identify a grave or graves.

"Grave space" means a space or grave room intended to be used for the burial of the remains of one person. Grave spaces are the smallest subdivision of a lot. Grave space is synonymous with grave, grave room, grave site, or plot where those terms are used in documents. The fact that in some instances the remains of more than one person have been buried in a single grave room, or that this chapter makes provision under some circumstances for burial of more than one person, does not affect this definition except in those contexts.

"Lot" means a platted lot within the cemetery containing five, six, twelve, sixteen, eighteen, or twenty-four grave spaces as specified for the particular lot. Lots are subdivisions of a section.

"Mortuary" means a funeral home or funeral establishment operated in conformance with the laws of the state.

"Section" means one of the fourteen main divisions of the cemetery, each of which contain varying numbers of lots, with each lot in turn containing varying numbers of individual grave spaces. The sections are labeled A through F, Avenue Reserve, Boulder Avenue Reserve, Central Avenue Reserve, Columbia Avenue Reserve, East Avenue Reserve, North Avenue Reserve, South Avenue Reserve, and West Avenue Reserve.

"Upright marker" means a grave marker which protrudes significantly above the ground and has space for visible inscriptions on a side or sides.

"Vehicle" has the meaning given in chapter 7-1, "Definitions," B.R.C. 1981.

8-7-3 Cemetery Hours.

(a) No person shall enter or remain in the cemetery after sunset and before sunrise.

(b) "Sunset" and "sunrise" have the meaning defined in chapter 7-1, "Definitions," B.R.C. 1981.

(c) This prohibition does not cover city maintenance activities, mortuary employees or contractors if a burial permit allows their presence during those hours to dig or fill a grave, city sponsored events, or special events for which a permit has been issued by the city manager.

8-7-4 Cemetery Entrances.

No person shall enter or leave the cemetery other than through the entrance gates at the corner of Ninth Street and Pleasant Avenue, on College Avenue just west of Ninth Street, at the western cemetery boundary just north of College Avenue, and on Pleasant Street approximately midway between Ninth Street and the western cemetery boundary.

8-7-5 Projectiles.

(a) No person shall cast, throw, or propel any projectile on, into, or from the cemetery.

(b) Projectile includes, without limitation, balls, boomerangs, bottles, darts, food items, frisbees and other like devices, paint balls, model airplanes, and rocks.

(c) Snowballs and sticks are not projectiles within the meaning of this section.

8-7-6 **Vehicles And Cemetery Drives.**

(a) No person shall drive a vehicle within the cemetery except upon the cemetery driveways. It is a specific defense to this violation that the vehicle was a backhoe or other maintenance vehicle driven in accordance with a permit to do so from the city manager pursuant to chapter 4-26, "Cemetery Permits," B.R.C. 1981.

(b) No person shall drive a vehicle within the cemetery at a speed in excess of five miles per hour.

(c) No person shall drive a vehicle onto the cemetery except through the entrance gate at the corner of Ninth Street and Pleasant Avenue.

(d) The city manager may close any portion of the cemetery driveways to vehicular use as may be necessary for maintenance or the prevention of damage to the cemetery grounds, and upon the posting of a sign or other indication of closure, no person shall drive any vehicle upon an area so closed.

8-7-7 **Pedestrian Uses Prohibited.**

(a) No person shall ski within the cemetery except upon the cemetery driveways.

(b) The city manager may close all or any portion of the cemetery grounds to pedestrian or any other use as may be necessary for maintenance, the prevention of damage to the cemetery grounds, or to mitigate hazards to visitors, and upon the posting of a sign or other indication of closure, no person shall enter or remain in an area so closed.

8-7-8 **Grave Marker Rubbings Prohibited.**

No person shall make a rubbing from any grave marker in the cemetery.

8-7-9 **Treatment Of Grave Markers.**

No person shall lean against, push, pull, shove, kick, climb on, or strike directly or with any object any grave marker.

8-7-10 **Decoration Of Graves.**

(a) No person shall plant within the cemetery any perennial, shrub, tree, flower, or rose except pursuant to a permit issued under chapter 4-26, "Cemetery Permits," B.R.C. 1981.

(b) The city manager may remove any artificial or living floral decoration or other grave space decoration or grave goods if it becomes injurious to the turf on a grave space, unsightly, dilapidated, blown off the grave space, or hinders other care required in the cemetery or poses a maintenance problem. Persons desiring to retain any funeral designs or floral pieces must remove them within forty-eight hours after interment.

8-7-11 **City Responsibility.**

(a) Ownership of a grave space by the person named in the deed or other instrument by which the person obtained ownership shall consist of the right to inter one body in one grave space

(however that is described in the instrument, and without affecting the validity of an instrument conveying such right for more than one grave space), or the right of one body already interred to remain there, subject to the restrictions on use of that space contained in this code. However, the city or its representatives may perform conservation work on grave markers and grave spaces, at no expense to the owners, that is deemed necessary to preserve and protect the historic integrity of the cemetery. This work includes, but is not limited to, restoration, cleaning, repair or resetting of grave markers, and trimming or removal of vegetation that may obscure, damage, or encroach upon grave markers.

(b) The city manager shall superintend the planting of trees and shrubs in accordance with the Columbia Cemetery Preservation Master Plan for the ornamentation of the grounds.

(c) The city manager may, to the end that the cemetery shall be reasonably cared for as a cemetery in the manager's discretion and subject to the appropriation of adequate funds, provide for the general care and maintenance of cemetery grounds, buildings, sprinkling systems, roadways, drives, walks or paths, drains, signs, fences, gates, plantings, or other cemetery property or facilities of a general nature, including, without limitation:

(1) Mowing and watering turf.

(2) Reseeding or resodding.

(3) Trimming around grave markers, with machine or by hand, as close as possible without risk of damage to the grave markers.

(4) Removal of detrimental plants, noxious weeds, encroaching seedlings and saplings from grounds and on and around grave markers.

(5) General preservation of the cemetery roads, walks, fences, buildings, plantings, signs, and the pruning of shrubs and trees that may have been placed by the cemetery.

(6) Filling in of holes as necessary.

(d) General maintenance shall not be construed as meaning the maintenance, cleaning, repair or resetting of any grave marker placed upon any individually owned lot or grave space.

(e) The city is not responsible for misplaced or broken flower receptacles or grave goods, or for damage by the elements, thieves, vandals, or by causes beyond its control on any grave space.

(f) Nothing in this chapter is intended to waive any immunity the city has.

8-7-12 **Transfer Of Ownership.**

The ownership of grave spaces is not transferable without the approval of the city manager. No transfer or assignment of any grave space, however described, or interest therein, shall be valid without the consent in writing of the city endorsed upon such transfer or assignment before it is to be effective, and after the document of transfer has been presented to the city manager to be filed in the cemetery records of the city. The city manager may withhold approval of a transfer if proof satisfactory to the city manager of ownership by the transferor is not presented, or if the evidence establishes that the grave space is already occupied. Approval of a transfer does not obligate the city to defend any challenge nor create any rights against the city in any person. Transference of burial space ownership grants only a right of use of this space for burial purposes.

8-7-13 **Abandoned Burial Spaces.**

(a) Reverts To The City: The ownership or right in or to any unoccupied cemetery grave space shall upon abandonment revert to the city.

(b) Presumption: Failure to inter in any burial space after one hundred years from purchase, transfer or interment in an adjacent grave space commonly owned, whichever is later in time, shall create a presumption that the unoccupied grave space has been abandoned; except that this presumption shall not apply when a letter of intent is filed by the owner or heir in title with the city before the end of the one hundred year period stating the intention to keep specified spaces vacant.

(c) Notice Required: Abandonment shall not be complete unless the registered owners or their heirs or assigns are notified in writing, mailed by first class or certified mail to the last known or registered address, by the city manager. In the event that the address of the owner or owner's heirs cannot be ascertained, then notice of such abandonment shall be sufficient if published in a newspaper of general circulation in Boulder County at least once a week for three weeks.

(d) Failure To Reply: If the registered owner or the owner's heirs or assigns fail to inform the city within sixty days after receipt of notice of abandonment or after final publication of such notice of an intention to retain the grave spaces remaining, then abandonment shall become final and the city may thereafter sell, transfer and convey title thereto. The funds derived from any sale of an abandoned space shall be deposited in the general fund.

8-7-14 **Burial.**

(a) No person shall bury any remains, cremated or not, nor disinter any remains, nor do any digging in the cemetery related to any burial without first obtaining a permit for the purpose from the city manager pursuant to chapter 4-26, "Cemetery Permits," B.R.C. 1981. Any burial of a casket or container containing the cremated remains of any person shall adhere to all requirements of a regular earth burial, except that it need not be buried deeper than twelve inches.

(b) The opening and closing of the grave will be the sole responsibility of the mortuary conducting the burial, and shall be at no expense to the city.

(c) All burials shall comply with the following requirements in addition to those which are requirements or conditions of the burial permit:

(1) All the excavation for a grave must be at least six inches from the boundary of the grave space, unless circumstances do not permit. But in no instance shall a grave excavation extend into a grave space which is not under common ownership.

(2) Not more than one body, or the remains of more than one body, shall be interred in one grave space. However, the remains of an infant may be buried in the grave space with a parent, and one cremated remains may be placed in the same grave space with one adult or infant burial or one other cremated remains.

(3) No person engaged in grave opening and closing operations or in erecting a grave marker or other structure shall attach a rope or other device to any grave marker, tree, or shrub. No such person shall scatter materials or tools over adjoining lots or block roadways or walks, or leave material or tools unattended on the grounds, or fail promptly to remove all debris and restore the ground to its original condition.

(4) Any expense to the city for cleaning up to make the grave space reasonably neat, removal of excess soil, repairing damages to adjacent grave spaces or the cemetery generally which is required shall be billed by the city to the mortuary which contracted for the opening and closing.

(5) Any costs incurred for repairs required for damage done to lots, walks, trees, shrubs, drives or other property by the mortuaries or monument dealers or contractors or their agents shall be charged to the mortuary or monument dealer or the contractor or to their principal.

8-7-15 **Grave Markers.**

(a) No grave marker shall be installed, removed, moved, altered, or repaired except pursuant to a permit from the city manager pursuant to chapter 4-26, "Cemetery Permits," B.R.C. 1981.

(b) If any grave marker becomes unsightly, dilapidated, is in imminent danger of being stolen or vandalized, has fallen or is in imminent danger of falling, or is a menace to the safety of visitors, the city manager may either correct the condition or remove the marker for protective storage at no expense to the lot owner.

8-7-16 **Other Code Provisions.**

All other applicable city code provisions are in force in the cemetery unless specifically contradicted or altered by some provision of this chapter. Without limitation these include the prohibition on alcoholic beverages, the prohibition against unreasonable noise and against noise exceeding the prescribed decibel limits, the prohibition against damaging city property, the city and state prohibitions against vandalism, the requirement that dogs be on a leash and their excrement be picked up by the dog's guardian or keeper, and the prohibition against littering.

TITLE 8 PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS

Chapter 8 Open Space And Mountain Parks Visitor Master Plan Implementation[1]

Section:

8-8-1 Purpose.

The purpose of this chapter is to protect the public health, safety, and general welfare by establishing procedures and requirements necessary to implement the Open Space and Mountain Parks Visitor Master Plan.

8-8-2 Habitat Conservation Area Designation.

(a) The city manager is authorized to identify and propose areas for restricted public use that would appropriately constitute habitat conservation areas within the city's open space and mountain parks system based upon the criteria set forth in the Open Space and Mountain Parks Visitor Master Plan. The city manager shall seek advice and comments from the Open Space Board of Trustees when developing a proposal.

(b) The city council may order designation of the habitat conservation area or areas by ordinance, subject to such conditions as may be deemed appropriate.

8-8-3 Travel Restricted To Designated Trails In Habitat Conservation Areas.

(a) Within any habitat conservation area, no person shall travel or be present on any area off a designated trail.

(1) It is a specific defense to a charge of violation of this section that:

(A) Such travel or presence was necessary for a guardian, owner or keeper to remove the animal excrement of an animal under his or her control; or

(B) Such travel or presence was authorized by an off-trail permit issued by the city manager.

(b) Within any habitat conservation area on a trail posted as a Voice and Sight Control Corridor, no person owning or keeping any dog shall fail to keep the dog within a trail corridor including the designated trail and extending twenty feet to either side of the designated trail.

[1]Adopted by Ordinance No. 7443.

(c) Unless posted otherwise, within any habitat conservation area no person owning or keeping any dog shall fail to keep the dog on a leash held by a person.

8-8-4 **Model Glider Flying.**

No person shall fly a model glider upon open space and mountain parks properties unless permitted by signs posted in designated areas.

Ordinance Nos. 7458 (2006); 7479 (2006).

8-8-5 **Fishing Prohibited Except Where Posted.**

Notwithstanding this section, fishing on open space and mountain parks properties may be allowed where posted.

8-8-6 **Newly-Acquired Properties Available For Public Use Only After Opening.**

All properties newly acquired by the open space and mountain parks department for the City of Boulder shall become available for public use only after they are opened by the city. At the time new property is acquired, the city manager shall identify and recommend to the Open Space Board of Trustees and city council, a temporary closure period sufficient in length to allow appropriate investigation and designation for appropriate public use.

8-8-7 **Permits For Off-Trail Use In Habitat Conservation Areas.**

The city manager may issue permits for off-trail use in habitat conservation areas. The city manager shall promulgate rules to implement this section pursuant to section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981.

8-8-8 **Permits For Special Uses On Open Space And Mountain Parks Lands.**

(a) No person shall organize, promote, or stage a noncommercial event intended for or which can reasonably be expected to draw an attendance of twenty-five or more participants and spectators on any open space and mountain parks property without first obtaining a permit from the city manager under this section.

(b) No person who has obtained a permit from the city manager under this section shall organize, promote, or stage a noncommercial event intended for or which can reasonably be expected to draw an attendance of twenty-five or more participants and spectators on any open space and mountain parks property without having the permit in their possession at all times during such event.

(c) An applicant for a permit shall file an application at least fourteen days before the requested day of the event. The application shall be signed by at least one adult and shall contain:

(1) The name and address of the individual or organization sponsoring the event;

(2) The name, address, and telephone number of the individual in charge of the event;

(3) The site for which the permit is requested;

(4) The type of event and a complete description of the planned activities;

(5) The day and hours for which the permit is sought; and

(6) An estimate of the anticipated attendance.

(d) Upon receiving an application, the city manager shall:

(1) Verify the accuracy of the information;

(2) Determine whether there is a conflict with prior applications or scheduled city activities, which have priority. If there is a conflict, the manager will notify the applicant to permit amendment of the application to avoid the conflict;

(3) Review the requested site of the event to determine whether or not the available seating, parking, and sanitation facilities are adequate for the proposed use; whether or not the event would conflict with any law, ordinance, code, rule or regulation, resource management, or environmental policy; and whether or not the event would unduly interfere with the general public use of the site; and

(4) Review the proposed time of the event and the estimated attendance and consider other relevant circumstances to determine whether a security deposit or insurance is necessary to protect against possible damage to city property and defray costs of restoration of the premises to a neat and orderly condition. The manager may require a deposit or insurance of no less than $100.00 and, if the manager determines that $100.00 is insufficient, a larger deposit or insurance may be required. The manager may also return all or a portion of the security deposit upon the determination that it is not necessary to protect the interests of the city.

(e) If the applicant fulfills the requirements prescribed by this section, the city manager may issue a permit if the event is appropriate for the site, the infrastructure of the site will support the event without environmental or resource damage, and the public benefit from the proposed event exceeds its detriments. Each permit is subject to the following conditions:

(1) The applicant takes all reasonable steps to protect city facilities and property, including flora and fauna, against damage;

(2) The applicant cleans and restores the premises to a neat and orderly condition;

(3) The applicant charges no admission for the event unless it is a city sponsored event;

(4) The applicant is responsible for assuring that the noise emanating from the event complies at all times with the standards prescribed by chapter 5-9, "Noise," B.R.C. 1981;

(5) The applicant is responsible to assure that all participants and spectators comply with all applicable state and city laws; and

(6) The applicant advises all participants and spectators to comply with all applicable state and city laws.

(f) The city manager may revoke a permit issued under this section at any time before or during the event for any reason, for no reason, or for breach of any of the conditions prescribed by subsection (d) of this section. Any permit issued pursuant to this section shall be deemed a revocable license that does not convey a property interest of any kind. If a permit is revoked before the event, any security deposit shall be promptly refunded to the permittee. If the

manager revokes the permit, the event must cease immediately. No person shall continue an event after a permit has been revoked.

(g) After the event and during working hours, each permittee under this section shall contact the city manager to inspect the area used in the event. If no damage has been done and the area has been properly cleaned, the manager shall return the security deposit. If the permittee has failed to meet the obligations prescribed by this section, the manager shall retain a sum from the deposit sufficient to cover the damage or restore the premises to a neat condition. If the security deposit does not completely indemnify the city for damage or cleaning costs necessary to restore the area, the permittee shall not fail to pay immediately to the city a sum to cover these extra costs.

(h) Groups of between twenty-five and forty-nine participants from bona fide educational institutions may request and, in the discretion of the city manager or his or her designee, receive an exemption from the permit requirements of this section, provided that they meet the following requirements:

(1) The requesting group has provided at least fourteen days' notice of the event to the city manager or his or her designee; and

(2) The requesting group has agreed to abide by low impact use principles as may from time to time be established by rule issued under section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981; and

(3) The requesting group has agreed to any location change recommendations which may be made by the city manager or his or her designee in order to avoid resource impacts or use conflicts.

Ordinance Nos. 7458 (2006); 7502 (2006).

8-8-9 Permits For Commercial Uses On Open Space And Mountain Parks Lands.

(a) No person shall organize, promote, or stage a commercial use event on any open space and mountain parks property without first obtaining a permit from the city manager under this section.

(b) No person who has obtained a permit from the city manager under this section shall organize, promote, or stage a commercial use event on any open space and mountain parks property without having the permit in their possession at all times during such event.

(c) No person who has obtained a permit from the city manager under this section shall assert or attempt to assert an exclusive right to use a particular place, site or area, nor shall any such person remove or exclude, or attempt to remove or exclude, any other person from a particular place, site or area.

(d) For the purposes of this section, "commercial use" shall mean either:

(1) Any activity for which a fee, charge, purchase of goods or services, or donation is required for the provision of a service or as a condition of attendance or participation, including, but not limited to, dog walking, outdoor guide services, environmental education, and clubs, camps or other organizations that merely use school facilities; or

(2) Photography, videography, or filmmaking for compensation or hire that involves human or animal subjects;

provided however that a bona fide educational group engaged in a curricular school activity, including noncompetitive athletic activities and before- or after-school activities, shall not be considered engaged in a commercial use.

(e) The city manager may issue single event commercial use permits or annual commercial use permits for groups of not more than sixteen persons without conducting a special review of the application. The city manager may also issue triennial commercial use permits to such annual permittees who have three consecutive years of successful compliance with all requirements of the annual permit.

(f) The city manager may issue single event commercial use permits or annual commercial use permits for groups of more than sixteen persons upon conducting a special review of the application. "Special review" shall mean a thorough examination of the proposed use, and imposition of conditions of approval, to assure mitigation of large group impacts. The city manager shall prescribe the requirements for special review through rule issued under section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981. The city manager may also issue triennial commercial use permits to such annual permittees who have three consecutive years of successful compliance with all requirements of the annual permit.

(g) The city manager may issue limited use permits for groups of not more than sixteen. "Limited use permit" shall mean an annual permit for which the commercial use events are restricted to not more than fifty visitor days (number of persons x number of days, including the leader) of designated trail use with groups of sixteen or fewer.

(h) An applicant for a permit shall file an application at least fourteen days before the requested event or annual permit application period. If an application is denied, the applicant may request a statement of the reasons for the denial. The city manager shall require applicants to provide insurance naming the city as an additional insured in such amounts as may be required to cover the maximum possible municipal liability exposure under state law. The city manager may prescribe such additional requirements and restrictions as may be necessary to minimize and mitigate use impacts, and as may be necessary or desirable for the implementation and enforcement of this section.

(i) The city manager shall prescribe by rule issued under section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981, such additional requirements as may be deemed necessary for the implementation and enforcement of this section.

(j) The city manager may revoke a permit issued under this section at any time before or during the permit period for any reason, for no reason, or for breach of any of the conditions prescribed by subsection (f) of this section. Any permit issued pursuant to this section shall be deemed a revocable license that does not convey a property interest of any kind. If a permit is revoked before the event, any security deposit shall be promptly refunded to the permittee. If the manager revokes the permit, the event must cease immediately. No person shall continue an event after a permit has been revoked.

(k) No person shall fail to comply with each term and condition of a permit issued under this section.

Ordinance Nos. 7458 (2006); 7479 (2006); 7503 (2006).

8-8-10 **Competitive Events Prohibited.**

No person shall organize, promote, conduct or participate in a competitive event upon open space and mountain parks properties. For the purposes of this section, "competitive event" shall mean

8-8-10

any event or activity in which four or more persons try to exceed the performance of each other or another person in a physical activity.

Ordinance No. 7458 (2006).

TITLE 9

LAND USE CODE

TITLE 9 LAND USE CODE

Chapter 1 General Provisions[1]

Section:

9-1-1 Legislative Intent.

This title is intended to accomplish the following purposes:

(a) Promote coordinated sound development, effective use of land, and high quality site planning considering and complementing the city's unique geographic setting, amenities of view, and open space;

(b) Prevent overcrowding of land, overtaxing of public facilities and services, unregulated growth, poor quality development, waste and inefficient use of land, danger and congestion in travel and transportation, and any other use or development that might be detrimental to the stability of the city;

(c) Protect and promote public safety, health, and general welfare by providing adequate light and air, public transportation, water and sewage control, police and fire protection, educational and recreational opportunities, and floodplain and wetlands protection;

(d) Encourage innovation in residential development and renewal that meets the growing demand for housing by providing a greater variety in type and design of dwellings and affordability levels;

[1]Adopted by Ordinance No. 7476.

(e) Preserve the character and stability of neighborhoods and conserve property values by encouraging the most appropriate uses of land within zoning districts;

(f) Support and implement the goals of the Boulder Valley Comprehensive Plan and adopted area and sub-area plans;

(g) Provide equal opportunity in housing to the handicapped;

(h) Provide a reasonable balance between the right of a business or an individual to identify itself and to convey its message through signage and the right of the public to be protected against the visual discord that results from the unrestricted proliferation of signs; and

(i) Protect, enhance, and perpetuate buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past, and to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.

9-1-2 How To Use This Code.

A general description of these land use regulations follows. This description is intended to provide the reader with some guidance using this code. This section is not intended to be a substitute for the standards, criteria, and procedures contained in this code.

(a) Organization: This title is divided into sixteen chapters. Each chapter is further subdivided into sections, subsections, paragraphs, and subparagraphs. A consistent numbering and formatting convention is used throughout the title to identify these divisions and to help orient the user to the organization of information. The example below illustrates the formatting and numbering convention:

9-1-1 **Section Heading.**

(a) Subsection Heading:

(1) Paragraph Heading:

(A) Subparagraph Heading:

When necessary, the numbering system continues beyond the subparagraph heading following a similar pattern of numbering and indentation. Each section includes all material between two section headings. For example, section 9-1-1 includes all material beginning with the number 9-1-1 up to number 9-1-2. References to any division of this title include all material located within the referenced section, subsection, paragraph, subparagraph, etc.

(b) Zoning Map: Zoning districts are the primary tool for regulating land in Boulder. Prior to considering developing land, an applicant should refer to the official zoning map to determine which zoning district his/her property is located within. The official zoning map is available at the planning department.

(c) Modular Zone System: Zoning districts in Boulder are comprised of standards from three modules: use, form, and intensity. Combining elements of the three modules creates a zoning district. The zoning districts are identified in section 9-5-2, "Zoning Districts," B.R.C. 1981.

(1) Use Module: The use module establishes the uses that are permitted, conditionally permitted pursuant to section 9-2-2, "Administrative Review Procedures," B.R.C. 1981, prohibited, or that may be permitted through use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981. Conditional uses are reviewed through an administrative (staff) review process to ensure conformance with specific use standards. If the use requires a use review, then the project will be required to complete a discretionary review to ensure that any impacts of the use on the surrounding area are minimized. Finally, if the use is an existing legal use that is no longer allowed in the zoning district, and there is a proposal to change or modify the use, it may also be required to complete a use review.

(2) Form Module: The form module establishes the physical parameters for development such as setbacks, building coverage, height, and special building design characteristics. Solar access standards, located in section 9-9-17, "Solar Access," B.R.C. 1981, may also impact building form and should be reviewed in conjunction with the form standards.

(3) Intensity Module: The intensity module establishes the density at which development may occur and includes: minimum lot sizes, minimum open space per dwelling unit, number of dwelling units per acre, minimum open space per lot or parcel, and floor area ratios when applicable.

(d) Overlay Districts And Development Standards: In addition to the zoning district standards, there are additional sets of standards that may be applicable to a property, depending on its location. The applicant should check with the planning department to find out if the property is subject to such regulations, based on the official maps available from the department. First, the applicant should determine if the property is located within a floodplain. Standards regulating lands in the floodplain are found in sections 9-3-2 through 9-3-8, B.R.C. 1981. If the property is located near the airport, the applicant should determine if the property is located within the airport influence overlay zone. Those standards are located in section 9-3-10, "Airport Influence Zone," B.R.C. 1981. The applicant should also determine if the property contains any significant wetlands. These regulations are found in section 9-3-9, "Wetlands Protection," B.R.C. 1981. Finally, the applicant should determine if the property is a designated landmark or located in a designated historic district. Standards regulating historic preservation are located in chapter 9-11, "Historic Preservation," B.R.C. 1981. In all cases, these overlay district standards apply in addition to any standards of the underlying zoning district. For example, the floodplain overlay regulations may limit or prohibit expansion of existing structures on portions of lots located in the floodplain, even though the basic zone standards would allow it. Other types of overlays may supplement the basic zone standards. For example, a property within the airport influence zone may limit uses or building heights beyond what the base zone standards allow.

(e) Development Standards: Chapter 9-9, "Development Standards," B.R.C. 1981, includes development standards that apply in addition to the zoning and overlay district standards. These include standards for parking, landscaping, signs, open space, site access, lighting, solar access and other elements of development.

(f) Variances Of Standards/Site Review Process:

(1) If the applicant cannot meet the standards described in subsections (b), (c) and (d) of this section, the applicant should determine whether there are alternative development options or any exceptions to the general rules in the code that may accommodate the project. If the project does not meet standards and other development alternatives are not possible, then there are two basic methods available to attempt to vary the standards: the variance process and the site review process.

(2) The variance process is generally used for existing development. Bulk and form requirements may be varied if the applicant can demonstrate an unusual physical circum-

stance or other hardship. The variance requirements are found in section 9-2-3, "Variances And Interpretations," B.R.C. 1981.

(3) The requirements for the site review process are found in section 9-2-14, "Site Review," B.R.C. 1981. If the project is large enough to meet the minimum thresholds set forth in the code, then the bulk and form requirements and other specified development standards may be varied as part of a unified development proposal through a site review. If the project is smaller than the minimum thresholds standards, it is not eligible for site review. All projects that exceed the maximum site review threshold will be required to complete a site review.

(g) Nonconformance Standards: Adoption of land use controls and changes in zoning have created nonconforming uses, non-standard buildings, and non-standard lots. Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, describes the treatment of these nonconformities. In general, the policy of the city is to allow these nonconforming uses and non-standard buildings to be changed and upgraded without requiring their elimination if the change would not substantially adversely affect the surrounding area and if the change would not increase the degree of nonconformity of the use.

(h) Subdivision Of Land: If the applicant would like to subdivide a piece of property or merge a number of different parcels into one parcel, the applicant may need to go through the subdivision process. The purpose of the subdivision process is to ensure that proposed building sites are appropriate for development; to obtain an accurate and permanent record of the separate interests of land that are created by subdivision of land; to apportion the costs of public services and facilities serving the subdivision; to provide assurances to future buyers of land that the subdivider owns the land to be sold; to provide legal and physical access to each lot; and to provide for maintenance of improvements, utilities, and amenities. There are a number of divisions of land to which the subdivision regulations do not apply. The applicant should review these exceptions to determine if the project will be required to complete the subdivision process. There is also an abbreviated process for projects that only require elimination of a lot line between two lots within an existing subdivision. The subdivision process is found in chapter 9-12, "Subdivision," B.R.C. 1981. The exceptions are found in section 9-12-2, "Application Of Chapter," B.R.C. 1981. The minor subdivision process is found in section 9-12-5, "Minor Subdivision," B.R.C. 1981. The abbreviated process for lot line eliminations, lot line adjustments and minor subdivisions is found in section 9-12-4, "Elimination Of Lot Lines," B.R.C. 1981.

(i) Inclusionary Zoning: The city has adopted regulations to assist in providing a diverse housing stock affordable to people of varying incomes. Chapter 9-13, "Inclusionary Zoning," B.R.C. 1981, sets forth the standards for the city's inclusionary zoning and moderate income housing programs. Inclusionary zoning requires that most new residential development contribute toward permanent affordable housing in the city. Generally speaking, twenty percent of the total number of units are required to be permanently affordable to low income households.

(j) Growth Management: The growth management system sets the maximum rate of residential growth at approximately one percent per year. This is achieved by allocating the number of dwelling units for which a building permit can be granted in any given year. Provided that there are enough allocations, each development is entitled to up to forty allocations per year. The allocations are distributed on a quarterly basis. During the last quarter of the year, the applicant may receive up to thirty-five more allocations (to a total of seventy-five) if there are enough allocations available in the system. If the applicant has a project that requires more allocations than are allowed because of the size of the building, building configuration, or infrastructure phasing, the applicant may bank allocations over time to build out the project. New residential development that meets the requirements of the city's affordable housing programs and residential development located in commercial, industrial and mixed-use zoning districts are not required to meet the allocation requirements of the growth

management system regulations. Those regulations are found in chapter 9-14, "Residential Growth Management System," B.R.C. 1981.

(k) Enforcement Of The Land Use Regulations: Violations of the land use regulation are investigated by the Development and Inspection Services division of the Public Works Department and are prosecuted in municipal court, by district court actions, or through administrative hearings. A hearing also is available before the Planning Board to protest a violation of a development review approval. The enforcement provisions are found in chapter 9-15, "Enforcement," B.R.C. 1981.

9-1-3 Application Of Regulations.

(a) General Applicability: The regulations, requirements, limitations, and provisions of this title shall extend and apply only to land and the use of land within the corporate limits of the City of Boulder, Colorado, except as may otherwise be specified in this title.

Ordinance No. 7535 (2007).

(b) General Compliance Requirements:

(1) No building, structure, or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, moved, or altered except in conformity with all of the regulations of this title.

(2) No part of a lot area, open space, off-street parking area, or yard required about or in connection with any building for the purposes of complying with this title, may be included as part of a lot area, an open space, off-street parking area, or yard similarly required for any other building or use, except as otherwise specifically permitted by the provisions of this title.

(3) Any building or occupancy permit issued in conflict with the provisions of this title shall be null and void and may not be construed as waiving any provision of this title.

(c) Private Covenants: Nothing in this title abrogates or is affected by any private covenant affecting uses of land or buildings or affects the right of any person to enforce such a covenant.

9-1-4 Transitional Regulations.

This section addresses the applicability of new substantive standards enacted by this title to activities, actions, and other matters that are pending or occurring as of the effective date of this title.

(a) Expiration Of Development Approvals:

(1) Any approval previously granted, including, without limitation, site reviews, use reviews, planned unit developments, special reviews, height reviews, nonconforming reviews, and variances, becomes subject to the provisions of any amendment to this title, unless application for a building permit has been made, or a certificate of completion has been issued pursuant to such approval by the date falling one year after the effective date of such respective amendment.

(2) If a building permit has been issued on any such development approval by September 15, 2006, it may be continued under the conditions of its approval, but it may only be amended

or modified in accordance with the minor modification and amendment provisions of sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981.

Ordinance No. 7522 (2007).

(b) Expiration Of Exceptions, Planned Developments, And Planned Residential Developments: Any exception, PD (planned development) or PRD (planned residential development) is subject to the provisions of this title, unless construction of such exception, PD, or PRD commenced by February 8, 1984. If, by February 8, 1984, a building permit had been issued for any use or occupation of land previously approved as an exception, a PD, or a PRD, such use or occupation may be continued under the conditions of its approval. Any change in the use or occupation of such land shall be made in accordance with the amendment provisions of section 9-2-14, "Site Review," B.R.C. 1981.

(c) Existing Uses That Require A Use Review Or Conditional Use Approval: Any previously approved use that was established prior to the adoption of new regulations that make such use permitted only pursuant to a conditional use or a use review shall be allowed to continue in operation. Any change or expansion of a use that was established prior to the adoption of new regulations that make such use permitted pursuant to a conditional use or a use review shall be made in conformance with the applicable standards for use review, conditional uses, or for changes or expansions to nonconforming uses. If active and continuous operations of such a use are not carried on for a period of one year, it shall thereafter be occupied and used by a use meeting the requirements of this title, as required by subsection 9-10-2(a), B.R.C. 1981.

(d) Violations Continue: Any violation of the previous land development regulations of the city shall continue to be a violation under this title and shall be subject to the penalties and enforcement set forth in chapter 9-15, "Enforcement," B.R.C. 1981, unless the use, development, construction, or other activity is clearly consistent with the express terms of this title.

9-1-5 Amendments And Effect Of Pending Amendments.

(a) The city council may amend the chapters of this title only after receiving the advice and recommendations of the planning board, except for sections 9-3-1, "Purpose Of Overlay And How To Use The Overlays," B.R.C. 1981, to 9-3-8, "Development Violating Chapter Is Nuisance," B.R.C. 1981, and amendments to chapter 9-11, "Historic Preservation," B.R.C. 1981, the recommendations of the landmarks board. The planning board or landmarks board recommendation shall be determined after a public hearing held by the board at least ten days after notice published in a newspaper of general circulation in the city.

Ordinance No. 7535 (2007).

(b) The city manager shall not issue a building permit, for a period not to exceed one hundred twenty days, that conflicts with a proposed amendment to this title, between the earlier of the date of the planning board's recommendation to the city council or the city council's first reading on such amendment and the city council's final action thereon.

9-2

TITLE 9 LAND USE CODE

Chapter 2 Review Processes[1]

Section:

[1]Adopted by Ordinance No. 7476.

9-2-1 **Types Of Reviews.**

(a) Purpose: This section identifies the numerous types of administrative and development review processes and procedures. The review process for each of the major review types is summarized in table 2-1 of this section.

(see following page for continuation of Section 9-2-1)

(b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

I. ADMINISTRATIVE REVIEWS	II. ADMINISTRATIVE REVIEWS - CONDITIONAL USES	III. DEVELOPMENT REVIEW AND BOARD ACTION
• Building permits • Change of address • Change of street name • Demolition, moving and removal of buildings with no historic or architectural significance, per section 9-11-23, "Review Of Permits For Demolition, On-Site Relocation, And Off-Site Relocation Of Buildings Not Designated," B.R.C. 1981 • Easement vacation • Extension of development approval/staff level • Landmark alteration certificates (staff review per section 9-11-14, "Staff Review Of Application For Landmark Alteration Certificate," B.R.C. 1981) • Landscape standards variance • Minor modification • Nonconforming use (extension, change of use (inc. parking)) • Parking deferral per subsection 9-9-6(e), B.R.C. 1981 • Parking reduction of up to fifty percent per subsection 9-9-6(f), B.R.C. 1981 • Parking stall variances • Public utility • Recession of development approval • Revocable permit • Right-of-way lease • Setback variance • Site access variance • Solar exception • Zoning verification	• Accessory Units (Dwelling, Owners, Limited) • Antennas for Wireless Telecommunications Services • Bed and Breakfasts • Cooperative Housing Units • Daycare Centers • Detached Dwelling Units with Two Kitchens • Drive-Thru Uses • Group Home Facilities • Home Occupations • Manufacturing Uses with Off-Site Impacts • Neighborhood Service Centers • Offices, Computer Design and Development, Data Processing, Telecommunications, Medical or Dental Clinics and Offices, or Addiction Recovery Facilities in the Service Commercial Zoning Districts • Recycling Facilities • Religious Assemblies • Residential Care, Custodial Care, and Congregate Care Facilities • Residential Development in Industrial Zoning Districts • Restaurants and Taverns • Sales or Rental of Vehicles on Lots Located Five Hundred Feet or Less from a Residential Zoning District • Service Stations • Shelters (Day, Emergency, Overnight, temporary) • Temporary Sales • Transitional Housing	• Annexation/initial zoning • BOZA variances • Concept plans • Demolition, moving, and removal of buildings with potential historic or architectural significance, per section 9-11-23, "Review Of Permits For Demolition, On-Site Relocation, And Off-Site Relocation Of Buildings Not Designated," B.R.C. 1981 • Landmark alteration certificates other than those that may be approved by staff per section 9-11-14, "Staff Review Of Application For Landmark Alteration Certificate," B.R.C. 1981 • Lot line adjustments • Lot line elimination • Minor Subdivisions • Out of City utility permit • Rezoning • Site review • Subdivisions • Use review • Vacations of street, alley or access easement

Ordinance No. 7522 (2007).

9-2-2 Administrative Review Procedures.

(a) Purpose: Administrative review of projects will occur at various times in project development to ensure compliance with the development standards of the city.

(b) Scope Of Administrative Review: Every application found in this title that permits an administrative review or action shall be subject to the following procedures. The list of administrative reviews is found in columns I and II of table 2-1 of this section. Any reference that authorizes an action by the city manager that is not specifically identified in column I or II of the chart shall be assumed to be an informal application procedure.

(c) Application Requirements:

(1) Those reviews not identified in column I or II of the chart shall submit an application in the form of a letter addressed to the city manager.

(2) The administrative review requests found in columns I and II shall be submitted on an application form provided by the city manager. No application will be accepted until it is determined to be complete. This determination will be made within five days of the submission of the application.

(3) The letter or application shall include the information required and address all criteria identified in the code section under which review and action is sought or required.

(4) If, in the city manager's judgment, the application does not contain sufficient information to permit an appropriate review, the manager may request additional information from the applicant. This additional information may include, without limitation, a written statement describing the operating characteristics of proposed and existing uses and a site plan showing dimensions, distances, topography, adjacent uses, location of existing and proposed improvements including, but not limited to, landscaping, parking and buildings.

(d) Administrative Review Decision:

(1) Approval: If the city manager approves an administrative review application, a building permit or approval may then be issued, provided that all other requirements of this code and all other ordinances of the city are satisfied.

(2) Denial: An administrative review application will be denied for failure to comply with this code or another ordinance of the city. If a development application is denied, the reasons for the denial will be stated in writing.

(3) Judicial Review: Any person aggrieved by the final decision of the city manager may seek judicial review pursuant to subsection 9-4-4(g), B.R.C. 1981.

9-2-3 Variances And Interpretations.

(a) Purpose: This section identifies those standards that can be varied by either the city manager or the Board of Zoning Adjustment (BOZA). Some standards can be varied by the city manager through an Administrative Review process, others by BOZA by another level of Administrative Review. The city manager may defer any administrative decision to BOZA.

(b) Interpretations: The city manager may decide questions of interpretation and application of the regulations of this title as a ministerial function. Interpretations made by the city manager of chapters 9-6, "Use Standards," 9-7, "Form And Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, may be appealed to the BOZA by filing an application in compliance with this section.

(1) Planning Board Call-Up: A member of the planning board may call-up any interpretation of the BOZA through the procedures of section 9-4-4, "Appeals, Call-Ups And Public

Hearings," B.R.C. 1981. The planning board may consider the record, or any portion thereof, of the hearing before the BOZA in its consideration of the matter.

(2) City Council Call-Up: The city council may call-up for review any interpretation of the BOZA upon which the planning board has acted pursuant to the procedures of section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981. The council may consider the record, or any portion thereof, of the hearing before the planning board in its consideration of the matter.

Ordinance No. 7522 (2007).

(c) Administrative Variances: The city manager may grant a variance from the minimum yard setback requirement of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, of up to twenty percent of the required yard setback, if the manager finds that the application satisfies all of the requirements in subsection (h) of this section and if the applicant obtains the written approvals of impacted property owners. If written approvals of impacted property owners cannot be obtained, the applicant may apply for consideration of the variance before the BOZA. Applicants shall apply for the variance on a form provided by the city manager and shall pay the application fee required by title 4, "Licenses And Permits," B.R.C. 1981, at time of submittal of the application. The city manager may also grant variances or refer variance requests to the BOZA to allow development not in conformance with the provisions of this chapter which otherwise would result in a violation of federal legislation including, but not limited to, the Federal Fair Housing Act, or the Americans with Disabilities Act.

Ordinance No. 7522 (2007).

(d) Board Of Zoning Adjustment (BOZA): The BOZA may grant variances from the requirements of:

(1) Setbacks listed in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981;

(2) The building coverage requirements of chapter 9-10, "Nonconformance Standards," B.R.C. 1981;

(3) The spacing requirements for mobile homes of section 9-7-10, "Mobile Home Park Form And Bulk Standards," B.R.C. 1981;

(4) The porch setback and size requirements of section 9-7-4, "Setback Encroachments For Front Porches," B.R.C. 1981;

(5) The size and parking setback requirements for accessory units of subsection 9-6-3(a), B.R.C. 1981;

(6) The total cumulative building coverage requirements for accessory buildings of section 9-7-8, "Accessory Buildings In Residential Zones," B.R.C. 1981;

(7) The use of a mobile home for nonresidential purposes subject to the requirements of subsection 10-12-6(b), B.R.C. 1981;

(8) The parking requirements of subsection 9-9-6(d), B.R.C. 1981, with regards to parking in landscaped front yard setbacks;

(9) Sign code variances and appeals as permitted by subsection 9-9-21(s), B.R.C. 1981; and

In granting any variance, the board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this title.

(e) Application Requirements: A person having an interest in the property for which the variance is requested or a person having an interest in an interpretation by the city manager of section 9-6-1, "Schedule Of Permitted Land Uses," or 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may file an application on a form provided by the city manager that shall include, without limitation, the following, but the manager may waive particular application requirements if not required for review of the interpretation at issue:

(1) The written consent of the owners of the property for which the variance is requested or, in case of a request for review of an interpretation, a statement of the person's interest in the interpretation at issue;

(2) A list of property owners within three hundred feet;

(3) An improvement survey;

(4) A site plan including building height and setback;

(5) A building floor plan and building elevation plan;

(6) A demolition plan, if the applicant proposes to remove any part of the roof or remove any walls;

(7) In case of a variance, a written statement addressing the applicable criteria for approval of subsection (h), (i) or (j) of this section; and

Ordinance No. 7522 (2007).

(8) Any other information pertinent to the request. In addition, in case of a variance, the submitted application shall include the fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981.

(f) Public Notice: After receiving an application for a variance or an interpretation review, the city manager shall provide notice as specified in section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(g) Public Hearing: Except as provided in subsection (c) of this section, the BOZA shall hear a request for a variance or interpretation review at a public hearing, for which notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.

(h) Criteria For Variances: The BOZA may grant a variance only if it finds that the application satisfies all of the applicable requirements of paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this section and the requirements of paragraph (h)(5) of this section.

(1) Physical Conditions Or Disability:

(A) There are:

(i) Unusual physical circumstances or conditions, including, without limitation, irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property; or

(ii) There is a physical disability affecting the owners of the property or any member of the family of an owner who resides on the property which impairs the ability of the disabled person to utilize or access the property; and

(B) The unusual circumstances or conditions do not exist throughout the neighborhood or zoning district in which the property is located; and

(C) Because of such physical circumstances or conditions the property cannot reasonably be developed in conformity with the provisions of this chapter; and

(D) Any unnecessary hardship has not been created by the applicant.

(2) Energy Conservation:

(A) The variance will permit construction of an addition to a building that was constructed on or before January 1, 1983;

(B) The proposed addition will be an integral part of the structure of the building;

(C) The proposed addition will qualify as a "solar energy system" as defined in chapter 9-16, "Definitions," B.R.C. 1981, or will enable the owner of the building to reduce the net use of energy for heating or cooling purposes by a minimum of ten percent over the course of a year of average weather conditions for the entire building; and

(D) The costs of constructing any comparable addition within existing setback lines so as to achieve comparable energy purposes would be substantially greater than the cost of constructing the addition which is proposed for the variance.

(3) Solar Access:

(A) The volume of that part of the lot in which buildings may be built consistent with this code has been reduced substantially as a result of the provisions of section 9-9-17, "Solar Access," B.R.C. 1981;

(B) The proposed building or object would not interfere with the basic solar access protection provided in section 9-9-17, "Solar Access," B.R.C. 1981; and

(C) The volume of the proposed building to be built outside of the building setback lines for the lot will not exceed the amount by which the buildable volume has been reduced as a result of the provisions of section 9-9-17, "Solar Access," B.R.C. 1981.

(4) Designated Historic Property: The property could be reasonably developed in conformity with the provisions of this chapter, but the building has been designated as an individual landmark or recognized as a contributing building to a designated historic district. As part of the review of an alteration certificate pursuant to chapter 9-11, "Historic Preservation," B.R.C. 1981, the approving authority has found that development in conforming locations on the lot or parcel would have an adverse impact upon the historic character of the individual landmark or the contributing building and the historic district, if a historic district is involved.

(5) Requirements For All Variance Approvals:

(A) Would not alter the essential character of the neighborhood or district in which the lot is located;

(B) Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property;

(C) Would be the minimum variance that would afford relief and would be the least modification of the applicable provisions of this title; and

(D) Would not conflict with the provisions of section 9-9-17, "Solar Access," B.R.C. 1981.

(i) Floor Area Variances For Accessory Dwelling Units: The BOZA may grant a variance to the maximum floor area allowed for an accessory dwelling unit under subsection 9-6-3(a), B.R.C. 1981, only if it finds that the application satisfies all of the following applicable requirements:

(1) That the interior configuration of the house is arranged in such a manner that the space to be used as the accessory dwelling unit cannot feasibly be divided in conformance with the size requirements;

(2) That the variance, if granted, meets the essential intent of this title, and would be the minimum variance that would afford relief; and

(3) That the strict application of the provisions at issue would impose an undue and unnecessary hardship on the individual and that such hardship has not been created by the applicant.

(j) Variances For Parking Spaces In Front Yard Setbacks: The BOZA may grant a variance to the requirements of section 9-9-6, "Parking Standards," B.R.C. 1981, to allow a required parking space to be located within the front yard setback if it finds that the application satisfies all of the following requirements:

(1) The dwelling unit was built in an RR-1, RR-2, RE, or RL-1 zoning district;

(2) The dwelling unit originally had an attached carport or garage that met the off-street parking requirements at the time of initial development or, at the time of initial construction, an off-street parking space was not required and has not been provided;

(3) The garage or carport was converted to living space prior to January 1, 2005;

(4) The current property owner was not responsible for the conversion of the parking space to living area and can provide evidence as such;

(5) A parking space in compliance with the parking regulations of section 9-9-6, "Parking Standards," B.R.C. 1981, cannot reasonably be provided anywhere on the site due to the location of existing buildings, lack of alley access, or other unusual physical conditions;

(6) Restoring the original garage or carport to a parking space would result in a significant economic hardship when comparing the cost of restoration to the cost of any other proposed improvements on the site; and

(7) The proposed parking space to be located within the front yard setback space shall be paved with asphalt, concrete, or other similar permanent hard surface, shall comply with section 9-9-5, "Site Access Control," B.R.C. 1981, shall not be less than nine feet in width or more than sixteen feet in width, and shall not be less than nineteen feet in length. No parking space shall encroach into a public right-of-way or obstruct a public sidewalk.

Ordinance No. 7535 (2007).

(k) Conformity With Approved Site Plan: No person granted a variance shall fail to build in conformity with the approved site plan.

(l) Expiration Of Variance Approval: A variance granted by the BOZA or city manager automatically expires within one hundred eighty days of the date on which it is granted or within such other time as the BOZA or the city manager prescribes, unless a building permit for such variance is applied for within such period. The city manager may grant a one time extension for any approved variance not to exceed ninety days. Extension in excess of ninety days shall be approved by the decision authority for good cause shown. Extensions shall not exceed six months and only if an application for such extension is made prior to the expiration of the period.

Ordinance Nos. 5623 (1994); 6046 (1999); 6083 (1999); 7182 (2002); 7287 (2003); 7401 (2004).

9-2-4 Good Neighbor Meetings And Management Plans.

(a) Purpose And Applicability: Good neighbor meetings and management plans are required for some uses, such as shelters and some restaurants and taverns, in order to ensure that applicants, owners and operators of specific uses are informed of the effects of their use upon neighboring properties, and are educated about ways to mitigate, reduce, or eliminate potential impacts upon neighboring properties. The specific use standards of chapter 9-6, "Use Standards," B.R.C. 1981, identify those uses that must complete these procedures.

(b) Good Neighbor Meeting: When required, owners and operators shall conduct a good neighbor meeting that meets the following standards:

(1) Meeting With Surrounding Property Owners Required: Prior to submitting an application, the owner or operator shall be required to organize, host, and participate in a meeting with the surrounding property owners. The time and place of the meeting shall be approved by the city manager. Nothing in this section shall relieve the owner or operator of the responsibility to otherwise comply with all other laws applicable to the property or business.

(2) Purpose Of Meeting: The purpose of the meeting described in subsection (a) of this section is to provide interested persons in the surrounding neighborhood an opportunity to inform the facility owner or operator of the concerns of the neighborhood. The facility owner or operator shall also provide interested persons in the surrounding neighborhood an opportunity to comment on its proposed management plan. The issues to be addressed at this meeting may include, without limitation, hours of operation; client and visitor arrival and departure times; coordinated times for deliveries and trash collection; mitigation of noise impacts; security; the facility's drug and alcohol policy; loitering; employee education; the facility's responsibilities as good neighbors; neighborhood outreach and methods for future communication; and dispute resolution with the surrounding neighborhood.

Ordinance No. 7522 (2007).

(3) Notice For The Meeting: Notice of the meeting shall be provided as set forth in section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(4) Waiver Of Requirement: The city manager may waive the requirement that the applicant organize, host, and participate in a good neighbor meeting upon finding that the applicant will not require a use review, and that the needs of the facility's clients for anonymity and a safe and secure environment will be compromised by such a meeting.

(c) Management Plan: When required, owners and operators shall develop a management plan that addresses how the applicant will mitigate the potential adverse impacts that a facility

9-2-4

may have on the surrounding neighborhood. The approving authority will not approve a management plan unless it adequately addressees such impacts. The following standards apply to the preparation, submission, and approval of a management plan:

(see following page for continuation of Section 9-2-4)

(1) Elements Of A Management Plan: The management plan shall contain the following components that address the mitigation of potential adverse impacts the facility may have on the surrounding neighborhood, to the extent necessary: hours of operation; client and visitor arrival and departure times; coordinated times for deliveries and trash collection; mitigation of noise impacts; security; the facility's drug and alcohol policy; loitering; employee education; the facility's responsibilities as good neighbors; neighborhood outreach and methods for future communication; and dispute resolution with the surrounding neighborhood.

(2) Preparation And Distribution Of A Proposed Management Plan: The owner or operator shall prepare a proposed management plan and present it to the surrounding property owners at the good neighbor meeting required by subsection (a) of this section.

(3) Submission Of A Management Plan: After the good neighbor meeting, the applicant shall submit a revised management plan with its application.

(4) Approved Management Plan: An approved management plan shall be used to define the operating characteristics of a facility. No person shall operate a facility in violation of an approved management plan.

(5) Amendment Of A Management Plan: When the owner or operator changes the operating characteristics in a manner that does not comply with the approved management plan, the owner or operator shall resubmit a management plan. No owner or operator shall fail to resubmit a management plan that meets the requirements of this section. The city manager is authorized to require an owner or operator to organize, host, and participate in a good neighbor meeting if the city manager determines that such a meeting will be of assistance in identifying additional adverse impacts that may have been created by the facility. The amended management plan shall address how the facility will address any additional adverse impacts that have been identified by the city manager. The city manager will approve the amended management plan upon finding that any such additional adverse impacts will be mitigated by amendments to the management plan.

(6) Management Plan As A Condition Of A Use Review Approval: A management plan shall be incorporated into the conditions of approval if the applicant is required to complete a use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

9-2-5 Development Review Process.

(a) Purpose: The development review process is established in order to provide a uniform and consistent method for evaluating and reviewing all proposals for discretionary review.

(b) Compliance Required: No person shall commence or complete construction of any structure or part thereof which requires a development review under this title without first complying with all applicable requirements of this title, receiving approval under this title, and complying with any condition of approval given under this title. No person shall use, occupy, or maintain any structures or part thereof for which a discretionary review approval under this title is required if no such approval was given, or in violation of any condition of approval.

9-2-6 Development Review Application.

(a) Application Requirements For Use Review And Site Review: A person having a demonstrable property interest in land to be included in a development review may file an application for approval on a form provided by the city manager that shall include the following:

(1) The written consent of the owners of all property to be included in the development;

(2) An improvement survey of the land;

(3) Development plans including site, landscaping, building plans, and building elevations as applicable;

(4) A written statement addressing the criteria for approval;

(5) All information required in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested;

(6) Any other information that the applicant wishes to submit; and

(7) The fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981, for the type of review requested.

(b) Combined Reviews: If a development proposal, by its nature, requires more than one type of approval under sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, the following will apply in addition to other requirements of this chapter:

(1) All applicable fees will be collected as prescribed in section 4-20-43, "Development Application Fees," B.R.C. 1981.

(2) The notice requirements of subsection (c) of this section shall be met for each individual type of approval required, although such notices may be combined in one document, one posting, and one publication.

(3) The approving agency will apply the criteria for each type of approval required under sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981.

(c) Public Notice Of Application: The city manager shall provide the public notice for a development review application as specified in section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(d) Notice - Mineral Estate: The applicant shall notify all owners of a mineral estate as specified in subsection 9-4-3(e), B.R.C. 1981.

(e) Inactive Applications:

(1) If, at any point in a development review process, the city manager has notified the applicant that additional or corrected materials are required, and the applicant has not submitted those materials within sixty days after the date of such notification, the application will be considered withdrawn. The city manager may extend the sixty-day period if requested by the applicant prior to its expiration and upon the applicant's demonstrating good cause for the additional delay.

(2) Any re-submittal of the application after the sixty day deadline will be treated as a new application for purposes of review, scheduling, public notice, and payment of application fees.

Ordinance Nos. 6093 (1999); 7117 (2001); 7210 (2002).

9-2-7 Development Review Action.

No development review application will be accepted unless and until it is determined to be complete. Such determination will be made within five days after the submission of the application. The city manager will review the application and provide the applicant with a list of any deficiencies.

(a) City Manager Review And Recommendation:

(1) The city manager shall, after acceptance of the application, review the application for compliance with the review criteria. The city manager shall provide the applicant with a written evaluation of the application and whether it meets or does not meet applicable criteria, and what modifications the applicant may wish to consider in order to meet applicable criteria and obtain the city manager's support.

(2) The applicant shall be afforded a maximum of sixty days to make any corrections or changes recommended by the city manager. If corrections or changes are not submitted in the prescribed time period, the application shall be considered withdrawn.

(3) The city manager shall approve the application in whole or in part, with or without modifications and conditions, deny the application, or may refer the application to the planning board for review or decision, as provided in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested.

(4) The manager will mail a written disposition of approval or denial with the reasons for denial to the applicant, appeal body, and to any person that requested notification of the final decision. A decision not referred to, appealed to, or called-up by the planning board is final fourteen days after the date of approval indicated on the disposition.

(b) Planning Board Review And Recommendation: Development review applications requiring a decision by the planning board shall be reviewed as follows:

(1) Referral: The city manager shall refer to the planning board any application for a development review which requires a board decision as required by sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, and any other application which the manager deems appropriate.

(2) Decision: Within thirty days of the public hearing provided for in section 9-2-8, "Public Hearing Requirement," B.R.C. 1981, or within such other time as the agency and the applicant mutually agree, the board will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The board will review the application in accordance with the standards and guidelines established in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested. The decision will specifically set forth in what respects the application meets or fails to meet the standards and criteria set forth in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested. A planning board decision not called up by the city council is final thirty days after the date of the decision.

(3) Appeal And Call-Ups:

(A) The applicant or any interested person may appeal the city manager's decision pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(B) A member of the planning board may call-up an application for review pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(c) City Council Call-Up: The city council may call-up any planning board decision pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(d) Building Permit Pending Appeal: A building permit may be applied for after the initial approval of a development review application, but no building permit will be issued until after any and all applicable call-up or appeal periods have expired. An applicant for such a permit bears all risks of subsequent disapproval and waives any claims arising from the permit application.

(e) Judicial Review: Any person aggrieved by the final decision of the city manager may seek judicial review pursuant to subsection 9-4-4(g), B.R.C. 1981.

9-2-8 **Public Hearing Requirements.**

Within sixty days after a referral, appeal, or call-up pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981, the approving agency, after publishing notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, will hold a public hearing on the application.

9-2-9 **Final Approval Requirements.**

(a) Development Agreement: After the approving agency has finally approved an application for use review or site review, the owner, and the city manager will execute a development agreement that incorporates all conditions of the approval, including, without limitation, time limits for completion of the development, and, if applicable, requirements for appropriate easements or deed restrictions if unique conditions of approval apply. The development agreement shall be binding on all parties thereto, shall run with the land, and will be recorded upon execution by the city clerk in the office of the County Clerk and Recorder of Boulder County. Any violation of a development agreement is a violation of this title.

(b) Final Mylar: The applicant shall file a mylar or electronic copy containing the approved site plan, any applicable restrictions or modifications to the underlying zoning district, and any conditions approved by the approving agency. The mylar or electronic copy shall be filed with the city manager, who will endorse and date the approved site plan. The location of the approved development will be included on an official map showing development in the city. The mylar or electronic copy will remain on file in the planning department.

(c) Expiration: Unless expressly waived by the city manager for good cause, pursuant to a request made prior to expiration of the approval, if the applicant fails to file the final mylar or sign the development agreement within ninety days of final approval, the approval expires.

9-2-10 **Amendment Procedures.**

An approved use review may be amended pursuant to subsection 9-2-15(h), B.R.C. 1981. An approved site review may be amended pursuant to subsection 9-2-14(l) or (m), B.R.C. 1981. The city manager may approve, without notice, minor modifications to a use review or a site review under the procedures prescribed by subsection 9-2-14(m), B.R.C. 1981.

9-2-11 Compliance With Development Agreement.

(a) Issuance Of The Certificate Of Occupancy Or Certificate Of Completion: Prior to issuance of a certificate of occupancy pursuant to a building permit or a certificate of completion for a use undertaken pursuant to a development agreement, the city manager will determine whether the provisions of the development agreement have been met. If the manager so finds, the manager will sign the certificate of occupancy or the certificate of completion. If not, the manager will provide to the developer or its successors an opportunity for a hearing before the planning board under chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, which will determine whether the development complies with the agreement and may:

(1) Revoke the site review or use review approval;

(2) Impose additional conditions or modifications to carry out the purposes of the original approval; or

(3) Seek enforcement remedies as provided in chapter 9-15, "Enforcement," B.R.C. 1981.

(b) Request For Planning Board Hearing For Failure To Comply With The Development Agreement: At any time after the execution of a development agreement, any person aggrieved by an alleged failure of the developer or its successors to comply with the development agreement may request a hearing, conducted pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, before the planning board. The planning board will determine whether the conditions of the agreement have been met and may:

(1) Revoke the site plan or use review approval;

(2) Impose additional conditions or modifications to carry out the purposes of the original approval; and

(3) Seek enforcement remedies as provided in chapter 9-15, "Enforcement," B.R.C. 1981.

Ordinance No. 7079 (2000).

9-2-12 Development Progress Required.

(a) Three-Year Rule: The applicant must begin and substantially complete the approved site review or use review as specified in the development agreement within three years from the time of the final approval of the site or use review or as modified by a development schedule incorporated in the development agreement. For the purposes of this section, "substantially complete" means the time when the construction is sufficiently complete so the owner can occupy the work or portion thereof for the use for which it is intended. If the project is to be developed in stages, the applicant must begin and substantially complete the development of each stage within three years of the time provided for the start of construction of each stage in the development agreement. Failure to substantially complete the development or any development stage within three years of the approved development schedule shall cause the un-built portion of the development approval to expire. Nothing in this section is deemed to create a vested property right in any applicant; such vested property right may only be created pursuant to the provisions of section 9-2-19, "Creation Of Vested Rights," B.R.C. 1981.

(b) Extension: Prior to the expiration of a use review or site review approval, the applicant may request an extension of the time allowed for the completion of the development.

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(1) City Manager Level Extension: The city manager may grant up to two six-month extensions for each phase of the development if such extension will enable the applicant to substantially complete the phase of development or is necessary to allow the applicant to request an extension from the planning board.

(2) Planning Board Level Extension: The planning board may grant an extension of a development approval, pursuant to a hearing, conducted under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after the applicant has exhausted any extension granted pursuant to paragraph (b)(1) of this section. The applicant shall be required to demonstrate that it exercised reasonable diligence in completing the project according to the approved development schedule and of good cause as to why the extension should be granted.

(A) Criteria For Demonstrating Reasonable Diligence: An applicant may show that it has exercised reasonable diligence by providing evidence that it has done substantial work towards completing the project. Such evidence may include, without limitation, drafting plans for building permit or technical document review, applications for building permits or other permits that are required prior to the issuance of building permits, site preparation and grading, or commencement of the construction of a portion of the project.

(B) Criteria For Demonstrating Good Cause: An applicant may show good cause as to why an extension should be granted by providing evidence that includes, without limitation, the following: a demonstration of the applicant's ability to complete the project within the extension; the extension is needed because of the size of the project or phasing of the development; or economic cycles and market conditions prevented the construction of the project during the original approval period.

(C) Additional Conditions: As part of a hearing to consider an extension, the planning board may impose additional conditions on the applicant in order to ensure compliance with any amendments to this title enacted after the date of the original approval.

(c) Building Permits: Upon issuance of a building permit pursuant to a development review approval, the applicant must adhere to the schedule for construction and inspection as defined in the city building code, chapter 10-5, "Building Code," B.R.C. 1981. In addition to the provisions of this title, all provisions of the building code regarding expiration and termination of building permits shall apply.

(d) Annexations/Six-Month Rule: If an owner of property not located within the city, for which a development review application is approved, fails to annex the property to the city within six months of the date of approval, the approval shall expire unless the approving agency extends the time period, upon a finding of good cause predicated upon a written request of the applicant delivered to the city manager before the expiration of the six-month period.

(e) Rescission Of Development Approval: If after use review or site review approval is granted pursuant to this chapter the owner of property desires to develop, instead, under the provisions of chapters 9-6, "Use Standards," 9-7, "Form And Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, the owner may request rescission of such use review or site review approval by filing a written request for rescission with the city manager. The city manager will grant a rescission of such use review or site review approval if no building permit has been issued for the development and neither the city nor the developer has taken any actions in detrimental reliance on the terms of the development agreement. The city manager may also rescind a site review approval if the existing or proposed development complies with all the use, form, and intensity requirements of chapters 9-6, "Use Standards," 9-7, "Form And Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, and there is no substantial public benefit in maintaining the original approval. An owner may also request a rescission of a use review or special review approval in order to return the property

to a use that is permitted as a matter of right, or as a conditional use if it is able to meet all applicable standards for such use under this title.

9-2-13 **Concept Plan Review And Comment.**

(a) Purpose Of Concept Plan Review: The purpose of the concept plan review step is to determine a general development plan for the site, including, without limitation, land uses, arrangement of uses, general circulation patterns and characteristics, methods of encouraging use of alternative transportation modes, areas of the site to be preserved from development, general architectural characteristics, any special height and view corridor limitations, environmental preservation and enhancement concepts, and other factors as needed to carry out the objectives of this title, adopted plans, and other city requirements. This step is intended to give the applicant an opportunity to solicit comments from the planning board authority early in the development process as to whether the concept plan addresses the requirements of the city as set forth in its adopted ordinances, plans, and policies.

(b) Projects Required To Complete Concept Review And Comment: Any applicant for a development that exceeds the "Site Review Required" thresholds set forth in paragraph 9-2-14(b)(1), B.R.C. 1981, shall complete the concept review process prior to submitting an application for site review.

(c) Application Requirements: A concept plan should be preliminary plan for the development of a site of sufficient accuracy to be used for discussing the plan's conformance with adopted ordinances, plans, and policies of the city. The concept plan provides the public, the city manager, and the planning board opportunity to offer input in the formative stages of the development. An application for a concept plan review and comment may be filed by a person having a demonstrable property interest in land to be included in a site review on a form provided by the city manager and shall include the following:

(1) The written consent of the owners of all property to be included in the development;

(2) A context map, drawn to scale, showing the site and an area of not less than three hundred feet radius around the site, including streets, zoning, general location of buildings, and parking areas of abutting properties;

(3) A scaled and dimensioned schematic drawing of the site development concept, and an area of not less than two hundred feet around the site, showing:

(A) Access points and circulation patterns for all modes of transportation;

(B) Approximate locations of trails, pedestrian and bikeway connections, on-site transit amenities, and parking areas;

(C) Approximate location of major site elements, including buildings, open areas, natural features such as watercourses, wetlands, mature trees, and steep slopes; and

(D) Proposed land uses and approximate location;

(4) Architectural character sketches showing building elevations and materials; and

(5) A written statement that describes, in general how the proposed development meets this title, city plans and policies, and addresses the following:

(A) Techniques and strategies for environmental impact avoidance, minimization, or mitigation;

(B) Techniques and strategies for practical and economically feasible travel demand management techniques, including, without limitation, site design, land use, covenants, transit passes, parking restrictions, information or education materials or programs that may reduce single-occupant vehicle trip generation to and from the site; and

(C) Proposed land uses, and if it is a development that includes residential housing type, mix, sizes, and anticipated sale prices, the percentage of affordable units to be included; special design characteristics that may be needed to assure affordability.

(d) Public Notice Of Application: After receiving an application the city manager shall provide public notification pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(e) Additional Information Or Processes: Based on the concept plan submission, and to the extent that such requirements can be determined from the information provided by the applicant, the city manager will identify additional information or processes that may be needed prior to or concurrent with site review, such as:

(1) Variances and exceptions to existing standards necessary to achieve the defined objectives for the site, and the process and approving agency for the required changes;

(2) Processes, permits, and approvals that may be needed, including, without limitation, wetland permits, floodplain permits, flood map revisions, special large water user or sanitary sewer pretreatment agreements, rezonings, or Boulder Valley Comprehensive Plan changes;

(3) Need for any further environmental studies or impact studies; and

(4) Public infrastructure improvements needed to serve the development, including, without limitation, transportation improvements such as streets, alleys, transit stops and shelters, other alternative mode facilities and connections, and acceleration and deceleration lanes, water, wastewater, and flood control.

(f) Review Of And Comment On Concept Plans: Upon receipt of an application for a concept plan review, the city manager will review the submitted materials for general compliance with the requirements of this title, and prepare staff comments. The scope of staff comments will differ from application to application, at the discretion of the city manager. The city manager will forward the application, any comments received from neighbors and other interested persons and any staff comments to the planning board. The planning board shall review the concept plan at a public meeting held pursuant to the provisions of subsection 2-3-1(b), B.R.C. 1981. Planning board members may provide individual comments on the concept plan. A concept plan review and comment shall not relieve the applicant of the burden required to seek approvals for elements of the plan that require review and approval under the Boulder Revised Code.

(g) Guidelines For Review And Comment: The following guidelines will be used to guide the planning board's discussion regarding the site. It is anticipated that issues other than those listed in this section will be identified as part of the concept plan review and comment process. The Planning Board may consider the following guidelines when providing comments on a concept plan:

(1) Characteristics of the site and surrounding areas, including, without limitation, its location, surrounding neighborhoods, development and architecture, any known natural features of the site including, without limitation, mature trees, watercourses, hills, depressions, steep slopes and prominent views to and from the site;

(2) Community policy considerations including, without limitation, the review process and likely conformity of the proposed development with the Boulder Valley Comprehensive Plan

and other ordinances, goals, policies, and plans, including, without limitation, sub-community and sub-area plans;

(3) Applicable criteria, review procedures, and submission requirements for a site review;

(4) Permits that may need to be obtained and processes that may need to be completed prior to, concurrent with, or subsequent to site review approval;

(5) Opportunities and constraints in relation to the transportation system, including, without limitation, access, linkage, signalization, signage, and circulation, existing transportation system capacity problems serving the requirements of the transportation master plan, possible trail links, and the possible need for a traffic or transportation study;

(6) Environmental opportunities and constraints including, without limitation, the identification of wetlands, important view corridors, floodplains and other natural hazards, wildlife corridors, endangered and protected species and habitats, the need for further biological inventories of the site and at what point in the process the information will be necessary;

(7) Appropriate ranges of land uses; and

(8) The appropriateness of or necessity for housing.

Ordinance Nos. 5669 (1994); 5777 (1998); 5994 (1998); 6093 (1999).

9-2-14 **Site Review.**

(a) Purpose: The purpose of site review is to allow flexibility and encourage innovation in land use development. Review criteria are established to promote the most appropriate use of land, improve the character and quality of new development, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space, to assure consistency with the purposes and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community, to ensure compatibility with existing structures and established districts, to assure that the height of new buildings is in general proportion to the height of existing, approved, and known to be planned or projected buildings in the immediate area, to assure that the project incorporates, through site design, elements which provide for the safety and convenience of the pedestrian, to assure that the project is designed in an environmentally sensitive manner, and to assure that the building is of a bulk appropriate to the area and the amenities provided and of a scale appropriate to pedestrians.

(b) Scope: The following development review thresholds apply to any development that is eligible or that otherwise may be required to complete the site review process:

(1) Development Review Thresholds:

(A) Minimum Thresholds: No person may apply for a site review unless the project exceeds the thresholds for the "minimum size for site review" category set forth in table 2-2 of this section.

(B) Site Review Required: No person may apply for a subdivision or a building permit for a project that exceeds the thresholds for the "site review required" category set forth in table 2-2 of this section until a site review has been completed.

(C) Common Ownership: All contiguous lots or parcels under common ownership or control, not subject to a planned development, planned residential development, planned unit

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development or site review approval, shall be considered as one property for the purposes of determining whether the maximum site review thresholds below apply. If such lots or parcels cross zoning district boundaries, the lesser threshold of the zoning districts shall apply to all of the lots or parcels.

(D) Previously Approved Developments: Previously approved valid planned unit developments that do not otherwise meet the minimum site review thresholds may be modified or amended consistent with the provisions of this title pursuant to subsections (k) and (l) of this section.

(E) Height Modifications: A development which exceeds the permitted height requirements of section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review.

TABLE 2-2: SITE REVIEW THRESHOLD TABLE

Zoning District Abbreviation	Use	Form	Intensity	Minimum Size For Site Review	Concept Plan And Site Review Required	Former Zoning District Abbreviation
A	A	a	1	2 acres	–	(A-E)
BC-1	B3	f	15	1 acre	3 acres or 50,000 square feet of floor area	(CB-D)
BC-2	B3	f	19	1 acre	2 acres or 25,000 square feet of floor area or any site in BVRC	(CB-E)
BCS	B4	m	28	1 acre	3 acres or 50,000 square feet of floor area	(CS-E)
BMS	B2	o	17	0	3 acres or 50,000 square feet of floor area	(BMS-X)
BR-1	B5	f	23	0	3 acres or 50,000 square feet of floor area	(RB-E)
BR-2	B5	f	16	0	3 acres or 50,000 square feet of floor area	(RB-D)
BT-1	B1	f	15	1 acre	2 acres or 30,000 square feet of floor area	(TB-D)
BT-2	B1	e	21	0	2 acres or 30,000 square feet of floor area	(TB-E)
DT-1	D3	p	25	0	1 acre or 50,000 square feet of floor area	(RB3-X/E)
DT-2	D3	p	26	0	1 acre or 50,000 square feet of floor area	(RB2-X)
DT-3	D3	p	27	0	1 acre or 50,000 square feet of floor area	(RB2-E)

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Zoning District Abbreviation	Use	Form	Intensity	Minimum Size For Site Review	Concept Plan And Site Review Required	Former Zoning District Abbreviation
DT-4	D1	q	27	0	1 acre or 50,000 square feet of floor area	(RB1-E)
DT-5	D2	p	27	0	1 acre or 50,000 square feet of floor area	(RB1-X)
IG	I2	f	22	2 acres	5 acres or 100,000 square feet of floor area	(IG-E/D)
IM	I3	f	20	2 acres	5 acres or 100,000 square feet of floor area	(IM-E/D)
IMS	I4	r	18	0	3 acres or 50,000 square feet of floor area	(IMS-X)
IS-1	I1	f	11	2 acres	5 acres or 100,000 square feet of floor area	(IS-E)
IS-2	I1	f	10	2 acres	5 acres or 100,000 square feet of floor area	(IS-D)
MH	MH	s	–	5 or more units are permitted on the property	–	(MH-E)
MU-1	M2	i	18	0	1 acre or 20 dwelling units	(MU-D)
MU-2	M3	r	18	0	3 acres or 50,000 square feet of floor area	(RMS-X)
MU-3	M1	n	24	5 or more units are permitted on the property	1 acre or 20 dwelling units, or 20,000 square feet of nonresidential floor area	(MU-X)
P	P	c	5	2 acres	5 acres or 100,000 square feet of floor area	(P-E)
RE	R1	b	3	5 or more units are permitted on the property	–	(ER-E)
RH-1	R6	j	12	0	2 acres or 20 dwelling units	(HR-X)
RH-2	R6	c	12	0	2 acres or 20 dwelling units or less than 3,200 square feet of lot area/dwelling unit	(HZ-E)
RH-3	R7	l	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR1-X)
RH-4	R6	h	15	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR-D)
RH-5	R6	c	19	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR-E)

Zoning District Abbreviation	Use	Form	Intensity	Minimum Size For Site Review	Concept Plan And Site Review Required	Former Zoning District Abbreviation
RL-1	R1	d	4	5 or more units are permitted on the property	3 acres or 18 dwelling units	(LR-E)
RL-2	R2	g	6	5 or more units are permitted on the property	3 acres or 18 dwelling units	(LR-D)
RM-1	R3	g	9	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-D)
RM-2	R2	d	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-E)
RM-3	R3	j	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-X)
RMX-1	R4	d	7	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MXR-E)
RMX-2	R5	k	8	0	2 acres or 20 dwelling units	(MXR-D)
RR-1	R1	a	2	5 or more units are permitted on the property	–	(RR-E)
RR-2	R1	b	2	5 or more units are permitted on the property	–	(RR1-E)

Ordinance No. 7522 (2007).

(2) Poles Above The Permitted Height: The city manager will follow the following procedures for the review, recommendation, call-up, and effective date for the approval of poles above the permitted height.

(A) Light Poles At Government-Owned Facilities: The city manager will determine whether or not to approve an application for light poles at government-owned recreation facilities between thirty-five and fifty-five feet in height, subject to call-up by the planning board pursuant to the procedures set forth in subsection 9-2-7(b), B.R.C. 1981.

(B) Poles Over Fifty-Five Feet In Height: The city manager will determine whether or not to approve all applications for poles over fifty-five feet in height, subject to call-up by the city council pursuant to the procedures set forth in subsection 9-2-7(c), B.R.C.1981.

(3) Exceptions: The following developments that exceed the maximum site review thresholds set forth in this section shall not be required to complete a site review:

(A) Minor modifications and amendments to approved development review applications;

(B) Building permits for additions to existing structures that do not exceed a cumulative total, over the life of the building, of twenty-five percent of the size of the building on which the addition is proposed and that do not alter the basic intent of an approved development;

(C) Subdivisions solely for the purpose of amalgamating lots or parcels of land;

(D) Subdivisions solely for the purpose of conveying property to the city; and

(E) City of Boulder public projects that are otherwise required to complete a public review process.

(c) Modifications To Development Standards: The following development standards of B.R.C. 1981 may be modified under the site review process set forth in this section:

(1) The height and setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards."

(2) 9-8-1, "Schedule Of Intensity Standards," table 8-1, minimum lot area (in square feet unless otherwise noted).

Ordinance No. 7522 (2007).

(3) 9-8-4, "Housing Types And Density Bonuses Within An RMX-2 Zoning District."

(4) 9-9-3(a), window requirements for buildings.

(5) 9-9-4, "Public Improvements" and subsection 9-12-12(a), standards for lots and public improvements, conditions required, only to the extent that certain development criteria for alternative street standards are noted in the City of Boulder *Design And Construction Standards*.

(6) 9-9-5, "Site Access Control."

(7) 9-9-6, "Parking Standards."

(8) 9-9-7, "Sight Triangles."

(9) 9-9-9, "Off-Street Loading Standards."

(10) 9-7-10, "Mobile Home Park Form And Bulk Standards."

(11) 9-9-12, "Landscaping And Screening Standards."

(12) 9-9-11(c), "Open Space Standards For Buildings Over Twenty-Five Feet In Height."

(13) 9-9-13, "Streetscape Design Standards."

(14) 9-2-14(h)(2)(I) and (h)(2)(J) land use intensity modifications for nonresidential buildings.

(15) 9-9-14, "Parking Lot Landscaping Standards."

(16) 9-9-15, "Fences And Walls."

(17) 9-9-17, "Solar Access."

(18) 10-12-7, "Accessory Structures."

(19) 10-12-13, "Mobile Home Park Environmental Standards."

(20) 10-12-14, "Nonresidential Uses In Mobile Home Parks."

(21) 10-12-18, "Windbreaks."

(22) 10-12-19, "Mobile Home Park Streets And Walkways."

(23) 10-12-23, "Permanent Buildings."

(d) Application Requirements: An application for approval of a site plan may be filed by any person having a demonstrable property interest in land to be included in a site review on a form provided by the city manager that includes, without limitation:

(1) All materials and information required by subsection 9-2-6(a), B.R.C. 1981;

(2) A site plan with a north arrow showing the major details of the proposed development, prepared on a scale of not less than one inch equals one hundred feet providing sufficient detail to evaluate the features of the development required by this section. The site plan shall contain, insofar as applicable, the information set forth in this subsection;

(3) The existing topographic character of the land, showing contours at two-foot intervals;

(4) The site and location of proposed uses with dimensions indicating the distance from lot lines;

(5) The location and size of all existing and proposed buildings, structures, and improvements, and the general location of adjacent streets, structures, and properties;

(6) The maximum height of all buildings and building elevations showing exterior colors and materials;

(7) The density and type of uses;

(8) The internal traffic and circulation systems, off-street parking areas, service areas, loading areas, and major points of access to public rights-of-way;

(9) The location, height, and size of proposed signs, lighting, and advertising devices;

(10) The areas that are to be conveyed, dedicated, or reserved as parks, recreation areas, playgrounds, outlots, or open space and as sites for schools and other public buildings;

(11) The areas that are to be conveyed, dedicated, or reserved for streets, alley and utility easements;

(12) The areas subject to the one hundred-year flood as defined in chapter 9-16, "Definitions," B.R.C. 1981, and any area of the site that is within a designated space conveyance zone or high hazard zone;

(13) A general landscaping plan at the time of initial submission to be followed by a detailed landscaping plan once the site plan has been approved, showing the spacing, sizes and specific types of landscaping materials and whether the plant is coniferous or deciduous;

(14) A shadow analysis depicting shadows on December 21, as described in the solar analysis instructions provided by the city manager, and depicting shadows calculated pursuant to subsection 9-9-17(d), B.R.C. 1981, for those buildings that affect adjacent properties;

(15) A written statement containing the following information:

(A) A statement of the current ownership and a legal description of all of the land included in the project;

(B) An explanation of the objectives to be achieved by the project, including, without limitation, building descriptions, sketches, or elevations that may be required to describe the objectives;

(C) A development schedule indicating the approximate date when construction of the project or phases of the project can be expected to begin and be completed; and

(D) Copies of any special agreements, conveyances, restrictions, or covenants that will govern the use, maintenance, and continued protection of the goals of the project and any related parks, recreation areas, playgrounds, outlots, or open space;

(16) Materials required by the City of Boulder *Design And Construction Standards*, including, without limitation, a traffic study, master utility plan, utility report and storm water report and plan for any application that proposes to construct or have an impact on public improvements; and

(17) Plans for preservation of natural features existing on the site or plans for mitigation of adverse impacts to natural features existing on the site from the proposed development and anticipated uses. Natural features include, without limitation, healthy long-lived trees, significant plant communities, ground and surface water, wetlands, riparian areas, drainage areas, and habitat for species on the federal Endangered Species List, "Species of Special Concern in Boulder County" designated by Boulder County, or prairie dogs (Cynomys ludiovicianus) which is a species of local concern.

(e) Additional Application Requirements For Height Modification: The following additional application requirements apply if the development proposal includes a request for the modification of the permitted height:

(1) Preliminary building plans including sketches and elevations illustrating the proposed building or pole and indicating how the height was calculated;

(2) For developments in all Downtown (DT) districts, a model, at a scale of no less than one inch equals thirty feet, of the proposed building and all buildings and property within one hundred feet of the proposed project;

(3) For developments in all Downtown (DT) districts, an illustration of the proposed building shown from street level demonstrating the pedestrian view, including, without limitation, a perspective, computer model, or photographic montage;

(4) A shadow analysis, as described in the solar analysis instructions provided by the city manager, that shows the shadow cast by a thirty-five-foot building located at the required setback and the shadow cast by the proposed building;

(5) A list of the height of each principal building located or known to be proposed or approved within one hundred feet of the proposed project;

(6) A written statement and drawings which describe the way in which the proposal accommodates pedestrians, including, without limitation, uses proposed for the ground level, percent of transparent material at the ground level, and signage and graphics; and

(7) A detailed plan showing the useable open space and a written statement of how it serves the public interest.

(f) Public Notification: After receiving an application the city manager shall provide public notification pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.

(g) Review And Recommendation: The city manager will review and decide an application for a site review in accordance with the provisions of section 9-2-6, "Development Review Application," B.R.C. 1981, except for an application involving the following, which the city manager will refer with a recommendation to the planning board for its action:

(1) A reduction in off-street parking of more than fifty percent subject to compliance with the standards of subsection 9-9-6(f), B.R.C. 1981.

(2) A reduction of the open space or lot area requirements allowed by subparagraph (h)(2)(I) of this section.

(3) An application for any principal or accessory building above the permitted height for principal buildings set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981.

(4) An increase in density in the RH-1, RH-2 and RH-3 districts consistent with section 9-8-3, "Density In The RH-1, RH-2 And RH-3 Districts," B.R.C. 1981.

(h) Criteria For Review: No site review application shall be approved unless the approving agency finds that:

(1) Boulder Valley Comprehensive Plan:

(A) The proposed site plan is consistent with the purposes and policies of the Boulder Valley Comprehensive Plan.

(B) The proposed development shall not exceed the maximum density associated with the Boulder Valley Comprehensive Plan residential land use designation. Additionally, if the density of existing residential development within a three hundred-foot area surrounding the site is at or exceeds the density permitted in the Boulder Valley Comprehensive Plan, then the maximum density permitted on the site shall not exceed the lesser of:

(i) The density permitted in the Boulder Valley Comprehensive Plan, or

(ii) The maximum number of units that could be placed on the site without waiving or varying any of the requirements of chapter 9-8, "Intensity Standards," B.R.C. 1981.

(C) The proposed development's success in meeting the broad range of BVCP policies considers the economic feasibility of implementation techniques required to meet other site review criteria.

(2) Site Design: Projects should preserve and enhance the community's unique sense of place through creative design that respects historic character, relationship to the natural environment, and its physical setting. Projects should utilize site design techniques which enhance the quality of the project. In determining whether this subsection is met, the approving agency will consider the following factors:

(A) Open Space: Open space, including, without limitation, parks, recreation areas, and playgrounds:

(i) Useable open space is arranged to be accessible and functional;

(ii) Private open space is provided for each detached residential unit;

(iii) The project provides for the preservation of or mitigation of adverse impacts to natural features, including, without limitation, healthy long-lived trees, significant plant

communities, ground and surface water, wetlands, riparian areas, drainage areas, and species on the federal Endangered Species List, "Species of Special Concern in Boulder County" designated by Boulder County, or prairie dogs (Cynomys ludiovicianus) which is a species of local concern, and their habitat;

(iv) The open space provides a relief to the density, both within the project and from surrounding development;

(v) Open space designed for active recreational purposes is of a size that it will be functionally useable and located in a safe and convenient proximity to the uses to which it is meant to serve;

(vi) The open space provides a buffer to protect sensitive environmental features and natural areas; and

(vii) If possible, open space is linked to an area- or city-wide system.

(B) Open Space In Mixed Use Developments (Developments That Contain A Mix Of Residential And Nonresidential Uses):

(i) The open space provides for a balance of private and shared areas for the residential uses and common open space that is available for use by both the residential and nonresidential uses that will meet the needs of the anticipated residents, occupants, tenants, and visitors of the property; and

(ii) The open space provides active areas and passive areas that will meet the needs of the anticipated residents, occupants, tenants, and visitors of the property and are compatible with the surrounding area or an adopted plan for the area.

(C) Landscaping:

(i) The project provides for aesthetic enhancement and a variety of plant and hard surface materials, and the selection of materials provides for a variety of colors and contrasts and the preservation or use of local native vegetation where appropriate;

(ii) Landscape design attempts to avoid, minimize, or mitigate impacts to important native species, plant communities of special concern, threatened and endangered species and habitat by integrating the existing natural environment into the project;

(iii) The project provides significant amounts of plant material sized in excess of the landscaping requirements of sections 9-9-12, "Landscaping And Screening Standards," and 9-9-13, "Streetscape Design Standards," B.R.C. 1981; and

(iv) The setbacks, yards, and useable open space along public rights-of-way are landscaped to provide attractive streetscapes, to enhance architectural features, and to contribute to the development of an attractive site plan.

(D) Circulation: Circulation, including, without limitation, the transportation system that serves the property, whether public or private and whether constructed by the developer or not:

(i) High speeds are discouraged or a physical separation between streets and the project is provided;

(ii) Potential conflicts with vehicles are minimized;

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(iii) Safe and convenient connections accessible to the public within the project and between the project and existing and proposed transportation systems are provided, including, without limitation, streets, bikeways, pedestrianways and trails;

(iv) Alternatives to the automobile are promoted by incorporating site design techniques, land use patterns, and supporting infrastructure that supports and encourages walking, biking, and other alternatives to the single-occupant vehicle;

(v) Where practical and beneficial, a significant shift away from single-occupant vehicle use to alternate modes is promoted through the use of travel demand management techniques;

(vi) On-site facilities for external linkage are provided with other modes of transportation, where applicable;

(vii) The amount of land devoted to the street system is minimized; and

(viii) The project is designed for the types of traffic expected, including, without limitation, automobiles, bicycles, and pedestrians, and provides safety, separation from living areas, and control of noise and exhaust.

(E) Parking:

(i) The project incorporates into the design of parking areas measures to provide safety, convenience, and separation of pedestrian movements from vehicular movements;

(ii) The design of parking areas makes efficient use of the land and uses the minimum amount of land necessary to meet the parking needs of the project;

(iii) Parking areas and lighting are designed to reduce the visual impact on the project, adjacent properties, and adjacent streets; and

(iv) Parking areas utilize landscaping materials to provide shade in excess of the requirements in subsection 9-9-6(d), and section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981.

(F) Building Design, Livability, And Relationship To The Existing Or Proposed Surrounding Area:

(i) The building height, mass, scale, orientation, and configuration are compatible with the existing character of the area or the character established by an adopted plan for the area;

(ii) The height of buildings is in general proportion to the height of existing buildings and the proposed or projected heights of approved buildings or approved plans for the immediate area;

(iii) The orientation of buildings minimizes shadows on and blocking of views from adjacent properties;

(iv) If the character of the area is identifiable, the project is made compatible by the appropriate use of color, materials, landscaping, signs, and lighting;

(v) Buildings present an attractive streetscape, incorporate architectural and site design elements appropriate to a pedestrian scale, and provide for the safety and convenience of pedestrians;

(vi) To the extent practical, the project provides public amenities and planned public facilities;

(vii) For residential projects, the project assists the community in producing a variety of housing types, such as multi-family, townhouses, and detached single-family units as well as mixed lot sizes, number of bedrooms, and sizes of units;

(viii) For residential projects, noise is minimized between units, between buildings, and from either on-site or off-site external sources through spacing, landscaping, and building materials;

(ix) A lighting plan is provided which augments security, energy conservation, safety, and aesthetics;

(x) The project incorporates the natural environment into the design and avoids, minimizes, or mitigates impacts to natural systems;

(xi) Cut and fill are minimized on the site, the design of buildings conforms to the natural contours of the land, and the site design minimizes erosion, slope instability, landslide, mudflow or subsidence, and minimizes the potential threat to property caused by geological hazards.

(G) Solar Siting And Construction: For the purpose of ensuring the maximum potential for utilization of solar energy in the city, all applicants for residential site reviews shall place streets, lots, open spaces, and buildings so as to maximize the potential for the use of solar energy in accordance with the following solar siting criteria:

(i) Placement Of Open Space And Streets: Open space areas are located wherever practical to protect buildings from shading by other buildings within the development or from buildings on adjacent properties. Topography and other natural features and constraints may justify deviations from this criterion.

(ii) Lot Layout And Building Siting: Lots are oriented and buildings are sited in a way which maximizes the solar potential of each principal building. Lots are designed to facilitate siting a structure which is unshaded by other nearby structures. Wherever practical, buildings are sited close to the north lot line to increase yard space to the south for better owner control of shading.

(iii) Building Form: The shapes of buildings are designed to maximize utilization of solar energy. Buildings shall meet the solar access protection and solar siting requirements of section 9-9-17, "Solar Access," B.R.C. 1981.

(iv) Landscaping: The shading effects of proposed landscaping on adjacent buildings are minimized.

(H) Additional Criteria For Poles Above The Permitted Height: No site review application for a pole above the permitted height will be approved unless the approving agency finds all of the following:

(i) The light pole is required for nighttime recreation activities, which are compatible with the surrounding neighborhood, or the light or traffic signal pole is required for safety, or the electrical utility pole is required to serve the needs of the city; and

(ii) The pole is at the minimum height appropriate to accomplish the purposes for which the pole was erected and is designed and constructed so as to minimize light and electromagnetic pollution.

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(I) Land Use Intensity Modifications:

(i) Potential Land Use Intensity Modifications:

a. The density of a project may be increased in the BR-1 district through a reduction of the lot area requirement or in the Downtown (DT), BR-2, or MU-3 districts through a reduction in the open space requirements.

b. The open space requirements in all Downtown (DT) districts may be reduced by up to one hundred percent.

c. The open space per lot requirements for the total amount of open space required on the lot in the BR-2 district may be reduced by up to fifty percent.

d. Land use intensity may be increased up to twenty-five percent in the BR-1 district through a reduction of the lot area requirement.

(ii) Additional Criteria For Land Use Intensity Modifications: A land use intensity increase will be permitted up to the maximum amount set forth below if the approving agency finds that the criteria in paragraph (h)(1) through subparagraph (h)2(H) of this section and following criteria have been met:

a. Open Space Needs Met: The needs of the project's occupants and visitors for high quality and functional useable open space can be met adequately;

b. Character Of Project And Area: The open space reduction does not adversely affect the character of the development nor the character of the surrounding area; and

c. Open Space And Lot Area Reductions: The specific percentage reduction in open space or lot area requested by the applicant is justified by any one or combination of the following site design features not to exceed the maximum reduction set forth above:

1. Close proximity to a public mall or park for which the development is specially assessed or to which the project contributes funding of capital improvements beyond that required by the parks and recreation component of the development excise tax set forth in chapter 3-8, "Development Excise Tax," B.R.C. 1981: maximum one hundred percent reduction in all Downtown (DT) districts and ten percent in the BR-1 district;

2. Architectural treatment that results in reducing the apparent bulk and mass of the structure or structures and site planning which increases the openness of the site: maximum five percent reduction;

3. A common park, recreation, or playground area functionally useable and accessible by the development's occupants for active recreational purposes and sized for the number of inhabitants of the development, maximum five percent reduction; or developed facilities within the project designed to meet the active recreational needs of the occupants: maximum five percent reduction;

4. Permanent dedication of the development to use by a unique residential population whose needs for conventional open space are reduced: maximum five percent reduction;

5. The reduction in open space is part of a development with a mix of residential and nonresidential uses within a BR-2 zoning district that, due to the ratio of residential to nonresidential uses and because of the size, type, and mix of dwelling units, the need for open space is reduced: maximum reduction fifteen percent; and

6. The reduction in open space is part of a development with a mix of residential and nonresidential uses within a BR-2 zoning district that provides high quality urban design elements that will meet the needs of anticipated residents, occupants, tenants, and visitors of the property or will accommodate public gatherings, important activities, or events in the life of the community and its people, that may include, without limitation, recreational or cultural amenities, intimate spaces that foster social interaction, street furniture, landscaping, and hard surface treatments for the open space: maximum reduction twenty-five percent.

(J) Additional Criteria For Floor Area Ratio Increase For Buildings In The BR-1 District:

(i) Process: For buildings in the BR-1 district, the floor area ratio ("FAR") permitted under table 8-2, section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, may be increased by the city manager under the criteria set forth in this subparagraph.

Ordinance No. 7522 (2007).

(ii) Maximum FAR Increase: The maximum FAR increase allowed for buildings thirty-five feet and over in height in the BR-1 district shall be from 2:1 to 4:1.

(iii) Criteria For The BR-1 District: The FAR may be increased in the BR-1 district to the extent allowed in subparagraph (h)(2)(J)(ii) of this section if the approving agency finds that the following criteria are met:

a. Site and building design provide open space exceeding the required useable open space by at least ten percent: an increase in FAR not to exceed 0.25:1.

b. Site and building design provide private outdoor space for each office unit equal to at least ten percent of the lot area for buildings twenty-five feet and under and at least twenty percent of the lot area for buildings above twenty-five feet: an increase in FAR not to exceed 0.25:1.

c. Site and building design provide a street front facade and an alley facade at a pedestrian scale, including, without limitation, features such as awnings and windows, well-defined building entrances, and other building details: an increase in FAR not to exceed 0.25:1.

d. For a building containing residential and nonresidential uses in which neither use comprises less than twenty-five percent of the total square footage: an increase in FAR not to exceed 1:1.

e. The unused portion of the allowed FAR of historic buildings designated as landmarks under chapter 9-11, "Historic Preservation," B.R.C. 1981, may be transferred to other sites in the same zoning district. However, the increase in FAR of a proposed building to which FAR is transferred under this subparagraph may not exceed an increase of 0.5:1.

f. For a building which provides one full level of parking below grade, an increase in FAR not to exceed 0.5:1 may be granted.

(K) Additional Criteria For Parking Reductions: The off-street parking requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may be modified as follows:

(i) Process: The city manager may grant a parking reduction not to exceed fifty percent of the required parking. The planning board or city council may grant a reduction exceeding fifty percent.

(ii) Criteria: Upon submission of documentation by the applicant of how the project meets the following criteria, the approving agency may approve proposed modifications to the parking requirements of section 9-9-6, "Parking Standards," B.R.C. 1981 (see tables 9-1, 9-2, 9-3 and 9-4, if it finds that:

Ordinance No. 7522 (2007).

a. For residential uses, the probable number of motor vehicles to be owned by occupants of and visitors to dwellings in the project will be adequately accommodated;

b. The parking needs of any nonresidential uses will be adequately accommodated through on-street parking or off-street parking;

c. A mix of residential with either office or retail uses is proposed, and the parking needs of all uses will be accommodated through shared parking;

d. If joint use of common parking areas is proposed, varying time periods of use will accommodate proposed parking needs; and

e. If the number of off-street parking spaces is reduced because of the nature of the occupancy, the applicant provides assurances that the nature of the occupancy will not change.

(L) Additional Criteria For Off-Site Parking: The parking required under section 9-9-6, "Parking Standards," B.R.C. 1981, may be located on a separate lot if the following conditions are met:

(i) The lots are held in common ownership;

(ii) The separate lot is in the same zoning district and located within three hundred feet of the lot that it serves; and

(iii) The property used for off-site parking under this subparagraph continues under common ownership or control.

(i) Planning Board Call-Up: The planning board may call-up any final site review decision by the city manager pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(j) Subdivisions: An approved site plan may be subdivided under chapter 9-12, "Subdivision," B.R.C. 1981. The approved site plan may substitute for a preliminary plat if it meets the requirements of section 9-12-6, "Application Requirements For A Preliminary Plat," B.R.C. 1981. As part of subdivision review, the city manager will consider conditions of the site plan approval and assure that they will be met within the future subdivision.

(k) Minor Modifications To Approved Site Plans: Changes to the site plan, building plans, and landscaping plans may be approved by the city manager without an amendment to the site plan if such changes are minor. All minor modifications shall be noted, signed, and dated on the approved site plan. For proposed minor modifications of site review projects that are partially or totally developed, the applicant shall provide notice to any owners of property within the development that might be affected as determined by the city manager. In

determining whether a proposed change is a minor modification, the following standards shall apply:

(1) Setbacks on the perimeter of a development cannot be varied by a minor modification to less than the minimum setbacks permitted by the underlying zoning district;

(2) The floor area of the development, including principal and accessory buildings, may be expanded by the cumulative total of no more than the greater of ten percent or two hundred square feet or, in the case of a building that exceeds the permitted height, no more than five percent, except that the portion of any building over thirty-five feet in height may not be expanded under the provisions of this paragraph;

(3) Commercial and industrial building envelopes may be moved or expanded by no more than the greater of ten feet, or ten percent of the length of the building, measured along the building's axis in the direction that the building is being moved;

(4) Principal and accessory buildings not within an approved building envelope may be expanded or moved by no more than ten feet in any direction within the development in residential districts and lots abutting residential districts. The resulting setbacks shall not be less than the minimum allowed setback of the underlying zone;

(5) Dwelling unit type may not be changed;

(6) The portion of any building over the permitted height under section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may not be expanded under the provisions of this subsection;

(7) No increase may be granted to an open space reduction or to a parking reduction in excess of that allowed in subsection 9-9-6(f), B.R.C. 1981; and

(8) No change may alter the basic intent of the site plan approval.

(l) Minor Amendments To Approved Site Plans:

(1) Standards: Changes to approved building location, or additions to existing buildings which exceed the limits of a minor modification, may be considered through the minor amendment process, if the following standards are met:

(A) In a residential zone as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981, all approved dwelling units within the development phase have been completed;

(B) In residential zones, dwelling unit type is not changed;

(C) The required open space per dwelling unit requirement of the zone is met on the lot of the detached dwelling unit to be expanded, and

(D) The total open space per dwelling unit in the development is not reduced by more than ten percent of that required for the zone; or

(E) If the residential open space provided within the development or an approved phase of a development cannot be determined, the detached dwelling unit is not expanded by more than ten percent and there is no variation to the required setbacks for that lot;

(F) For a building in a nonresidential use module, the building coverage is not increased by more than twenty percent, the addition does not cause a reduction in required open space,

and any additional required parking that is provided, is substantially accommodated within the existing parking arrangement;

(G) The portion of any building over the permitted height under section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, is not increased;

(H) The proposed minor amendment does not require public infrastructure improvements or other off-site improvements.

(2) Amendments To The Site Review Approval Process: Applications for minor amendment shall be approved according to the procedures prescribed by this section for site review approval, except:

(A) If an applicant requests approval of a minor amendment to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The manager will provide notice pursuant to subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected, and to all property owners within a radius of six hundred feet of the subject property.

(B) Only the owners of the subject property shall be required to sign the application.

(C) The minor amendment shall be found to comply with the review criteria of subparagraphs (h)(2)(A), (h)(2)(C), and (h)(2)(F) of this section, and

Ordinance No. 7522 (2007).

(D) The minor amendment is found to be substantially consistent with the intent of the original approval, including conditions of approval, the intended design character and site arrangement of the development, and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts.

(E) The city manager may amend, waive, or create a development agreement.

(m) Amendments To Approved Site Plans:

(1) No proposal to modify, structurally enlarge, or expand any approved site review, other than a minor modification or minor amendment, will be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a site review, except for the notice and consent provisions of this subsection.

(2) No proposal to modify, structurally enlarge, or expand that portion of a building over the permitted height will be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a building above the permitted height.

(3) If an applicant requests approval of an amendment to an approved site plan, the city manager shall provide public notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(4) The owners of all property for which an amendment is requested shall sign the application.

Ordinance Nos. 5656 (1994); 5776 (1996); 5777 (1996); 5930 (1997); 5986 (1998); 6082 (1999); 6093 (1999); 7018 (1999); 7182 (2002); 7242 (2002); 7287 (2003); 7334 (2004); 7349 (2004); 7364 (2004); 7484 (2006).

9-2-15 **Use Review.**

(a) Purpose: Each zoning district established in section 9-5-2, "Zoning Districts," B.R.C. 1981, is intended for a predominant use, but other uses designated in section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, may be allowed by use review if a particular use is demonstrated to be appropriate in the proposed location. Nonconforming uses may be upgraded or expanded under this section if the change would not adversely affect the traffic and the environment of the surrounding area or if the change would reduce the degree of the nonconformity or improve the appearance of the structure or site without increasing the degree of nonconformity. Nonstandard buildings may be changed, expanded, or modified consistent with the criteria and standards set forth in this section and subsection 9-10-3(a), B.R.C. 1981.

(b) Application Requirements: An application for an approval of a use review use may be filed by any person having a demonstrable interest in land for which a use review use is requested and shall be made on a form provided by the city manager that includes, without limitation:

(1) All materials and information required by subsection 9-2-6(a), B.R.C. 1981;

(2) A complete site plan showing the major details of the development, including, without limitation, location of buildings and structures, useable open space, off-street loading areas, service and refuse areas, means of ingress and egress, landscaping, screening, and existing and proposed signs;

(3) A written statement indicating how the application meets the criteria for approval of subsection (e) of this section. Such written statement shall include information relating to the intensity of uses, amount of traffic generated, hours of operation, and other information that is necessary to determine how the criteria of subsection (e) of this section will be met; and

(4) For industrial and commercial uses, the city manager may require the applicant to provide the following additional information and meet the following requirements:

(A) A pollution prevention audit;

(B) Long-term plans for reducing air emissions and use of hazardous materials;

(C) Data on air emissions control processes and demonstration that appropriate emission control technology is being used;

(D) A description of plans for chemical handling, storage, chemical waste disposal, and spill prevention;

(E) A description of water and energy conservation measures planned for the use; and

(F) Plans for recycling and minimizing waste.

(c) Public Notification: After receiving an application the city manager shall provide public notification pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.

(d) Review And Recommendation:

(1) The city manager will review applications for use review of a nonresidential use in residential zoning districts, except for the MU-1, MU-2, and MU-3 districts, or attached and

detached dwelling units or a residential use in a P district, and will submit a recommendation to the planning board for its final action pursuant to subsection 9-2-7(b), B.R.C. 1981.

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(2) The city manager shall review and make decisions on all other use review applications pursuant to subsection 9-2-7(a), B.R.C. 1981.

(3) Reviews by either the city manager or planning board shall be pursuant to section 9-2-7, "Development Review Action," B.R.C. 1981.

(e) Criteria For Review: No use review application will be approved unless the approving agency finds all of the following:

(1) Consistency With Zoning And Nonconformity: The use is consistent with the purpose of the zoning district as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981, except in the case of a nonconforming use;

(2) Rationale: The use either:

(A) Provides direct service or convenience to or reduces adverse impacts to the surrounding uses or neighborhood;

(B) Provides a compatible transition between higher intensity and lower intensity uses;

(C) Is necessary to foster a specific city policy, as expressed in the Boulder Valley Comprehensive Plan, including, without limitation, historic preservation, moderate income housing, residential and nonresidential mixed uses in appropriate locations, and group living arrangements for special populations; or

(D) Is an existing legal nonconforming use or a change thereto that is permitted under subsection (f) of this section;

(3) Compatibility: The location, size, design, and operating characteristics of the proposed development or change to an existing development are such that the use will be reasonably compatible with and have minimal negative impact on the use of nearby properties or for residential uses in industrial zoning districts, the proposed development reasonably mitigates the potential negative impacts from nearby properties;

(4) Infrastructure: As compared to development permitted under section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to the existing level of impact of a nonconforming use, the proposed development will not significantly adversely affect the infrastructure of the surrounding area, including, without limitation, water, wastewater, and storm drainage utilities and streets;

(5) Character Of Area: The use will not change the predominant character of the surrounding area; and

(6) Conversion Of Dwelling Units To Nonresidential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts to nonresidential uses that are allowed pursuant to a use review, or through the change of one nonconforming use to another nonconforming use. The presumption against such a conversion may be overcome by a finding that the use to be approved serves another compelling social, human services, governmental, or recreational need in the community including, without limitation, a use for a daycare center, park, religious assembly, social service use, benevolent organization use, art or craft studio space, museum, or an educational use.

(f) Additional Criteria For Modifications To Nonconforming Uses: No application for a change to a nonconforming use shall be granted unless all of the following criteria are met in addition to the criteria set forth above:

(1) Reasonable Measures Required: The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area, including, without limitation, objectionable conditions, glare, adverse visual impacts, noise pollution, air emissions, vehicular traffic, storage of equipment, materials, and refuse, and on-street parking, so that the change will not adversely affect the surrounding area.

(2) Reduction In Nonconformity/Improvement Of Appearance: The proposed change or expansion will either reduce the degree of nonconformity of the use or improve the physical appearance of the structure or the site without increasing the degree of nonconformity.

(3) Compliance With This Title/Exceptions: The proposed change in use complies with all of the requirements of this title:

(A) Except for a change of a nonconforming use to another nonconforming use; and

(B) Unless a variance to the setback requirements has been granted pursuant to section 9-2-3, "Variances And Interpretations," B.R.C. 1981, or the setback has been varied through the application of the requirements of section 9-2-14, "Site Review," B.R.C. 1981.

(4) Cannot Reasonably Be Made Conforming: The existing building or lot cannot reasonably be utilized or made to conform to the requirements of chapter 9-6, "Use Standards," 9-7, "Form And Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981.

(5) No Increase In Floor Area Over Ten Percent: The change or expansion will not result in a cumulative increase in floor area of more than ten percent of the existing floor area.

(6) Approving Authority May Grant Zoning Variances: The approving authority may grant the variances permitted by subsection 9-2-3(d), B.R.C. 1981, upon finding that the criteria set forth in subsection 9-2-3(h), B.R.C. 1981, have been met.

(g) Conditions Of Approval: The approving agency may impose modifications or conditions on the use review approval in order to assure compliance with the criteria set forth in subsections (e) and (f) of this section. In the case of a nonconforming use, conditions may also be imposed to reduce nonconformity and to improve site design.

(h) Amendments And Minor Modifications: No person shall expand or modify any approved use review use. However, the approved site plan may be modified as provided in subsection 9-2-14(k), B.R.C. 1981, if it does not expand the use, any changes conform to section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981; the impact on other uses of the approved use review is not changed; and the change complies with all other provisions of this title and any other ordinance of the city.

Ordinance No. 7522 (2007).

(i) Expiration: Any use review approval or previously approved special review which is discontinued for at least one year shall expire. The city manager, upon a finding of good cause, may grant an extension not to exceed six months from the original date of expiration.

(j) Appeals And Call-Ups:

(1) The applicant or any interested person may appeal the city manager's decision pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(2) A member of the planning board may call-up the city manager's decision pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(3) The city council may call-up any planning board decision pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

Ordinance Nos. 6063 (1999); 7117 (2001); 7182 (2002); 7334 (2004); 7336 (2004).

9-2-16 **Annexation Requirements.**

(a) Compliance With State Statutes And Boulder Valley Comprehensive Plan: All annexations to the city shall meet the requirements of 31-12-101 et seq., C.R.S., and shall be consistent with the Boulder Valley Comprehensive Plan and other ordinances of the city.

(b) Conditions: No annexation of land to the city shall create an unreasonable burden on the physical, social, economic, or environmental resources of the city. The city may condition the annexation of land upon such terms and conditions as are reasonably necessary to ensure that this requirement is met. Such terms and conditions may include, without limitation, installation of public facilities or improvements, dedication of land for public improvements, payment of fees incidental to annexation, or covenants governing future land uses. In annexations of hillside areas, the city council may impose conditions designed to mitigate the effects of development on lands containing slopes of fifteen percent or greater. In annexations of more than ten acres, the applicant shall provide the information necessary to enable the city to prepare an annexation impact report when required by section 31-12-108.5, C.R.S.

(c) Annexation Agreement: Owners of land petitioning the city for annexation of their property shall enter into an annexation agreement with the city stating any terms and conditions imposed on said property, prior to the first reading of the annexation ordinance. Upon annexation, such agreements shall be recorded to provide notice to future purchasers of said property. Where the annexation agreement provides that the city may install public improvements and that the owners of the annexed property will pay for such improvements, the costs of such improvements constitute an assessment against the annexed property as they accrue. If, after notice, any such assessment is not paid when due, the city manager shall certify the amount of the principal, interest, and penalties due and unpaid, together with ten percent of the delinquent amount for costs of collection to the county treasurer to be assessed and collected in the same manner as general taxes are assessed and collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

9-2-17 **Zoning Of Annexed Land.**

(a) Generally: Zoning of annexed land or land in the process of annexation shall be considered an initial zoning and shall be consistent with the goals and land use designations of the Boulder Valley Comprehensive Plan.

(b) Public Notification: When zoning of land is proposed in the process of annexation, the city manager will provide notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(c) Sequence Of Events: An ordinance proposing zoning of land to be annexed shall not be finally adopted by the city council before the date of final adoption of the annexation ordinance, but the annexation ordinance may include the zoning ordinance for the annexed property.

(d) Placement On Zoning Map: Any land annexed shall be zoned and placed upon the zoning map within ninety days after the effective date of the annexation ordinance, notwithstanding any judicial appeal of the annexation. The city shall not issue any building or occupancy permit until the annexed property becomes a part of the zoning map.

(e) Nonconformance: A lot annexed and zoned that does not meet the minimum lot area or open space per dwelling unit requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may be used notwithstanding such requirements in accordance with this code or any ordinance of the city, if such lot was a buildable lot under Boulder County jurisdiction prior to annexation.

(f) Slopes: Notwithstanding the provisions of subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies 4.13, 4.16, and 4.17 of the Boulder Valley Comprehensive Plan.

9-2-18 **Rezoning.**

(a) Initiation: An amendment to rezone any area of the city may be initiated by the city council, the planning board, or a person with an ownership interest in property proposed for rezoning.

(b) Application Requirements: A property owner applicant shall pay the filing fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981, and file an application for approval on a form provided by the city manager that shall include, without limitation:

(1) A list of the names and addresses of all owners of all property for which the rezoning is requested and for all property within three hundred feet of the boundaries of the area for which the rezoning is requested;

(2) An improvement survey;

(3) The legal description of all property included in the rezoning; and

(4) A written statement addressing the criteria for approval in subsection (e) of this section.

(c) Public Notification: When an amendment to the zoning map is proposed, except an amendment incidental to a general or comprehensive revision of the map, the city manager will provide notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(d) Hearing: The planning board shall hear a request for rezoning at a public hearing and shall make a recommendation for approval or denial to the city council. After considering the planning board's recommendation, the city council shall make the final determination on a request for rezoning at a public hearing held in accordance with the adopted Council Procedure of title 2, "Government Organization," (Appendix) B.R.C. 1981.

(e) Criteria: The city's zoning is the result of a detailed and comprehensive appraisal of the city's present and future land use allocation needs. In order to establish and maintain sound, stable, and desirable development within the city, rezoning of land is to be discouraged and allowed only under the limited circumstances herein described. Therefore, the city council shall grant a rezoning application only if the proposed rezoning is consistent with the

policies and goals of the Boulder Valley Comprehensive Plan, and, for an application not incidental to a general revision of the zoning map, meets one of the following criteria:

(1) The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map;

(2) The existing zoning of the land was the result of a clerical error;

(3) The existing zoning of the land was based on a mistake of fact;

(4) The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage;

(5) The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area; or

(6) The proposed rezoning is necessary in order to provide land for a community need that was not anticipated at the time of adoption of the Boulder Valley Comprehensive Plan.

(f) Solar Access Areas: A request for rezoning may seek to amend a solar access area, as defined in subsection 9-9-17(c), B.R.C. 1981, if all applicable requirements of subsection 9-9-17(e), B.R.C. 1981, are met.

9-2-19 **Creation Of Vested Rights.**

(a) Site Specific Development Plan: For the purpose of this title and article 68 of title 24, C.R.S., as amended, the term "site specific development plan" means any project which requires a use review or site review. For the purposes of section 24-68-102.5, C.R.S., an application shall be deemed submitted upon the application for a use review, pursuant to section 9-2-15, "Use Review," B.R.C. 1981, or a site review, pursuant to section 9-2-14, "Site Review," B.R.C. 1981.

(b) Establishing A Vested Property Right: In order to establish a vested property right as defined in section 24-68-102(5), C.R.S., for a site specific development plan, the applicant shall meet all of the following requirements:

(1) Public Hearing Required: For those site specific development plan approvals not requiring a public hearing before the planning board, the applicant shall request, in writing, that its application be referred to the planning board for hearing under the city manager's discretionary power pursuant to paragraph 9-2-7(b)(1), B.R.C. 1981. The city manager will refer any such requested application to the planning board for public hearing pursuant to subsection 9-4-4(d), B.R.C. 1981.

(2) Elements Of Plans To Be Vested: The applicant shall state clearly in its application those specific elements of the plan in which the applicant seeks to create vested rights, including, without limitation, type of use, density, building height, building footprint location, and architecture.

(3) Notice Of Approval: If a site specific development plan is approved by the planning board, the applicant shall cause a notice advising the general public of the site specific development plan approval and the creation of a vested property right to be published in a newspaper of general circulation no later than fourteen days following final approval.

Further, the applicant shall provide the city manager with the newspaper's official notice of said publication no later than ten days following the date of publication.

(4) Compliance With Conditions Of Approval: The applicant shall meet and maintain all conditions of final approval for the site specific development plan.

(c) Void: An applicant's failure to meet all of the above requirements renders the site specific development plan approval void and results in the waiver of the applicant's right to create a vested property right pursuant to section 24-68-103(1), C.R.S.

(d) Applicability Of Ordinances That Are General In Nature: The establishment of a vested property right shall not preclude the application of city ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation including, without limitation, the provisions of chapter 9-3, "Overlay Districts," section 9-9-17, "Solar Access," chapters 9-12, "Subdivision," 9-13, "Inclusionary Zoning," and 9-14, "Residential Growth Management System," B.R.C. 1981, and the city's building, fire, plumbing, electrical, and mechanical codes. Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions of this code pertaining to the development and use of property.

(e) City Council Approval: The three-year vesting period for site specific development plan approvals shall not be extended to a longer time period, including by amendments to such approvals, unless such extensions are included in the development agreement and adopted by ordinance of the city council.

Ordinance Nos. 5778 (1996); 7079 (2000).

9-2-20 Required Improvements And Financial Guarantees.

(a) Fees: If public improvements or private improvements in lieu of public improvements are included within any application governed by this title, or are required as a condition of approval of the application, the applicant shall pay, in addition to any other fees, the public improvement inspection fees specified in section 4-20-43, "Development Application Fees," B.R.C. 1981. The applicant shall also provide the financial guarantees for public or other improvements required by sections 9-12-13, "Subdivider Financial Guarantees" and 9-12-14, "Public Improvement Warranty," B.R.C. 1981, as if the applicant were a subdivider. These fees and guarantees are due after final approval of the application by the city and are a condition of the approval.

(b) Security: If at the time of a request for a certificate of occupancy or certificate of completion all work required by a building permit or development agreement is not completed, the developer shall provide financial security in the form of an escrow of funds with the city, a letter of credit, or other financial guarantee that is acceptable to the city attorney to secure the installation or completion of improvements required by this title or the terms of a development agreement, including, without limitation, landscaping, building and site treatment, and public improvements.

(c) Amount And Term: The city manager shall establish the amount and term of the financial guarantee.

(d) Time Frame: The developer shall install or complete the improvements within the time specified in the development agreement.

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(e) Annual Review: The city manager shall review the financial guarantee annually to assure that it meets the full current cost of installing or completing the improvements that it guarantees and may require the developer to augment the guarantee to meet such costs.

(f) Collection: If the improvements are not completed within the required time, the city manager may cause them to be completed and collect against the financial guarantee, or, if the guarantee is exhausted, against the developer for their full cost of completion.

(g) In Addition: The requirements of this section are in addition to any requirements for financial guarantees under any other provision of this code.

TITLE 9 LAND USE CODE

Chapter 3 Overlay Districts[1]

Section:

9-3-1 Purpose Of Overlays And How To Use The Overlays.

(a) Overlay regulations provide restrictions or additional requirements for all development within a geographic area, irrespective of the basic zone standards. Because these regulations

[1]Adopted by Ordinance No. 7476.

"overlay" basic zone standards, it is important to understand how these regulations affect a particular property before investigating the basic zone standards. Overlay district standards described in this chapter include:

(1) Floodplains;

(2) Wetlands;

(3) Airport Influence Zone; and

(4) Medium Density Overlay Zone.

(b) There are additional regulations that must also be considered, including historic preservation designations (chapter 9-11, "Historic Preservation," B.R.C. 1981), and the various street access and network plans, and sub-community, area, and sub-area plans adopted as part of the Boulder Valley Comprehensive Plan. All overlays and their requirements applicable to a specific property should be carefully considered before evaluating the basic zone standards or proceeding with conceptual design.

9-3-2 **Floodplains.**

(a) Legislative Intent: The purpose of this section is to regulate certain areas of the city subject to flooding in order to protect the public health, safety, and welfare by:

(1) Restricting or prohibiting certain uses that are hazardous to life or property in time of flood;

(2) Restricting the location of structures intended for human occupancy and regulating the manner in which such structures may be built in order to minimize danger to human life within and around such structures;

(3) Requiring that those structures allowed in the floodplain be expanded or enlarged, and equipment and fixtures be installed or replaced, in a manner designed to prevent their being washed away and to assure their protection from severe damage;

(4) Regulating the method of construction and replacement of water supply and sanitation systems in order to prevent disease, contamination, and unsanitary conditions;

(5) Maintaining for public inspection available maps delineating areas subject to such provisions in order to protect individuals from purchasing or using lands for purposes that are not suitable;

(6) Protecting and preserving the water-carrying and water-retention characteristics and capacities of watercourses used for conveying and retaining floodwaters; and

(7) Obtaining and maintaining the benefits to the community of participating in the National Flood Insurance Program.

(b) Flooding May Occur: The degree of flood protection provided by the terms of this section has been determined to be reasonable for regulatory purposes. Floods of greater magnitude will occur, and flood heights may be increased as a result of natural or human-made causes. The provisions of this section do not imply that areas outside of the floodplain or land uses permitted within the floodplain are free from flooding, flood hazard, or flood damages. A grant or approval by the city under the requirements of this section does not constitute a representation, guarantee, or warranty of any kind or nature by the city or any city official

or employee of the practicability or safety of any structure or proposed use, and it creates no liability to or cause of action against the city or any city official or employee for any damages from flood or otherwise that may result from such structure or use.

(c) Scope And Application:

(1) The requirements of this section supplement those imposed on the same lands by any underlying zoning provisions of this code or other ordinance of the city. If there is a conflict between such requirements, the more restrictive controls.

(2) If a lot or parcel of land lies partly within the high hazard zone or the conveyance zone or the flood fringe area, the part(s) of such lot or parcel lying within such area or areas shall meet all the standards and requirements of such respective area as prescribed by this section. For the purposes of new construction, if any portion of a structure lies partly within the high hazard zone or the conveyance zone or the flood fringe area, all the standards and requirements of this section shall apply to the entire structure.

(3) If lands located outside the city limits are included within the floodplain, the flood fringe, the conveyance zone or the high hazard zone, the requirements of this section shall apply to such lands upon annexation.

(d) Administration: The city manager shall administer the requirements of this section and shall:

(1) Determine that the requirements of this section have been met before issuing any permit for development in the floodplain;

(2) Obtain and maintain for public inspection any certificates of floodproofing required by this section, and any information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and information specifying whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(3) Notify Boulder County and the Colorado Water Conservation Board before permitting any change in a watercourse and submit evidence of such notice to FEMA;

(4) Adopt rules interpreting and implementing the requirements of this section including, without limitation, application procedures for floodplain development permits and specifications for the floodproofing of structures, substantial improvements, and utilities;

(5) Assure that the Boulder Valley Comprehensive Plan is consistent with the floodplain management objectives of this section and the regulations of FEMA;

(6) Make necessary interpretations of the exact location of the boundaries of the floodplain, the flood fringe, the conveyance zone and the high hazard zone;

(7) Amend the boundaries of the high hazard zone and the conveyance zone pursuant to subsection (f) of this section;

Ordinance No. 7522 (2007).

(8) Determine that all necessary permits have been obtained from state, federal, or local agencies the approval of which is required before issuing any permit for development in the floodplain;

(9) Require that persons changing a watercourse maintain the watercourse so that its flood carrying capacity is not diminished;

(10) Require that new and replacement water supply systems in the floodplain be designed to minimize or eliminate infiltration of floodwaters into the systems;

(11) Require that new and replacement sanitary sewage systems within the floodplain be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;

(12) Require that on-site waste disposal systems be located to avoid impairment to them or contamination from them during flooding; and

(13) Obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal, state, and other sources, including data developed pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, as criteria for requiring that all new development meet the requirements of this section.

(e) Appeals: Any person contesting the city manager's interpretation of a boundary location under paragraph (d)(6) of this section, or any person aggrieved by the granting or denial of a floodplain development permit, may appeal such determination to the planning board through the process described in section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981. The request shall set forth the reason and basis for the appeal and such other information as the manager may prescribe by rule.

(f) Map Amendments: As watercourse or flood channel improvements or mapping corrections are made, the city manager may amend the flood regulatory area maps to recognize the changed conditions produced by such improvements or corrections provided that no such amendments or corrections may change a FEMA "area of special flood hazard" or "regulatory floodway" unless the city is in receipt of a letter of map amendment or a letter of map revision issued by FEMA.

(g) Flood Regulatory Areas:

(1) The provisions of this section apply to the area shown as floodplain on the most recent maps adopted by the city council, as amended from time to time by the city manager pursuant to subsections (d), (e), and (f) of this section. The regulatory floodplain encompasses the one hundred-year floodplain, the flood fringe, the conveyance zone, and the high hazard zone. The following regulations governing each portion of the floodplain are cumulative and not exclusive.

(2) In addition to the regulatory areas identified in paragraph (g)(1) of this section, the city has adopted the areas of special flood hazard identified in the Flood Insurance Study for Boulder County, effective October 4, 2002, and delineated on the Flood Insurance Rate Map for Boulder County and the City of Boulder as adopted by the city in compliance with 44 C.F.R. section 1. In no event will the regulations contained in this section be interpreted to permit any action not permitted under those regulations promulgated by FEMA for the regulation of areas of special flood hazard and regulatory floodways.

Ordinance No. 6034 (1998).

9-3-3 **Regulations Governing The Floodplain.**

(a) General Provisions: In the entire floodplain, the following standards apply:

(1) Floodplain Development Permit: No development in the floodplain may occur prior to the issuance of a floodplain development permit pursuant to section 9-3-6, "Floodplain Development Permits," B.R.C. 1981.

(2) Anchoring:

(A) All new construction and substantial improvements or substantial modifications shall be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads.

(B) All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties connecting to permanent ground anchors, in addition to any anchoring requirements for resisting wind forces and any tie-down requirements of chapter 10-12, "Mobile Homes," B.R.C. 1981. Requirements shall include, without limitation, the following:

(i) Over-the-top ties shall be provided at each of the four corners of the manufactured homes. For manufactured homes fifty feet or longer, two additional ties per side are required at intermediate locations. For manufactured homes less than fifty feet long, one additional tie per side is required;

(ii) Frame ties shall be provided at each of the four corners of the manufactured homes. For manufactured homes fifty feet or longer, five additional ties per side are required at intermediate points. For manufactured homes less than fifty feet long, four additional ties per side are required;

(iii) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred pounds; and

(iv) Any additions to manufactured homes shall be similarly anchored.

(3) Construction Materials And Methods:

(A) All new construction, substantial improvements, and substantial modifications shall be constructed with materials and utility equipment resistant to flood damage as outlined in FEMA Technical Document 2-93, *Flood-Resistant Materials Requirements.*

(B) All new construction, substantial improvements, and substantial modifications shall be constructed using methods and practices that minimize flood damage.

(C) All new construction, substantial improvements and substantial modifications shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located (by elevating or floodproofing the components) so as to prevent water from entering or accumulating within the components during flooding conditions.

(4) Utilities:

(A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

(B) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

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(C) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.

(5) Subdivision Proposals:

(A) All subdivision proposals shall demonstrate efforts to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development.

(E) No subdivision proposal shall create a lot which is unbuildable pursuant to this section.

(6) Floodproofing: Whenever this section requires a building or structure to be floodproofed, the following standards shall be met:

(A) Such building or structure shall be floodproofed in accordance with any rules for floodproofing promulgated by the city manager pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, and with FEMA Technical Bulletins 2-93, *Flood-Resistant Materials Requirements,* 3-93, *Non-residential Floodproofing-Requirements and Certification,* 4-93, *Elevator Installation,* 6-93, *Below-grade Parking Requirements,* and 7-93, *Wet Floodproofing Requirements;*

(B) Such building or structure shall be floodproofed to the flood protection elevation in such a manner that the building or structure is watertight with walls substantially impermeable to the passage of water;

(C) Such building or structure shall have structural components capable of resisting projected hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(D) Such floodproofing shall be certified by a Colorado registered professional engineer or registered architect to comply with this paragraph. Such certifications shall be provided to the city manager as set forth in paragraph 9-3-2(d)(2), B.R.C. 1981.

(7) Hazardous Materials: No person shall store a hazardous substance at or below the flood protection elevation for the area of the floodplain in which it is located, except for the storage of gasoline in existing and replacement underground tanks in existing gasoline service stations and service garages, which tanks are designed to prevent infiltration and discharge into floodwaters and which are adequately anchored and shielded against rupture. For purposes of this paragraph, "existing" means in place and in use on January 1, 1989.

(8) Automobile Parking: Notwithstanding other provisions of this title, no person shall establish an area for automobile parking in any portion of the floodplain where flood depths exceed eighteen inches.

(9) Flood Warning System: No owner of a hotel, a motel, a dormitory, a rooming house, a hostel, a school, a bed and breakfast, a daycare center, a group home, or a residential or congregate care facility located in the Boulder Creek floodplain shall fail to provide a flood warning system approved by the city manager that is connected to a point of central

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communication in the building with twenty-four-hour monitoring. No such person shall fail to maintain such a flood warning system.

(10) Rental Property: No owner of property that is located in a floodplain and subject to a city rental license under chapter 10-3, "Rental Licenses," B.R.C. 1981, shall fail to post on the exterior of the premises at the entrance a sign approved by the city manager stating that the property is subject to flood hazard and containing such further information and posted at such other locations inside the building as the city manager may require.

(11) Manufactured Housing: All manufactured homes placed in the city after July 1, 1989, and all manufactured homes which are substantially improved or substantially modified shall be elevated on a permanent foundation so that the lowest floor of the manufactured home is at or above the flood protection elevation and is securely anchored to an adequately anchored foundation system, and shall meet the anchorage and tie-down requirements of paragraph (a)(2) of this section.

(12) Recreational Vehicles: In order to reduce debris and hazard potential, recreational vehicles shall either: a) be in the floodplain for fewer than one hundred eighty consecutive days, b) be fully licensed and ready for highway use, or c) meet the permit requirements and elevation and anchoring requirements for manufactured homes.

(13) Structure Orientation: In order to minimize the obstruction to flow caused by buildings, to the extent consistent with other city policies regarding solar access, new structures shall be placed with their longitudinal axes parallel to the predicted direction of flow of floodwaters or be placed so that their longitudinal axes are on lines parallel to those of adjoining structures.

(14) Existing Uses: The use of any land or structure that was lawful before the application of this section or any amendment thereto but that does not conform to the requirements of this section may be continued subject to the requirements of this section. If such a use not conforming to the requirements of this section is discontinued for twelve consecutive months, no person shall use the land or structure thereafter unless such use conforms to the requirements of this section.

(15) New Uses: All uses allowed by the underlying zoning district may be established, subject to the requirements of this section, except for the outdoor or uncontained storage of moveable objects below the flood protection elevation.

(16) Existing Structures: Any structure in existence before the enactment of this section or any amendment thereto that does not conform to the requirements of this section may remain or may undergo rehabilitation subject to the requirements of this section. Further, any such structure may be otherwise improved as follows:

(A) Any person making an expansion or an enlargement to an existing residential structure shall elevate the lowest floor, including the basement, of the expanded or enlarged portion to or above the flood protection elevation.

(B) Any person making an expansion or an enlargement to an existing nonresidential structure shall floodproof or elevate the lowest floor, including the basement, of the expanded or enlarged portion to or above the flood protection elevation.

(C) Any person making a substantial modification or a substantial improvement to any existing nonresidential structure shall floodproof or elevate the lowest floor, including the basement, of the substantially modified or improved portion to or above the flood protection elevation and shall floodproof the remainder of the existing structure.

(D) Any person making a substantial modification or a substantial improvement to any existing residential structure shall elevate the lowest floor, including the basement, of the entire residential structure to or above the flood protection elevation.

(17) New Structures: Construction of new structures shall meet the following requirements:

(A) Any person constructing a new residential structure shall elevate the lowest floor, including the basement, to or above the flood protection elevation;

(B) Any person constructing a new nonresidential structure shall floodproof in a manner requiring no human intervention or elevate the lowest floor, including the basement, to or above the flood protection elevation with the following exceptions:

(i) Open air carwashes;

(ii) Unheated pavilions;

(iii) Unfinished or flood resistant building entryways or access areas;

(iv) Garden storage sheds;

(v) Sidewalks, paving, or asphalt, concrete, or stone flatwork;

(vi) Fences; and

(vii) Poles, lines, cables, or other transmission or distribution facilities of public utilities.

(18) Enclosures: Enclosures below the lowest floor that are unfinished or flood resistant, usable solely for parking of vehicles, crawl spaces, building access or storage, in an area that is not a basement, and that are not floodproofed as set forth in this section shall meet the following requirements:

(A) Compliance with the provisions of paragraphs (a)(2), (a)(3), and (a)(4) of this section; and

(B) Design and construction that automatically equalizes hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(i) Designs for meeting this requirement shall meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(ii) Any designs not in conformance with subparagraph (a)(18)(B)(i) of this section, shall be certified by a registered professional engineer or architect and shall conform with FEMA Technical Bulletin 1-93, *Openings In Foundation Walls.*

(C) Fully enclosed areas below the lowest floor subject to this provision, include the following:

(i) Residential garages placed at or above grade;

(ii) Enclosures or vestibules that are attached to structures and that are utilized for storage or entryways;

(iii) Crawl spaces; and

(iv) Outdoor pavilions and patio enclosures with removable walls not located in the high hazard zone.

(19) Below Grade Crawl Space Construction: New construction, expansion or enlargement, substantial improvement and substantial modification of any below grade crawl space shall meet the following requirements:

(A) Interior grade elevation that is below the base flood elevation shall be no lower than two feet below the lowest adjacent grade;

(B) The height of the below grade crawl space measured from the interior grade of the crawl space to the top of the foundation wall shall not exceed four feet at any point;

(C) Adequate drainage systems shall allow floodwaters to drain from the interior area of the crawl space following a flood; and

(D) The provisions of paragraphs (a)(2), (a)(3), (a)(4) and (a)(18) of this section shall be complied with.

Ordinance No. 6034 (1998).

9-3-4 Regulations Governing The Conveyance Zone.

In the conveyance zone, the following standards apply:

(a) The provisions of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981.

(b) The provisions of section 9-3-5, "Regulations Governing The High Hazard Zone," B.R.C. 1981, if the land is also located in the high hazard zone.

(c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or any ordinance of this city, may be established except that no person shall establish or change any use that results in any rise in the elevation of the one hundred-year flood.

(d) All structures allowed under section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981, may be established except that no person shall:

(1) Place any structure in the conveyance zone that will result in any rise in the elevation of the one hundred-year flood; or

(2) Place any obstruction in the conveyance zone, except a device reasonably necessary for flood management if the device is designed and constructed to minimize the potential hazards to life and property.

(e) No person shall carry out any other development that results in any rise in the elevation of the one hundred-year flood.

9-3-5 Regulations Governing The High Hazard Zone.

In the high hazard zone of the floodplain, the following standards apply:

(a) The provisions of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981.

(b) The provisions of section 9-3-4, "Regulations Governing The Conveyance Zone," B.R.C. 1981, if the land is also located in the conveyance zone.

(c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or any other ordinance of the city, may be established, except that no person shall:

(1) Change the use of an existing structure intended for human occupancy from a nonresidential use to a residential use or use as a school, daycare center, group home, residential care facility, or congregate care facility.

(2) Establish any new parking lot for motor vehicles.

(3) Establish any campground.

(d) All structures allowed under the provisions of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981, may be established, except that no person shall:

(1) Construct or place any new structure intended for human occupancy.

(2) Expand, enlarge, or make a substantial modification or substantial improvement to any existing structure intended for human occupancy. Notwithstanding this provision, a person may reconstruct a non-flood-damaged structure or portion thereof, which otherwise does constitute a substantial improvement, under the provisions of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981.

9-3-6 **Floodplain Development Permits.**

(a) An applicant for a floodplain development permit shall pay the fee prescribed by section 4-20-44, "Floodplain Development Permits And Flood Control Variance Fees," B.R.C. 1981, and shall complete an application form provided by the city manager that shall include, without limitation, the following:

(1) The written consent of the owners of all property subject to the development request;

(2) A written statement addressing the criteria for approval;

(3) A surface view plan showing elevations and contours of the ground; pertinent structures, fill, and storage elevations; sizes, locations, and spatial arrangements of all proposed, anticipated, and existing structures on the site; location and elevations of streets, water supplies and sanitary facilities; and soil types; and

(4) Specifications for building construction and materials, filling, dredging, grading, channel improvements and changes, storage of materials, water supply, and sanitary facilities.

(b) The manager may require the applicant to furnish additional information and details deemed necessary to evaluate the effects of the proposed construction upon the floodplain, including, without limitation:

(1) Valley cross sections showing the floodplain surrounding the watercourse, cross sections of the area to be occupied by the proposed development, and one hundred-year flood maximum water surface elevation information;

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(2) A profile showing the slope of the bottom of the channel or thalweg of the watercourse;

(3) A floodplain analysis by a Colorado registered professional engineer of the flood profile, elevation, and velocity, using methodology acceptable to FEMA, including existing and anticipated uses and making a determination that the proposed construction or development will not cause a rise in the elevation of the water surface of a one hundred-year flood;

(4) A structural analysis by a Colorado registered professional engineer showing that any proposed structures will be adequately designed and constructed to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and scouring.

(c) When reviewing an application for a permit, the city manager shall determine which portion or portions of the floodplain are affected by the particular development request and shall then apply the provisions of sections 9-3-3, "Regulations Governing The Floodplain," 9-3-4, "Regulations Governing The Conveyance Zone," and 9-3-5, "Regulations Governing The High Hazard Zone," B.R.C. 1981, as applicable. The manager also shall determine whether the application meets the intent of this chapter prescribed by subsection 9-3-2(a), B.R.C. 1981, after considering the following factors:

(1) The effects upon the efficiency or capacity of the conveyance zone and high hazard zone;

(2) The effects upon lands upstream, downstream, and in the immediate vicinity;

(3) The effects upon the one hundred-year flood profile;

(4) The effects upon any tributaries to the main stream, drainage ditches, and any other drainage facilities or systems;

(5) Whether additional public expenditures for flood protection or prevention will be required;

(6) Whether the proposed use is for human occupancy;

(7) The potential danger to persons upstream, downstream, and in the immediate vicinity;

(8) Whether any proposed changes in a watercourse will have an adverse environmental effect on the watercourse, including, without limitation, stream banks and streamside trees and vegetation;

(9) Whether any proposed water supply and sanitation systems and other utility systems can prevent disease, contamination, and unsanitary or hazardous conditions during a flood;

(10) Whether any proposed facility and its contents will be susceptible to flood damage and the effect of such damage;

(11) The relationship of the proposed development to the Boulder Valley Comprehensive Plan and any applicable floodplain management programs;

(12) Whether safe access is available to the property in times of flood for ordinary and emergency vehicles;

(13) Whether the applicant will provide flood warning systems to notify floodplain occupants of impending floods;

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(14) Whether the cumulative effect of the proposed development with other existing and anticipated uses will increase flood heights; and

(15) Whether the expected heights, velocities, duration, rate of rise, and sediment transport of the floodwaters expected at the site will adversely affect the development or surrounding property.

(d) If the city manager determines that the applicant meets the purposes and requirements of this chapter, the manager shall issue the permit and may attach such conditions as deemed necessary to further the purposes of this chapter. However, any application involving a change of watercourse shall be referred to the planning board for public hearing and decision, with call-up potential by the city council, subject to the procedures in section 9-4-2, "Development Review Procedures," B.R.C. 1981.

(e) A permit issued on or after April 7, 1985, expires three years after its date of issuance, if the permittee has not commenced construction under the permit. The term "commenced construction" shall mean the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation; but does not include land preparation, grading and filling, or installation of streets or sidewalks.

(f) No person who has obtained a permit shall fail to construct in accordance with their approved application and design.

(g) Floodplain development permits that allow for development in the conveyance zone or the high hazard zone, or which will involve a change of watercourse, shall be decided by the city manager. The decision of the city manager shall be subject to call-up by the planning board, or appeal by any aggrieved party to the planning board, subject to the call-up and appeal procedure of section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(h) A floodplain development permit for any of the following items is effective upon the date of its issuance:

(1) Sidewalks, parking lots, or other concrete, asphalt, or stone flatwork that do not modify existing grade;

(2) Underground utility facilities that do not modify existing grade;

(3) Uninhabited overhead structural projections, no portion of which extends below the flood protection elevation; or

(4) Rehabilitation of an existing structure in accordance with the definitions in chapter 9-16, "Definitions," B.R.C. 1981. In addition, for properties in the high hazard zone, the rehabilitation shall not result in a prohibited change in use as set forth in subsection 9-3-5(c), B.R.C. 1981.

(i) No person shall initiate any use after obtaining a permit under this section without first submitting to the city manager a certification by a Colorado registered professional engineer that the development has been completed in compliance with the approved permit application and that all conditions have been fulfilled.

Ordinance No. 6034 (1998).

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9-3-7 **Variances.**

(a) A person wishing to expand or enlarge an existing structure that does not conform to the requirements of this chapter and cannot be made to conform without unreasonable expense or unreasonable impact on the existing structure may apply to the city manager for a variance from the requirements of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981, except that no variance shall be granted for expansion or enlargement of any structure constructed after July 12, 1978, unless such expansion or enlargement conforms to the flood protection elevation requirement in effect at the time of the original construction.

(b) The city manager shall not grant a variance under this section unless the manager determines that:

(1) Considering the flood hazard, the variance is the minimum necessary to afford relief;

(2) To do so would not result in additional threats to public safety, extraordinary public expense, nuisance, fraud, victimization of the public, or for variances in the conveyance zone a rise in the elevation of the water surface of a one hundred-year flood, or be in conflict with existing provisions of this code or any ordinance of the city; and

(3) Failure to grant the variance would result in exceptional hardship to the applicant.

(c) The manager shall examine the following factors in determining whether or not to grant a variance under this section:

(1) The danger to life and property due to flooding or erosion damage;

(2) The likelihood that the proposed development, in conjunction with existing and anticipated development, may increase flood hazards;

(3) The relationship of the proposed development to the Boulder Valley Comprehensive Plan and any applicable floodplain management programs; and

(4) The cost of providing essential services such as maintaining and protecting public utility systems, roads, and bridges during and after floods.

(d) The city manager shall not grant a cumulative total of variances that increases a structure's floor area by more than ten percent of the structure throughout the life of the structure.

(e) An applicant for a variance shall apply on forms provided by the city manager and pay the fee prescribed by section 4-20-44, "Floodplain Development Permits And Flood Control Variance Fees," B.R.C. 1981, unless a floodplain development permit is required as well, in which case no fee is required for the variance.

(f) Any decision by the city manager to approve a variance is subject to call-up by the planning board or appeal by any aggrieved party to the planning board as described by section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(g) When granting any variance that allows for construction below FEMA's one hundred-year flood protection elevation, the city manager shall provide to the recipient of the variance written notice that the proposed construction does not conform with FEMA guidelines and that the proposed construction and the original structure may be subject to increased flood insurance premiums.

9-3-8 **Development Violating Chapter Is Nuisance.**

(a) Every development placed or maintained in the floodplain contrary to the terms of this chapter constitutes a public nuisance that may be enjoined and abated by suit or action by the city or any resident of the city.

(b) In the event of a flood, when a structure intended for human occupancy located within a high hazard zone is damaged to an extent exceeding fifty percent of its market value before the flood damage occurred, it may not be repaired or replaced, and use of the structure for human occupancy shall cease. After written request of the property owner within ninety days after the date on which the damage occurred, subject to appropriation by the city council of sufficient funds therefore, the city manager shall agree to contract or purchase the land upon which the structure was located at its fair market value after the damage occurred.

(c) When this section provides for acquisition of a structure and the city manager does not accept as reasonable the values submitted by an applicant, the fair market value shall be determined by an appraiser acceptable to the applicant and the manager, whose cost shall be borne equally by the city and the applicant. If the applicant and the manager are unable to agree upon an appraiser, each shall select an appraiser, whose cost shall be borne by each respective selector, and the two appraisers shall select a third appraiser, whose cost shall be borne equally by the city and the applicant. The value shall be the average of the values determined by the three appraisers.

9-3-9 **Wetlands Protection.**

(a) Legislative Intent:

(1) It is the intent of the city council in enacting this section to preserve, protect and enhance wetlands. The council finds that wetlands are indispensable and fragile natural resources with significant development constraints due to high groundwater, flooding, erosion, and soil limitations, and that development activities may threaten wetlands. The preservation of wetlands under this section is consistent with the goal of wetland protection set forth in the Boulder Valley Comprehensive Plan.

(2) The city council finds that many wetlands have been lost or impaired by draining, dredging, filling, excavating, building, polluting, and other acts. Piecemeal and cumulative losses destroy or diminish the functions of the remaining wetlands.

(3) The city council finds that it is necessary for the city to ensure protection for wetlands by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetlands. When development is permitted and the destruction of wetlands cannot be avoided, the city council finds that impacts on wetlands should be minimized and mitigation provided for unavoidable losses.

(4) Nothing in this section shall be construed to prevent irrigation companies from diverting and carrying water under their historic water rights or owners of such rights from exercising those historic rights.

(5) Nothing in this section shall be construed to prevent compliance with applicable state or federal statutes and regulations.

(b) Scope And Application: It is not the intent of this section to prohibit all activities within the regulated areas, but rather to encourage avoidance of regulated activities within the regulated area and to require a permit or best management practices in regulated areas.

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(1) Regulated Area: This section applies to the following:

(A) Areas within the city shown on the wetlands maps adopted pursuant to subsection (c) of this section, as amended;

(B) All wetlands on city owned or managed lands inside or outside the city limits;

(C) All city activities affecting wetlands inside or outside of the city limits;

(D) Buffer areas associated with all of the above.

(2) Exempt Wetlands: Isolated wetlands with a size of less than four hundred square feet, regardless of property boundaries, are exempt from this section unless the wetland site provides habitat for the following species:

(A) Plant, animal, or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;

(B) Plant, animal, or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern, or species of undetermined status; or

(C) Plant, animal, or other wildlife species listed in the Boulder County Comprehensive Plan as critical; and

(D) Plant, animal, or other wildlife species listed in the Boulder Valley Comprehensive Plan as a species of local concern.

(3) Most Stringent Restrictions Prevail: It is not intended that this section repeal, abrogate, supersede, or impair any existing federal, state, or local law, easement, covenant, or deed restriction. However, if this section imposes greater or more stringent restrictions, the provisions of this section shall prevail. Specifically, if an applicant for a wetlands permit pursuant to this section also acquires authorization under section 404 of the Clean Water Act from the United States Army Corps of Engineers, the applicant shall meet any greater or more stringent restrictions set forth in this section in addition to and independent of the restrictions of such permit.

Ordinance No. 5788 (1996).

(c) Wetlands Mapping And Evaluation:

(1) Wetlands Maps: The wetlands maps and wetlands evaluations are hereby adopted and will be maintained on file in the planning department.

(2) Significant Wetlands: Significant wetlands are designated on the adopted wetlands maps. Wetlands are defined as significant according to the definition set forth in chapter 9-16, "Definitions," B.R.C. 1981.

(3) Wetland Functional Equivalents: At the request of the applicant or an interested party and after payment of the fee, if any, prescribed in section 4-20-53, "Wetland Permit And Map Revision Fees," B.R.C. 1981, by the party initiating the request, or at the city manager's initiative, the city manager will perform a wetland functional evaluation. Functional evaluations shall be determined or modified in accordance with the description of wetland functions in the report entitled: *Advanced Identification Of Wetlands In The City Of Boulder Comprehensive Planning Area* (1988), by D. Cooper, Ph.D.

(4) Wetland Boundary Determination:

(A) Wetland boundaries may be modified by ordinance by means of the performance of a wetland boundary determination. Wetland boundary determinations shall be performed in accordance with the procedures specified in the *Federal Manual For Identifying And Delineating Jurisdictional Wetlands* (January, 1989) Interagency Cooperative Publication, Fish and Wildlife Service, Environmental Protection Agency, and Department of Army, Soil Conservation Service or defined in chapter 9-16, "Definitions," B.R.C. 1981. The methodology for a "comprehensive" wetland boundary determination shall be used for all wetlands under this section.

(B) At the request of the applicant or an interested party and after payment of the fee, if any, prescribed in section 4-20-53, "Wetland Permit And Map Revision Fees," B.R.C. 1981, by the party initiating the request, or at the city manager's initiative, the city manager will perform a wetland boundary determination.

(5) Wetland Buffer Area Determination: The extent of wetland buffer areas shall vary according to wetland function and shall include areas adjacent to the wetland that are necessary to preserve the natural water source of the wetland, or necessary for the protection of animal and plant habitat associated with the wetland. In the absence of a specific buffer area determination, the buffer area for significant wetlands shall be fifty feet from each point on the wetland boundary, and the buffer area for all other wetlands shall be twenty-five feet from each point on the wetland boundary.

(6) Annexation: Prior to annexation, all wetlands and buffer areas on the property to be annexed shall be mapped by the city after the fee prescribed in section 4-20-53, "Wetland Permit And Map Revision Fees," B.R.C. 1981, is paid and according to the procedures set forth in this section. This mapping shall include a functional evaluation of the wetlands performed by the city. The approved mapping and evaluation shall be adopted as an update to the wetlands maps as a part of the annexation ordinance.

Ordinance Nos. 5604 (1993); 5725 (1995); 5788 (1996).

(d) Regulated Activities:

(1) All Activities Are Regulated: No person shall conduct any regulated activity within a regulated area without first obtaining a wetland permit or meeting the requirements of this section. No person shall violate any provision of this section or any requirement of any wetland permit.

(2) Activities Requiring A Wetland Permit: Except as provided in paragraphs (d)(3) and (d)(4) of this section, any activity in a regulated area requires a wetland permit. The application requirements, process, standards, and conditions for all types of wetland permits are provided in section 9-2-6, "Development Review Application," B.R.C. 1981. Activities that require a wetland permit include, without limitation:

Ordinance No. 7522 (2007).

(A) Placement, removal, excavation, or dredging of any material, including, without limitation, any soil, sand, gravel, mineral, aggregate, or organic material;

(B) Construction, total reconstruction or replacement, installation, erection, expansion, enlargement, or placement of any obstruction, development, facility, utility, road, surface improvement, public infrastructure, building, or structure;

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(C) Removal of any existing vegetation or any activity which may cause any damage, deterioration, or loss of vegetation in a wetland;

(D) Alteration of the surface and subsurface hydrology, water table, or water quality by any means, including, without limitation, draining, ditching, trenching, impounding, flooding, or pumping; and

(E) Disturbance of existing surface drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics by any means, including, without limitation, grading and alteration of existing topography.

(3) Activities Exempt From A Wetland Permit Requiring Best Management Practices And Notification: Subject to the application of best management practices as set forth in paragraph (d)(5) of this section and provision of notice as set forth in paragraph (d)(6) of this section, the activities listed in this paragraph are permissible in a regulated area as long as such activity does not significantly alter the function of the wetland:

(A) "Maintenance" as defined in chapter 9-16, "Definitions," B.R.C. 1981;

(B) Ongoing or periodic activities impacting created or recreated wetlands as authorized pursuant to the issuance of a wetlands permit under this section, including, without limitation, the removal of silt and sediment from water quality facilities;

(C) Maintenance of an existing farm or stock pond, irrigation ditch, fence, or drainage system;

(D) Weed control consistent with state and county laws;

(E) Continuation of existing agricultural practices such as the cultivation and harvesting of hay or pasturing of livestock, or a change of agricultural practices which does not result in an increase in impact to the wetland function; and

(F) Revegetation of wetlands or buffer areas consistent with the city's revegetation rules.

(4) Activities Exempt From A Wetland Permit: The following activities are allowed within a regulated area and do not require a permit if they do not reduce the extent of a wetland or significantly reduce the degree to which a wetland performs any function:

(A) Outdoor recreation, such as fishing, birdwatching, hiking, boating, and swimming, so long as they do not harm or disturb the wetland;

(B) Education, scientific research, or field surveying;

(C) Minor improvements and landscape maintenance within a buffer area but outside the boundaries of a wetland, including, without limitation, the pruning of trees, mowing of grass, and removal of dead vegetation and debris; and

(D) Removal of debris and maintenance of vegetation and wildlife habitat subject to the application of best management practices as set forth in paragraph (d)(5) of this section.

(5) Application Of Best Management Practices: Where required under the provisions of any wetland permit or as set forth in paragraphs (d)(3) and (d)(4) of this section, the application of best management practices shall comply, at a minimum, with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981.

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(6) Notice Of Regulated Activities: Except for emergency maintenance activities required for the immediate protection of life, safety, or property, or to restore essential public services, written notice of activities listed in paragraph (d)(3) of this section, shall be provided to the city manager at least two weeks prior to the commencement of work. The written notice shall include a full description of the activity, including duration and extent of impacts, and confirmation from a qualified wetland biologist that the activity will not significantly alter the function of the wetland. Work may commence only after the city manager has given written clearance for the activity. Written notice of any emergency maintenance activity shall be provided immediately following the activity.

(e) Wetland Permit And Wetland Boundary Determination Applications:

(1) Information Required: An applicant shall file a complete application for a simple wetland permit, a standard permit, or a wetland boundary determination on a form provided by the city manager. The application shall include, at a minimum, the following information:

(A) Payment of the required application fees as set forth in section 4-20-53, "Wetland Permit And Map Revision Fees," B.R.C. 1981;

(B) The name, address, and phone number of the applicant; and

(C) The location of the proposed activity and the address or legal description of the affected property.

(2) Simple Or Standard Wetland Permit Application: An application for a simple or standard wetland permit shall include the following information in addition to that listed in paragraph (e)(1) of this section:

(A) A detailed description of the proposed activity and how the application meets all applicable review criteria;

(B) A site plan which illustrates the regulatory wetland boundary and wetland buffer area as set forth in subsection (b) of this section; the property boundary and the proposed area of impact; and all existing and proposed structures, roads, improvements, watercourses, and drainageways on and adjacent to the property; and

(C) A report prepared by a qualified wetland biologist, which includes:

(i) Identification of the exact locations and specifications of all regulated activities;

(ii) An evaluation of the direct and indirect impacts of such activities;

(iii) A description of the types and sizes of wetlands and buffer areas that will be impacted by the regulated activities;

(iv) An evaluation and analysis of the proposed activities and all alternatives considered with respect to wetland protection standards as set forth in subsection (g) of this section, including a description of why avoidance of regulatory wetland areas and less damaging alternatives have been rejected by the applicant;

(v) Any applicable field investigation, monitoring, and clearances for critical species which may be impacted by the proposed activities;

(vi) A description and specifications for best management practices to be applied as part of the proposed activities;

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(vii) The source, type, and method of transport and disposal of any fill material to be used. Certification that placement of the fill material will not violate applicable state and federal statutes and regulations also shall be required; and

(viii) A mitigation plan as set forth in subsection (i) of this section, prepared by a qualified wetland biologist where required to mitigate direct or indirect impacts to wetland areas as a result of the proposed activities.

(3) Wetland Boundary Determination: An application for a wetland boundary determination shall include the following information in addition to that listed in paragraph (e)(1) of this section:

(A) A site plan showing the exact location of the current regulatory wetland and buffer areas; and

(B) A wetland boundary determination performed by a qualified wetland biologist in accordance with the procedures specified in the *Federal Manual For Identifying And Delineating Jurisdictional Wetlands* (January, 1989), Interagency Cooperative Publication: Fish and Wildlife Service, Environmental Protection Agency, and Department of the Army, Soil Conservation Service or a request to the city for a wetland boundary determination.

(4) Simple Wetland Permits:

(A) In determining whether a proposed activity is eligible for a simple wetland permit, one of the following shall apply to the activity:

(i) The activity will occur only in the wetland buffer;

(ii) The activity will permanently impact no more than four hundred square feet of the mapped wetland area; or

(iii) The activity will temporarily impact no more than ten thousand square feet of a mapped wetland area, not including the buffer.

(B) If the proposed activity involves total replacement of an existing improvement, the footprint of the existing structure is not included in the four hundred square feet of the calculated area of disturbance.

Ordinance Nos. 7182 (2002); 7373 (2004).

(f) Process For Simple Wetland Permits, Standard Wetland Permits And Wetland Boundary Determinations:

(1) Acceptance Of Application: Applicants for simple wetland permits or standard wetland permits shall submit an application as set forth in subsection (e) of this section. Upon receipt of an application, the city manager will review the application for completeness. A wetland permit application will be accepted when the city manager determines that it is complete. Such determination shall be made within five to ten days of the submission of the application.

(2) Notification: Upon acceptance of a complete application, public notice will be provided according to the requirements shown in section 9-4-3, "Public Notice Requirements," B.R.C. 1981, using Public Notice Type 5.

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(3) Simple Wetland Permit Review: The city manager will consider all comments on a simple wetland permit application and may require the applicant to resubmit for a standard wetland permit based on the nature and extent of public input.

(4) Permit Decision: The city manager will review all simple permit and standard permit applications in accordance with subsections (g), (h), and (i) of this section, and shall approve a permit, approve a permit with conditions or deny the application. Standard permits shall be final fourteen days after issuance. Simple permits shall be final upon issuance.

(5) Referrals, Call-Up Or Appeal:

(A) Simple Wetland Permits: For simple wetland permits, there shall be no referrals, call-ups or appeals. An aggrieved party may resubmit an application for a standard wetland permit and proceed pursuant to that process.

(B) Standard Wetland Application: The city manager may refer any standard wetland application directly to the planning board for a decision.

(C) Permit Decisions: The city manager shall forward all standard wetland permit decisions to the planning board. Within fourteen days of the decision, the planning board may call-up, or any aggrieved party may appeal, the city manager decision. Procedures for call-up and appeal shall follow the requirements of section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981.

(6) Wetland Boundary Determination Process:

(A) The city manager shall review the application in accordance with subsection (c) of this section, and may recommend to the planning board the proposed boundary change, recommend the proposed boundary change with modifications, or not recommend the proposed boundary change.

(B) Proposed wetland boundary changes shall be referred to the planning board for public hearing and recommendation to city council. Wetland boundary changes are final after the effective date of an ordinance passed by city council.

(7) Coordination With Other Development Reviews: The city manager may coordinate the application review process with other development review processes.

(8) Amendment Procedures:

(A) Changes to conditions of an approved permit or changes to an approved mitigation plan may be approved by the city manager without submittal of a new application if such changes are minor. Applicants for a minor change to a wetland permit must pay the fee for a simple wetland permit as prescribed in section 4-20-53, "Wetland Permit And Map Revision Fees," B.R.C. 1981. All minor changes to the permit shall be noted, signed, and dated on the approved permit.

(B) If an applicant proposes to amend an approved permit and the proposed amendment is not considered minor under subparagraph (f)(8)(A) of this section, the applicant must submit a complete application and pay the fee for a standard wetland permit as prescribed in section 4-20-53, "Wetland Permit And Map Revision Fees," B.R.C. 1981.

Ordinance Nos. 7366 (2004); 7373 (2004).

(g) Standards For Wetland Permits: The city manager, the planning board, or the city council shall evaluate a wetland permit application based on the following standards:

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(1) Avoidance: The applicant has demonstrated that all adverse impacts on a wetland, either directly or through its associated buffer area, have been avoided through a reduction in the size, scope, or density of the project or a change of project configuration or design;

(2) Unavoidable Impacts: If avoidance is not feasible, then the applicant has demonstrated all of the following:

(A) Minimization: The applicant has demonstrated that any direct or indirect adverse impact on a wetland or its associated buffer area has been minimized to the maximum extent feasible, the activity will result in minimal impact or impairment to any wetland function, and the activity will not jeopardize the continued existence of habitat for the following species:

(i) Plant, animal, or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;

(ii) Plant, animal, or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern, or species of undetermined status;

(iii) Plant, animal, or other wildlife species listed in the Boulder County Comprehensive Plan as critical; and

(iv) Plant, animal, or other wildlife species listed in the Boulder Valley Comprehensive Plan as a Species of Local Concern.

(B) Public Interest Review: The applicant has demonstrated that the project is in the public interest, considering:

(i) The extent of the public need for the proposed regulated activity;

(ii) The functional values of the wetland that may be affected by the proposed regulated activity;

(iii) The extent and permanence of the adverse effects of the regulated activity on the wetland, either directly or through its associated buffer area;

(iv) The cumulative adverse effects of past activities on the wetland, either directly or through its associated buffer area; and

(v) The uniqueness or scarcity of the wetland that may be affected.

(C) Mitigation Demonstration: The applicant has demonstrated that unavoidable direct and indirect impacts can be successfully mitigated based on the submission of a mitigation plan in conformance with the standards outlined in subsection (i) of this section.

(h) Wetland Permit Conditions:

(1) Permit Conditions: The city manager, the planning board, or the city council may attach such conditions to the granting of a wetland permit as are reasonably necessary to carry out the purposes of this section. To the extent necessary for the regulated activity to take place without adverse impact on the wetland, such conditions may include, without limitation:

(A) Requiring that structures be elevated on piles and otherwise protected against natural or man-made hazards;

(B) Modifying waste disposal and water supply facilities;

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(C) Requiring deed restrictions concerning future use and subdivision of lands, including, without limitation, preservation of undeveloped areas as open space and restrictions on vegetation removal;

(D) Restricting the use of an area, which may be greater than the regulated area;

(E) Requiring erosion control and storm water management measures;

(F) Clustering structures;

(G) Restricting fill, deposit of soil, and other activities which may be detrimental to a wetland;

(H) Modifying the project design to ensure continued water supply or other necessary protections for the purpose of maintaining wetland functions;

(I) Requiring or restricting maintenance of a regulated area for the purpose of maintaining wetland functions; and

(J) Requiring submission and approval of a mitigation plan as set forth in subsection (i) of this section.

(2) Financial Guarantee: The city manager will require a financial guarantee in an amount, and with surety and conditions, sufficient to secure compliance with the conditions and limitations set forth in the permit. The financial guarantee may be any of the options set forth in sections 9-2-20, "Required Improvements And Financial Guarantees," and 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981.

Ordinance No. 5562 (1993).

(i) Mitigation Plan:

(1) Mitigation Plan Required: As a condition of a wetland permit issued under this section, the city manager, the planning board or the city council may require a mitigation plan. A mitigation plan requires the applicant to engage in the restoration or creation of wetlands in order to offset, in whole or in part, the losses resulting from that applicant's actions. This mitigation plan shall not be an alternative to the standards set forth in subsection (g) of this section, but shall be used only to compensate for unavoidable losses. In making a determination of whether a mitigation plan will be required, and the degree to which it is required, the following factors will be considered:

(A) The type and value of the altered wetland's functions, the functions and associated resources to be impaired or destroyed as a result of the proposed regulated activity, and the ecological equivalency of the restored or created wetland. In considering whether the restored or created wetland is the ecological equivalent to the wetland impaired or destroyed, the city manager will accept an evaluation of functional values comparing the wetland impaired or destroyed and the proposed restored or created wetland using the *Advanced Identification of Wetlands in the City of Boulder Comprehensive Planning Area* (1988), by D. Cooper, Ph.D., or *The Wetlands Replacement Evaluation Procedure* (1992), by Environmental Concern Inc., or *The Wetlands Evaluation Technique* (1987), issued by the United States Department of the Army, or similar techniques. In interpreting the provisions of this section, the planning board may adopt design standards;

(B) The type, size, and location of the altered wetland and gains or losses of this particular type of wetland in the Boulder Valley planning area and in the area of the altered wetland; and

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(C) The cost and probability of success of the mitigation measures.

(2) Mitigation Plan Requirements:

(A) A mitigation plan shall contain:

(i) An evaluation of all of the factors set forth in paragraph (i)(1) of this section;

(ii) The location and ownership of the proposed mitigation site;

(iii) An evaluation of the suitability of the proposed mitigation site for establishing the restored or created wetland;

(iv) The source and ownership of any water to be used for establishing or maintaining the restored or created wetland;

(v) A description of the sizes and types of wetlands to be impaired or destroyed and restored or created;

(vi) The site hydrology of the restoration or creation area;

(vii) A maintenance program for a period of not less than five years, including, without limitation, weed control, litter and debris removal, watering, repair of water control structures, maintenance of vegetation and wildlife habitat, and clearing of culverts;

(viii) A description of any critical elements and possible problems that may influence the success of the project;

(ix) A timetable for construction and monitoring;

(x) A monitoring program; and

(xi) A demonstration of fiscal, administrative, and technical competence to successfully execute the overall project.

(B) The guidelines for the selection of a location for a wetland restoration or creation project will consider the following order of geographic preferences in the context of the goals of this section:

(i) On-site;

(ii) Adjacent to the site;

(iii) Within the watershed of the existing wetland;

(iv) Within the Boulder Valley planning area; or

(v) In unusual cases, outside the Boulder Valley planning area.

(C) In a mitigation plan, replication of the same or greater wetland functional value is required, unless a wetland of a different type or in a different location is justified based on the functions and values of the wetland which is proposed to be altered.

(D) The guidelines for wetland compensation indicating the amount of wetland area to be restored or created compared to wetland area destroyed or impaired are as in table 3-1 of this section.

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TABLE 3-1: WETLAND COMPENSATION

	Significant Wetlands	Other Wetlands
Creation	2:1	1.5:1
Restoration	1.5:1	1:1

Lower or higher ratios may be considered if justified. For example, lower ratios may be considered for the following:

(i) Demonstrated long-term success of similar restoration or creation plans;

(ii) In-kind restoration or creation rather than out-of-kind;

(iii) On-site mitigation rather than off-site;

(iv) Similarity of functions in the restored or created wetland compared to the wetland functions destroyed or impaired; and

(v) Prompt replacement of wetland functions.

(3) Mitigation Banking Program: Upon adoption of a wetland mitigation banking program by the city council, if the city manager, the planning board or the city council determines that the public interest is better served, a fee may be accepted in lieu of direct action on the part of the applicant to initiate a wetland restoration or wetland creation project to offset wetland destruction or impairment from the permitted activity. Fees for compensation of wetland destruction or impairment will be set based upon the amount that would be required to perform equivalent wetland restoration or creation. Such fees shall be held for the express use of wetland restoration and creation projects, including, without limitation, the acquisition of water rights for the use of compensatory mitigation.

(4) Financial Guarantee: Prior to receiving a final certificate of occupancy, the applicant and any successor owner of any portion of the property subject to a wetland permit shall either complete the mitigation or provide a financial guarantee in an amount sufficient to guarantee the performance of the mitigation plan. If a building permit is not required for a proposed activity, a financial guarantee is required prior to issuance of a wetland permit. The guarantee shall be in an amount necessary to secure the full costs, as determined by the city manager, of construction and monitoring as described in the approved mitigation plan. The city manager will annually review the guarantee to assure that it meets the full current cost of constructing the improvements whose installation it secures. The manager may require the applicant to amend the guarantee to meet such current costs. The financial guarantee may be in any of the forms as described in subsection 9-12-13(f), B.R.C. 1981. If the financial guarantee is in the form of the escrow of funds, the city manager will take the measures described in subsection 9-12-13(g), B.R.C. 1981, to ensure that the funds are maintained in an appropriate manner.

(j) Mitigation Monitoring And Release Of Mitigation Plan Responsibilities:

(1) The applicant and any successor owner of any portion of any property subject to a wetland permit is responsible for the implementation of any related wetland mitigation plan for up to five years from the date of completion of construction and planting of all vegetation required by the plan and acceptance of such construction and planting by the city manager.

(2) Any failure of a mitigation plan during the five-year monitoring period shall be remedied by the applicant and any successor owner of any portion of the property, who shall be jointly

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and severally liable to the city for the costs of such remedy. Any such failure shall trigger a new guarantee period of equivalent length. The city manager will release the financial guarantee at the end of the monitoring period if the original goals of the plan have been achieved.

(k) Expiration Of Wetland Permit:

(1) A wetland permit expires three years after the date of final approval, if:

(A) A building permit has not been issued and construction has not commenced; or

(B) No building permit is required and construction has not commenced.

(2) For good cause, an applicant or any successor owner of any portion of land subject to a wetland permit may request an extension of an original permit by filing an application with the city manager prior to the expiration date of the permit, for up to an additional three year period. The city manager may deny the request if good cause is not shown, if the original intent of the permit is altered or extended by the renewal, or if the applicant failed to abide by the terms of the original permit.

(l) Enforcement:

(1) In order to carry out the provisions of this section, the city manager may enter upon private land not otherwise open to the public in a reasonable and lawful manner, with reasonable notice to the owner or manager of the property during reasonable business hours for the purposes of inspection and observation.

(2) If denied access to any property or building, the city manager may apply to the municipal court for a search warrant or administrative inspection warrant.

(3) The city manager may suspend or revoke a wetland permit pursuant to the procedures set forth in sections 4-1-10, "Revocation Of Licenses," and 4-1-11, "Revocation Not Exclusive Penalty," B.R.C. 1981. Permits may be suspended or revoked for a failure to comply with the provisions of the permit.

(4) In addition to other remedies, the city manager will have the following powers:

(A) In the event of a violation, the city manager will have the power to issue an appropriate order to any person responsible for a violation of this section and to the property owner. In the order, the manager may specify the initial corrective measures required, including, without limitation, wetland restoration and creation measures for the destroyed or impaired wetland. If the responsible person or property owner does not complete such measures within the time required by the order, or request an administrative hearing by the city manager within seven days of the issuance of such order, the city may restore the affected wetland to its prior condition and restore or create other wetlands for the purpose of offsetting losses sustained as a result of the violation. The person responsible for the original violation and the property owner shall be liable to the city for the cost of such actions in addition to any fines that may be levied by the municipal court for violating this section.

(B) If any property owner fails or refuses to pay, when due, any charges imposed pursuant to this section, the city manager may charge the costs against the financial guarantee, pursue other collection remedies, and certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(C) To guide wetland restoration and wetland creation actions, the city manager may order the violator to develop and amend a plan as described in subsection (h) of this section.

(m) Emergency Exemption: The city manager may suspend any portion of this section in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or the city's planning area or to the city's environment.

(n) Regulations: The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this section.

9-3-10 **Airport Influence Zone.**

(a) Legislative Intent: The purpose of this section is to enact an airport influence overlay zone map and associated regulations, providing for certain land development controls on the area surrounding the airport which may be affected by aircraft accidents and by noise, vibrations, fumes, dust, smoke, fuel particles, and other annoyances and influences from airport operations. Further, the use of land within the airport influence overlay zone affects the safe and efficient operation of the airport and aircraft using the airport, and this section is intended to minimize risks to public safety and hazards to aircraft users, and to protect the capacity of the airport to serve the city's air transportation needs. Finally, this section is intended to promote sound land use planning in the airport influence overlay zone.

(b) Applicability Of Section: The requirements of this section supplement those imposed on the same lands by any underlying zoning provision of this code or any other ordinance of the city. If there is a conflict between such requirements, the more restrictive controls.

(c) City-Wide Restrictions:

(1) Prohibitions: No person shall establish or maintain any structure or use which:

(A) Creates any electrical interference with navigational signals or radio communications at the airport;

(B) Mimics airport lights; or

(C) Results in glare affecting aircraft using the airport.

(2) Hazards: No person shall establish or maintain any hazard.

(3) Development Permits: No development permit shall be granted or approved that would create a hazard or that would allow an existing structure or use to become a greater hazard. Notwithstanding the provisions of this paragraph and subsection 9-6-9(c), B.R.C. 1981, no person shall, on or after July 1, 1989, acquire any vested right to maintain any hazard which the city manager may subsequently determine to exist, nor shall the city be estopped from proceeding to remove such hazard, under the procedure set forth in paragraph (c)(4) of this section.

(4) Abatement: Any use or structure which the city manager determines to violate any provision of this subsection shall be discontinued upon order of the manager, subject to the procedures set forth in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, concerning quasi-judicial hearings.

Ordinance No. 5562 (1993).

(d) Zones: In order to carry out the purposes of this section, overlay zones one through four are established as shown on the "Airport Influence Overlay Zone Map," which shall be an attachment to the Zoning District Map of the City of Boulder, Colorado, adopted by section 9-5-3, "Zoning Map," B.R.C. 1981, and on file with the City Planning Department, as amended.

(e) Zone Regulations: The zones shall be regulated as follows:

(1) Zone Four:

(A) A person annexing to the city and thereafter constructing a new principal structure in the city shall be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded. An applicant for a development permit pursuant to chapter 9-2, "Review Processes," B.R.C. 1981, may be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded.

(B) All new utility lines shall be placed underground.

(2) Zone Three:

(A) An avigation easement may be required as set forth in subparagraph (e)(1)(A) of this section.

(B) All new utility lines shall be placed underground.

(C) Applications for development shall be referred to the Airport Manager for review and comment.

(3) Zone Two:

(A) An avigation easement may be required as set forth in subparagraph (e)(1)(A) of this section.

(B) All new utility lines shall be placed underground.

(C) No new residential use, including, without limitation, nursing homes, group homes, congregate care facilities, group care facilities, and residential care facilities, is permitted.

(D) Schools, hospitals, churches, libraries, hotels and motels, and daycare facilities are permitted only if permitted by the underlying zoning and determined to be sited and designed in a manner which substantially alleviates the concerns set forth in subsection (a) of this section. Such determination shall be made by the city manager, subject to a call-up by the planning board pursuant to section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981. No hearing shall be required for such review, but adjacent property owners shall be notified by first class mail at least fourteen days prior to approval by the city manager.

(E) Nonconforming uses are not permitted if discontinued for one year.

(F) Applications for development shall be referred to the Airport Manager for review and comment.

(4) Zone One: Other than airport construction, no new construction is permitted. All new utility lines shall be placed underground. Nonconforming uses are not permitted if discontinued for one year.

(f) Federal Regulations: In addition to the other provisions of this section, the city manager shall enforce all applicable federal regulations, including, without limitation, those contained at Federal Aviation Regulation Part 77, *Objects Affecting Navigable Airspace*, U.S. Department of Transportation, Federal Aviation Administration, January 1975, as amended, for the purpose of controlling heights of objects in the airport vicinity, as codified under subsection E, *Airspace*, of title 14 of the Code of Federal Regulations, incorporated herein by this reference. As of the date of adoption of this subsection, federal regulations require a clear area five hundred feet in width, centered on the centerline of the runway, and extending outward from such point at a 7:1 slope.

(g) Violations: No person shall violate any provision of any avigation easement or violate any prohibition relating to any zone. No variance shall be permitted of any of the requirements of this section.

Ordinance No. 5200 (1991).

9-3-11 **Medium Density Overlay Zone.**

(a) Purpose And Scope: Medium density residential areas adjacent to the downtown central business district originally developed with a predominantly single-family character and are now redeveloping with higher densities. Development and redevelopment in certain RM-2 and RM-3 zoning districts has been very disruptive of the existing residential character of those areas, has failed to preserve certain historic structures, has led to many inappropriate structures being erected and thus has negatively affected the value of adjoining properties. The medium density overlay zone map which designates those portions of the medium density areas to which this section applies is set forth as appendix D, "Medium Density Overlay Zone," of this title.

(b) Additional Regulations: The following additional regulations shall apply in the medium density residential overlay zone:

(1) No person shall construct a second detached dwelling on a lot as set forth in section 9-7-9, "Two Detached Dwellings On A Single Lot," B.R.C. 1981.

(2) No person shall create additional multiple-dwelling units except that one additional dwelling unit per lot may be created by internal conversions of existing principal structures that are not enlarged in size subsequent to September 2, 1993, and provided that such conversions do not involve exterior modifications other than for access, including, without limitation, doors, windows, and stairways.

TITLE 9 LAND USE CODE

Chapter 4 Public Notice, Decisions, And Appeals[1]

Section:

9-4-1 Purpose.

This chapter describes the procedures and criteria for review and approval for development applications.

9-4-2 Development Review Procedures.

(a) Development Review Authority: Table 4-1 of this section summarizes the review and decision-making responsibilities for the administration of the administrative and development review procedures described in this chapter. The table is a summary tool and does not describe all types of decisions made under this code. Refer to sections referenced for specific requirements. Form and bulk standards may also be varied by site review. Additional procedures that are required by this code but located in other chapters are:

(1) "Historic Preservation," chapter 9-11;

(2) "Inclusionary Zoning," chapter 9-13; and

(3) "Residential Growth Management System," chapter 9-14.

(see following page for continuation of Section 9-4-2)

[1]Adopted by Ordinance No. 7476.

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TABLE 4-1: SUMMARY OF DECISION AUTHORITY BY PROCESS TYPE

KEY:
D = Decision Authority
R = Recommendation only
CA = Call-Up and Appeal Authority
(n) = Maximum number of days for call-up or appeal

Standard Or Application Type	Staff/City Manager	BOZA	Planning Board	City Council
Code Interpretation SECTION 9-2-3	D	CA(14)	CA(30)	CA
Setback variance ≤20% SECTION 9-2-3	D	D	–	–
Setback variance >20% SECTION 9-2-3	–	D	–	–
Parking, access dimensions SECTION 9-2-2	D	–	–	–
Parking deferral SECTION 9-2-2	D	–	–	–
Parking reduction ≤25% SECTION 9-2-2	D	–	–	–
Parking reduction >25% but ≤50% SECTION 9-2-2	D(14)	–	CA, D(30)	CA
Parking reduction >50% SUBSECTION 9-9-6(f)	–	–	D(30)	CA
Building height, conditional SECTION 9-7-6	D	–	–	–
Building height, connected or nonstandard SECTION 9-2-14	D(14)	–	CA, D(30)	CA
Building height SECTION 9-7-5	–	–	D(30)	CA
Conditional Use SECTION 9-2-2	D	–	–	–
Use Review SECTION 9-2-15	D(14)	–	D(30)	CA
Site Review SECTION 9-2-14	D(14)	–	CA, D(30)	CA
Rezoning SECTION 9-2-18	–	–	R	D
Annexation SECTION 9-2-16	–	–	R	D
Wetland Permit-Simple SECTION 9-3-9	D	–	–	–

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KEY:
D = Decision Authority
R = Recommendation only
CA = Call-Up and Appeal Authority
(n) = Maximum number of days for call-up or appeal

Standard Or Application Type	Staff/City Manager	BOZA	Planning Board	City Council
Wetland Permit-Standard SECTION 9-3-9	D(14)	–	D(30)	CA
Extension of Dev't Approval ≤1 yr PARAGRAPH 9-2-12(b)(1)	D	–	–	–
Extension of Dev't Approval >1 yr PARAGRAPH 9-2-12(b)(2)	–	–	D(30)	CA
Rescission of Dev't Approval SUBSECTION 9-2-12(e)	D	–	–	–
Creation of Vested Rights >3 yrs SECTION 9-2-19	–	–	R	D
Floodplain Dev't Permit SECTION 9-3-6	D(14)	–	CA(30)	CA
Wetland Boundary change-Standard SUBSECTION 9-3-9(e)	–	–	R	D
Substitution of Nonconforming Use SECTION 9-10-3	D	–	–	–
Expansion of Nonconforming Use SECTION 9-10-3	D(14)	–	CA(30)	CA
Subdivision, prelim plat SECTION 9-12-7	D	–	D(30)	CA
Subdivision, final plat SECTION 9-12-8	D(14)	–	CA(30)	CA
Subdivision, minor SECTION 9-12-5	D(14)	–	CA(30)	CA
Subdivision, LLA or LLE SECTIONS 9-12-3 and 9-12-4	D	–	–	–
Solar Exception SECTION 9-9-17(f)	D	D	–	–
Solar Access Permit SUBSECTION 9-9-17(h)	D	D	–	–
Growth Mgmt. Allocations, Std. SECTION 9-14-5	D	–	–	–
Growth Mgmt. Allocations, ≥40 per year SUBSECTION 9-14-3(f)	D(14)	–	CA(30)	CA
Accessory Bldg Coverage SUBSECTION 9-7-8(a)	–	D	–	–

KEY:
D = Decision Authority
R = Recommendation only
CA = Call-Up and Appeal Authority
(n) = Maximum number of days for call-up or appeal

Standard Or Application Type	Staff/City Manager	BOZA	Planning Board	City Council
Minor Modification of Discretionary approval SUBSECTION 9-2-14(k)	D	–	–	–
Minor Amendment of Discretionary approval SUBSECTION 9-2-14(l)	D(14)	–	CA(30)	CA
Amendment of Discretionary Approval not involving height SUBSECTION 9-2-14(m)	D(14)	–	CA, D(30)	CA
Amendment of Discretionary Approval involving height SECTION 9-2-14	–	–	D(30)	CA

Ordinance No. 7522 (2007).

9-4-3 **Public Notice Requirements.**

(a) Process And Options: When a process or procedure identified in this title requires public notice, the city manager shall provide such notice according to table 4-2 of this section. If a code section does not reference a specific method, the city manager shall determine the most appropriate notification method to be used.

TABLE 4-2: PUBLIC NOTICE OPTIONS

Public Notice Type	Type Of Application, Meeting Or Hearing	Mailed Notice	Posted Notice
1	Administrative Reviews (except those identified below)	none	none
2	Subdivisions and Minor Subdivisions	To adjacent property owners and mineral rights owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
3	Good neighbor meetings	To property owners within 600 feet of subject property a minimum of 10 days before meeting	none
4	Solar exceptions, solar access permits, accessory units, cooperative housing	To adjacent property owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing

Public Notice Type	Type Of Application, Meeting Or Hearing	Mailed Notice	Posted Notice
5	Applications requiring BOZA action, wetland permit and boundary determination	To property owners within 300 feet of subject property a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
6	Development Review Applications (site review, use review, annexation, rezoning, concept plans)	To property owners within 600 feet of subject property and any mineral rights owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing

(b) Mailed Notice: When mailed notice is required, the manager will notify by first class mail the owners of all property located within a radius specified in subsection (a) of this section from all points on the perimeter of the land included in the application. The notice will indicate:

(1) That a review application has been filed,

(2) The type of review requested,

(3) That the application may be reviewed during the planning department's regular business hours,

(4) A copy of the city manager's recommendation or decision on the application may be requested,

(5) How comments or objections may be submitted, and

(6) That public hearings may be held before the BOZA, the planning board, landmarks advisory board and/or the city council for which only published, rather than personal mailing will be provided.

(c) Posting: Posted notice shall meet the following standards:

(1) The notice shall be on a sign provided by the city and posted by the applicant.

(2) The notice shall indicate the type of review requested and where interested persons may obtain more detailed information about the request.

(3) All such notice shall be posted no later than ten days after the date the application is filed to ensure that notice is posted early in the review process. Properties shall remain posted until any final action or public hearing.

(4) The signs shall be placed along each abutting street, perpendicular to the direction of travel, in a manner that makes them clearly visible to neighboring residents and passers-by. At least one sign shall be posted on each street frontage.

(5) The signs shall remain in place during the period leading up to a decision by the approving authority, but not less than ten days.

(6) On or before the date that the approving authority is scheduled to make a decision on the application, the city manager will require the applicant to certify in writing that required notice will be posted according to the requirements of this section.

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(d) Published Notice: Published notice is required for all public hearings and good neighbor meetings. The city manager shall have the notice published in a newspaper of general circulation in the city within ten days of the receipt of the application and not less than ten days prior to any hearing or meeting. The notice will indicate:

(1) That a review application has been filed,

(2) The type of review requested,

(3) That such persons may review the application during the planning department's regular business hours, and

(4) In the case of notice for a public hearing, the notice will indicate the time, date, and place of the hearing, a summary of the proposed development, its location, and where interested parties may request a copy of the city manager's recommendation or decision on the application.

(e) Notice - Mineral Estate: The purpose of this notice provision is to comply with the notification of surface development requirements in article 24-65.5, C.R.S. The city manager will waive the notice requirements for mineral estate owners under this subsection for use review applications that will not result in the construction of a new building. The applicant shall:

(1) At least thirty days before a final decision on a development review application, send notice, by first class mail, to the mineral estate owner.

(2) Provide in the notice a statement about how the decision will be made, rights of appeal, the location of the property that is the subject of the application, and the name of the applicant, the City of Boulder as the approving authority, and the name and address of the mineral estate owner.

(3) Identify the mineral estate holder in a manner consistent with section 24-65.5-103, C.R.S.

(4) Certify, in a form acceptable to the city manager, that such notice has been provided to the mineral estate owner.

(f) Additional Notice: The city manager may require the applicant to provide notice in addition to the requirements of this chapter.

(g) Omissions Or Defects In Notice: The purpose of public notice provided in this section is to reasonably inform surrounding property owners of a pending review application. No minor omission or defect in the mailed, published or posted notice shall be deemed to impair the validity of the proceedings to consider the application. If at or prior to the public hearing or final approval, an omission or defect in the public notification is brought to the attention of the approving authority, the approving authority shall determine whether the omission or defect impairs or has impaired a surrounding property owner's ability to participate in the public review process. Upon such a finding, the approving authority shall continue the review process or hearing for at least ten days. Any omission or defect in the public notice that is not brought to the approving authority's attention or that the authority finds did not impair a surrounding property owner's ability to participate in the review process shall not affect the validity of the proceedings.

Ordinance Nos. 6093 (1999); 7117 (2001); 7210 (2002).

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9-4-4 Appeals, Call-Ups And Public Hearings.

When a section of the land use regulations indicates that a decision is subject to appeal or call-up, the following standards shall apply:

(a) Appeal: If noted in table 4-1, section 9-4-2, "Development Review Procedures," B.R.C. 1981, in a specific section, an applicant or any interested person may appeal the city manager's decision to grant or deny an application to the planning board by delivering a written notice of appeal to the city manager within fourteen days of the decision.

(b) Board Call-Up: If noted in table 4-1, section 9-4-2, "Development Review Procedures," B.R.C. 1981, a member of the planning board may call-up a city manager's decision upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. A member of the BOZA may call-up a city manager's decision regarding an interpretation upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. On any application that it calls up, the board will hold a public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as provided in subsection 9-4-3(d), B.R.C. 1981. Within thirty days of the public hearing or within such other time as the board and the applicant mutually agree, the board will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested.

(c) City Council Call-Up: The city council may call-up any board decision within thirty days of the board's action. On any application that it calls up, the council will hold a public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as specified by subsection 9-4-3(d), B.R.C. 1981, summarized in subsection (b) of this section. Together with the evidence presented at such public hearing, the council may consider the record, or any portion thereof, of the hearing before the board. Within thirty days of the public hearing or within such other time as the council and the applicant mutually agree, the council will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested.

(d) Public Hearing Requirements: Within sixty days after a referral, appeal, or call-up under this section, the approving agency will hold a public hearing on the application.

(e) Public Notice: Public notice for appeals and call-ups shall be provided pursuant to subsection 9-4-3(a), B.R.C. 1981.

(f) Building Permit Pending Appeal: A building permit may be applied for after the initial approval of a development review application, but no building permit will be issued until after any and all applicable call-up or appeal periods have expired. An applicant for such a permit bears all risks of subsequent disapproval and waives any claims arising from the permit application.

(g) Judicial Review: Exhaustion of administrative remedies is a prerequisite to judicial review of any decision made under this chapter. Any person aggrieved by the final decision of the city may seek judicial review of the decision by filing a complaint for review within thirty days of the final action under Colorado Rule of Civil Procedure 106.

TITLE 9 LAND USE CODE

Chapter 5 Modular Zone System[1]

Section:

9-5-1 Modular Zone System.

The modular zone system is comprised of three modules: Use, Form, and Intensity. Combining elements of the three modules creates a zoning district. The zoning districts are identified in section 9-5-2, "Zoning Districts," B.R.C. 1981.

(a) Use Chart: The use chart establishes the uses that are permitted, conditionally permitted pursuant to section 9-2-2, "Administrative Review Procedures," B.R.C. 1981, prohibited, or that may be permitted through use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

(b) Form Chart: The form chart establishes the physical parameters for development such as setbacks, building coverage, height, and special building design characteristics.

(c) Intensity Chart: The intensity chart establishes the density at which development may occur and includes: minimum lot sizes, minimum open space per dwelling unit, number of dwelling units per acre, minimum open space per lot or parcel, and floor area ratios when applicable.

9-5-2 Zoning Districts.

(a) Classification: Zoning districts are classified according to the following classifications based on the predominant character of development and current or intended use in an area of the community:

(1) R: Residential;

(2) M: Mixed Use, a mix of residential and business;

(3) B: Business;

(4) DT: Downtown business zones;

(5) I: Industrial;

(6) P: Public;

(7) A: Agricultural.

[1]Adopted by Ordinance No. 7476.

9-5-2

(b) Zoning Districts: Under the classifications defined in subsection (a) of this section, the particular zoning districts established for the city are as in table 5-1 of this section:

TABLE 5-1: ZONING DISTRICTS

Classification	Zoning District (Abbreviation)	Use Module	Form Module	Intensity Module	Former Zoning District Abbreviation
Residential	Residential - Rural 1 (RR-1)	R1	a	2	RR-E
	Residential - Rural 2 (RR-2)	R1	b	2	RR1-E
	Residential - Estate (RE)	R1	b	3	ER-E
	Residential - Low 1 (RL-1)	R1	d	4	LR-E
	Residential - Low 2 (RL-2)	R2	g	6	LR-D
	Residential - Medium 1 (RM-1)	R3	g	9	MR-D
	Residential - Medium 2 (RM-2)	R2	d	13	MR-E
	Residential - Medium 3 (RM-3)	R3	j	13	MR-X
	Residential - Mixed 1 (RMX-1)	R4	d	7	MXR-E
	Residential - Mixed 2 (RMX-2)	R5	k	8	MXR-D
	Residential - High 1 (RH-1)	R6	j	12	HR-X
	Residential - High 2 (RH-2)	R6	c	12	HZ-E
	Residential - High 3 (RH-3)	R7	l	14	HR1-X
	Residential - High 4 (RH-4)	R6	h	15	HR-D
	Residential - High 5 (RH-5)	R6	c	19	HR-E
	Mobile Home (MH)	MH	s	-	MH-E
Mixed Use	Mixed Use 1 (MU-1)	M2	i	18	MU-D
	Mixed Use 2 (MU-2)	M3	r	18	RMS-X
	Mixed Use 3 (MU-3)	M1	n	24	MU-X
Business	Business - Transitional 1 (BT-1)	B1	f	15	TB-D
	Business - Transitional 2 (BT-2)	B1	e	21	TB-E
	Business - Main Street (BMS)	B2	o	17	BMS-X
	Business - Community 1 (BC-1)	B3	f	15	CB-D
	Business - Community 2 (BC-2)	B3	f	19	CB-E
	Business - Commercial Services (BCS)	B4	m	28	CS-E
	Business - Regional 1 (BR-1)	B5	f	23	RB-E
	Business - Regional 2 (BR-2)	B5	f	16	RB-D

Classification	Zoning District (Abbreviation)	Use Module	Form Module	Intensity Module	Former Zoning District Abbreviation
Downtown	Downtown 1 (DT-1)	D3	p	25	RB3-X/E
	Downtown 2 (DT-2)	D3	p	26	RB2-X
	Downtown 3 (DT-3)	D3	p	27	RB2-E
	Downtown 4 (DT-4)	D1	q	27	RB1-E
	Downtown 5 (DT-5)	D2	p	27	RB1-X
Industrial	Industrial - Service 1 (IS-1)	I1	f	11	IS-E
	Industrial - Service 2 (IS-2)	I1	f	10	IS-D
	Industrial - General (IG)	I2	f	22	IG-E/D
	Industrial - Manufacturing (IM)	I3	f	20	IM-E/D
	Industrial - Mixed Services (IMS)	I4	r	18	IMS-X
Public	Public (P)	P	c	5	P-E
Agricultural	Agricultural (A)	A	a	1	A-E
Flex District	Flex (F)	TBD	TBD	TBD	n/a

Ordinance No. 7522 (2007).

(c) Zoning District Purposes:

(1) Residential Districts And Complementary Uses:

(A) Residential - Rural 1, Residential - Rural 2, Residential - Estate, And Residential - Low 1: Single-family detached residential dwelling units at low to very low residential densities.

(B) Residential - Low 2 And Residential - Medium 2: Medium density residential areas primarily used for small-lot residential development, including, without limitation, duplexes, triplexes, or townhouses, where each unit generally has direct access at ground level.

(C) Residential - Medium 1 And Residential - Medium 3: Medium density residential areas which have been or are to be primarily used for attached residential development, where each unit generally has direct access to ground level, and where complementary uses may be permitted under certain conditions.

(D) Residential - Mixed 1: Mixed density residential areas with a variety of single-family, detached, duplexes and multi-family units that will be maintained; and where existing structures may be renovated or rehabilitated.

(E) Residential - Mixed 2: Medium density residential areas which have a mix of densities from low density to high density and where complementary uses may be permitted.

(F) Residential - High 1, Residential - High 2, Residential - High 4, Residential - High 5: High density residential areas primarily used for a variety of types of attached residential units, including, without limitation, apartment buildings, and where complementary uses may be allowed.

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(G) Residential - High 3: High density residential areas in the process of changing to high density residential uses and limited pedestrian oriented neighborhood-serving retail uses in close proximity to either a primary destination or a transit center and where complementary uses may be allowed.

(H) Mobile Home: Mobile home parks primarily used and developed at a medium residential density where complementary uses may be allowed under certain conditions.

(2) Mixed Use Districts:

(A) Mixed Use - 1: Mixed use areas which are primarily intended to have a mix of residential and nonresidential land uses within close proximity to each other and where complementary business uses may be permitted.

(B) Mixed Use - 2: Mixed use residential areas adjacent to a redeveloping main street area, which are intended to provide a transition between a main street commercial area and established residential districts. Residential areas are intended to develop in a pedestrian-oriented pattern, with buildings built up to the street; with residential, office, and limited retail uses; and where complementary uses may be allowed.

(C) Mixed Use - 3: Areas of the community that are changing to a mixture of residential and complementary nonresidential uses, generally within the same building.

(D) Business - Transitional 1 And Business - Transitional 2: Transitional business areas which generally buffer a residential area from a major street and are primarily used for commercial and complementary residential uses, including, without limitation, temporary lodging and office uses.

(E) Business - Main Street: Business areas generally anchored around a main street that are intended to serve the surrounding residential neighborhoods. It is anticipated that development will occur in a pedestrian-oriented pattern, with buildings built up to the street; retail uses on the first floor; residential and office uses above the first floor; and where complementary uses may be allowed.

(F) Business - Community 1 And Business - Community 2: Business areas containing retail centers serving a number of neighborhoods, where retail-type stores predominate.

(G) Business - Commercial Services: Commercial areas primarily used to provide to the community a wide range of retail and commercial uses including repair, service, and small-scale manufacturing uses and where complementary uses may be allowed.

(H) Business - Regional 1 And Business - Regional 2: Business centers of the Boulder Valley, containing a wide range of retail and commercial operations, including the largest regional-scale businesses, which serve outlying residential development; and where the goals of the Boulder Urban Renewal Plan are implemented.

(3) Downtown Districts:

(A) Downtown - 1, Downtown - 2, And Downtown - 3: A transition area between the downtown and the surrounding residential areas where a wide range of retail, office, residential, and public uses are permitted. A balance of new development with the maintenance and renovation of existing buildings is anticipated, and where development and redevelopment consistent with the established historic and urban design character is encouraged.

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(B) Downtown - 4: The regional business area of the Boulder Valley known as the Central Business District which includes the downtown mall, where a wide range of retail, office, residential, and public uses are permitted and in which many structures may be renovated or rehabilitated. A balance of new development with the maintenance and renovation of existing buildings is anticipated, and where development and redevelopment consistent with the established historic and urban design character is encouraged.

(C) Downtown - 5: The business area within the downtown core that is in the process of changing to a higher intensity use where a wide range of office, retail, residential, and public uses are permitted. This area has the greatest potential for new development and redevelopment within the downtown core.

(4) Industrial Districts:

(A) Industrial - Service 1 And Industrial - Service 2: Service industrial areas primarily used to provide to the community a wide range of repair and service uses and small-scale manufacturing uses.

(B) Industrial - General: General industrial areas where a wide range of light industrial uses, including research and manufacturing operations and service industrial uses are located. Residential uses and other complementary uses may be allowed in appropriate locations.

(C) Industrial - Manufacturing: Industrial manufacturing areas primarily used for research, development, manufacturing, and service industrial uses in buildings on large lots. Residential uses and other complementary uses may be allowed in appropriate locations.

(D) Industrial - Mixed Services: Industrial areas on the edge of a main street commercial area, which are intended to provide a transition between a main street commercial area and established industrial zones. Industrial main street areas are intended to develop in a pedestrian-oriented pattern, with buildings built up to the street; first floor uses are predominantly industrial in character; uses above the first floor may include industrial, residential, or limited office uses, and where complementary uses may be allowed.

(5) Public Districts:

(A) Public: Public areas in which public and semi-public facilities and uses are located, including, without limitation, governmental and educational uses.

(6) Agricultural Districts:

(A) Agricultural: Agricultural areas in a natural state or in which the growing of crops, flowers, and trees or other farming activity is practiced.

(7) Flex Districts: A combination of use, form, and intensity standards not reflected in any existing zoning district. Rezoning to a flex district may only be initiated by the planning board or city council as part of an annexation, rezoning after concept review, or area plan, and upon the determination that the flex zone would implement the goals of the Boulder Valley Comprehensive Plan. When rezoning to a flex district the rezoning ordinance shall identify the specific use, form and intensity modules which shall be identified on the official zoning map. Nothing in this section shall be construed to prevent city council from creating new zoning districts.

Ordinance No. 7484 (2006).

9-5-3 Zoning Map.

(a) The boundaries of the zoning districts defined in section 9-5-2, "Zoning Districts," B.R.C. 1981, are set forth on a map entitled "Zoning District Map Of The City Of Boulder, Colorado" and adopted as part of this section. This map shall be kept in the city planning department and maintained as provided in subsection (c) of this section.

(b) Unless otherwise expressly defined on the zoning map, district boundary lines are lot lines, section lines, city limit lines, centerlines of stream beds, and centerlines of streets, alleys, or railroad rights-of-way or such lines extended. District boundary lines shall be calculated on the northern and eastern edge of the zoning lines depicted on the zoning map. If uncertainty remains as to the boundary of a district after application of the provisions of this subsection, the planning board will interpret the district boundary.

(c) All amendments to the zoning map shall be made by ordinance. The city manager shall, within a reasonable time after adoption of any such amendment, place the amendment on the zoning map.

(d) All amendments made to the zoning map shall bear the ordinance number of the amendment followed by the effective date of enactment of the amending ordinance in parenthesis and shall be signed by the city manager after placement of the amendment upon the zoning map.

9-6-1

TITLE 9 LAND USE CODE

Chapter 6 Use Standards[1]

Section:

9-6-1 Schedule Of Permitted Land Uses.

The schedule shows the uses which are permitted, conditionally permitted, prohibited, or which may be permitted through use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

[1]Adopted by Ordinance No. 7476.

9-6-1

(a) Explanation Of Table Abbreviations: The abbreviations used in table 6-1 of this section have the following meanings:

(1) Allowed Uses: An "A" in a cell indicates that the use type is permitted by right in the respective zoning district. Permitted uses are subject to all other applicable regulations of this title, including the development standards set forth in chapter 9-9, "Development Standards," B.R.C. 1981.

(2) Conditional Uses: A "C" in a cell indicates that the use type will be reviewed in accordance with the procedures established in section 9-2-2, "Administrative Review Procedures," B.R.C. 1981. Conditional use applications shall also meet the additional standards set forth in sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards," or other sections of this title.

(3) Use Review Uses: A "U" in a cell indicates that the use type will be reviewed in accordance with the procedures established in section 9-2-15, "Use Review," B.R.C. 1981. Use review applications shall also meet the additional standards set forth in sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards."

(4) Ground Floor Restricted Uses: A "G" in a cell indicates that the use type is permitted by right in the respective zoning district, so long as it is located above or below the ground floor, otherwise by use review only.

(5) Residential Restricted Uses - M: An "M" in a cell indicates the use is permitted provided at least fifty percent of the floor area is for residential use and the nonresidential use is less than seven thousand square feet per building, otherwise by use review only.

Ordinance No. 7522 (2007).

(6) Residential Restricted Uses - N: An "N" in a cell indicates the use is permitted provided at least fifty percent of the floor area is for nonresidential use, otherwise by use review only.

(7) Prohibited Uses: An asterisk symbol ("*") in a cell indicates that the use type is prohibited in the zoning district.

(8) Additional Regulations: There may be additional regulations that are applicable to a specific use type. The existence of these specific use regulations is noted through a reference in the last column of the use table entitled "Specific Use." References refer to subsections of sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards." Such standards apply to all districts unless otherwise specified.

(9) n/a: Not applicable; more specific use applications apply.

(b) Interpretation: The city manager may decide questions of interpretation as to which category uses not specifically listed are properly assigned to, based on precedents, similar situations, and relative impacts. Upon written application, the BOZA may determine whether a specific use not listed in table 6-1 of this section is included in a specific use category. Any use not specifically listed in table 6-1 of this section is not allowed unless it is determined to be included in a use category as provided by this section.

(c) Multiple Uses Of Land Permitted: Permitted uses, conditional uses and uses permitted by use review may be located in the same building or upon the same lot.

9-6-1

(d) Use Table:

table 6-1: use table

existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Residential Uses																										
Detached dwelling units	A	A	A	A	C	A	A	*	A	U	U	A	A	A	*	A	A	A	A	*	U	U	*	U	U	9-8-4
Detached dwelling unit with two kitchens	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	C	C	9-6-3(c)
Duplexes	*	A	A	A	C	A	A	*	A	A	A	A	A	A	*	A	A	A	A	G	U	U	N	U	*	9-8-4
Attached dwellings	*	A	A	A	C	A	A	*	A	A	A	A	A	A	*	A	A	A	A	G	U	U	N	U	*	9-8-4
Mobile home parks	*	U	U	*	U	U	*	A	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
Live-work	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	A	*	*	
Cooperative housing units	C	C	C	C	C	C	C	*	C	C	C	*	*	*	*	*	*	*	*	*	U	U	*	*	*	9-6-3(b)
Efficiency living units:																										
A. If <20% of total units	*	*	*	*	U	A	A	*	M	A	A	A	G	A	*	A	A	A	A	G	U	U	N	U	*	
B. If ≥20% of total units	*	*	*	*	*	U	A	*	U	A	A	U	U	U	*	U	U	U	U	U	U	U	U	U	*	
Accessory units:																										
A. Accessory dwelling unit	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	C	C	9-6-3(a)

A: Allowed use. **C**: Conditional use. See section 9-2-2 for administrative review procedures. *: Use prohibited. **U**: Use review. See section 9-2-15 for use review procedures. **G**: Allowed use provided that it is located above or below the ground floor. **M**: Allowed use provided at least 50% of the floor area is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise use review. **N**: Allowed use provided at least 50% of floor area is for nonresidential use, otherwise by use review. **n/a**: Not applicable; more specific use applications apply.

9-6-1

existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
B. Owner's accessory unit	C	*	*	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-3(a)
C. Limited accessory unit	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-3(a)
Caretaker dwelling unit	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	A	A	
Group quarters:																										
A. Congregate care facilities	*	*	A	A	A	A	A	*	A	A	A	A	C	A	*	A	C	C	C	*	U	U	*	U	*	9-6-3(f)
B. Custodial care	*	*	U	U	U	U	U	*	U	U	U	U	*	U	*	U	*	U	U	*	U	U	*	*	*	
C. Group homes	C	C	C	C	C	C	C	*	C	C	C	C	C	C	*	C	C	C	C	*	*	*	*	*	*	9-6-3(d)
D. Residential care facilities	*	*	C	C	C	C	C	*	C	C	C	C	C	C	*	C	C	C	C	*	U	U	*	*	*	9-6-3(f)
E. Fraternities, sororities, and dormitories	*	*	*	*	*	A	A	*	U	*	*	A	G	A	*	A	*	*	A	*	U	U	*	*	*	
F. Boarding houses	*	*	U	U	A	A	A	*	U	A	A	A	G	A	*	A	*	*	A	*	U	U	*	*	*	
Home occupation	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	9-6-3(e)
Transitional housing	C	C	C	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	9-6-3(h)

A: Allowed use. **C**: Conditional use. See section 9-2-2 for administrative review procedures. *: Use prohibited. **U**: Use review. See section 9-2-15 for use review procedures. **G**: Allowed use provided that it is located above or below the ground floor. **M**: Allowed use provided at least 50% of the floor area is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise use review. **N**: Allowed use provided at least 50% of floor area is for nonresidential use, otherwise by use review. **n/a**: Not applicable; more specific use applications apply.

9-6-1

existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Dining And Entertainment																										
Art or craft studio space ≤2,000 square feet	*	U	U	U	U	U	U	*	A	A	A	A	A	A	A	A	A	A	A	A	A	*	A	U	*	
Art or craft studio space >2,001 square feet	*	U	U	U	U	U	U	*	M	U	U	A	A	A	A	A	A	A	A	A	A	*	A	*	*	
Commercial kitchens and catering	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	U	U	A	A	A	A	*	*	
Indoor amusement establishment	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	A	U	U	U	*	*	*	*	*	*	
Museums	*	*	*	*	*	*	*	*	*	*	*	U	A	A	A	A	A	A	A	U	U	U	U	*	*	
Restaurants (general)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	C	C	C	C	n/a	n/a	9-6-5(b)
Taverns (general)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	*	*	*	*	n/a	n/a	
Restaurants and taverns no larger than 1,000 square feet in floor area, which may have meal service on an outside patio not more than $^1/_3$ the floor area, and which close no later than 11:00 p.m.	*	*	*	*	*	U	A	*	A	A	A	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	

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9-6-1

existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Restaurants and taverns no larger than 1,500 square feet in floor area, which may have meal service on an outside patio not more than $^1/_3$ the floor area, and which close no later than 11:00 p.m.	*	*	*	*	*	*	*	*	*	A	*	U	A	A	A	A	A	A	C	n/a	n/a	n/a	n/a	n/a	n/a	9-6-5(b)
Restaurants and taverns over 1,000 square feet in floor area, or which close after 11:00 p.m., or with an outdoor seating area of 300 square feet or more	*	*	*	*	*	U	*	*	U	A	U	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Restaurants and taverns that are: over 1,500 square feet in floor area, outside of the University Hill general improvement district; over 4,000 square feet within the University Hill general improvement district; or which close after 11:00 p.m.	*	*	*	*	*	n/a	n/a	n/a	n/a	n/a	n/a	U	U	A	A	A	A	A	U	n/a	n/a	n/a	n/a	n/a	n/a	

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Restaurants and taverns in the University Hill general improvement district that are greater than 1,500 square feet and do not exceed 4,000 square feet in floor area, and which close no later than 11:00 p.m.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	C	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	9-6-5(b)
Restaurants and taverns with an outdoor seating area of 300 square feet or more within 500 feet of a residential zoning district	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	U	U	U	U	U	U	U	U	n/a	n/a	n/a	n/a	n/a	n/a	
Small theater or rehearsal space	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	A	U	U	U	A	A	U	A	*	*	
Temporary outdoor entertainment	*	*	*	*	*	*	*	*	*	*	*	C	C	C	C	C	C	C	C	C	C	C	C	C	*	9-6-5(c)
Lodging uses:																										
Hostels	*	*	*	*	*	U	U	*	U	A	U	U	G	A	*	A	G	G	U	*	U	U	*	*	*	
Bed and breakfasts	*	*	*	*	*	U	A	*	U	A	A	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-5(a)
Motels and hotels	*	*	*	*	*	*	*	*	*	*	*	U	A	A	*	A	A	A	U	*	*	*	*	*	*	

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Public And Institutional Uses																										
Airports and heliports	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	
Cemeteries	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	
Daycare, home	A	A	A	A	A	A	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
Daycare center with ≤50 children	U	U	C	U	U	C	C	U	A	U	U	A	U	A	A	A	U	A	A	U	U	U	U	U	U	9-6-6(a)
Daycare center with >50 children	U	U	U	U	U	U	U	*	U	U	U	A	U	A	A	A	U	A	A	U	U	U	U	U	U	9-6-6(a)
Day shelter	*	*	U	*	U	C	C	*	U	C	U	C	C	C	C	C	C	C	C	C	C	C	C	U	*	9-6-6(b)
Emergency shelter	U	U	U	U	U	C	C	*	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	U	*	9-6-6(b)
Essential municipal and public utility services	U	U	U	U	U	U	U	U	U	U	U	A	A	A	A	A	A	A	A	A	A	A	A	U	U	
Governmental facilities	U	U	U	U	U	U	U	U	U	U	U	A	A	A	A	A	A	A	A	A	A	A	A	U	*	
Mortuaries and funeral chapels	*	*	*	*	*	*	*	*	*	*	*	U	U	U	U	U	*	*	U	*	*	*	*	*	*	
Nonprofit membership clubs	*	*	*	*	*	*	*	*	*	*	*	U	G	A	A	A	A	A	A	*	*	*	*	U	*	
Overnight shelter	*	*	U	*	U	C	C	*	U	C	U	C	C	C	C	C	C	C	C	C	C	C	C	U	*	9-6-6(b)

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Private elementary, junior, and senior high schools	U	U	U	U	U	A	U	*	U	U	U	A	G	A	A	A	U	A	U	*	*	*	*	*	*	
Public elementary, junior, and senior high schools	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	*	
Public colleges and universities	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	*	
Private colleges and universities	*	*	*	*	*	*	*	*	*	*	*	U	*	A	*	A	*	U	U	*	U	U	*	A	*	
Public and private office uses providing social services	*	*	*	*	*	*	*	*	U	U	U	A	G	A	A	A	G	A	A	*	U	*	U	U	*	
Religious assemblies	A	A	A	A	U	A	A	*	A	U	U	A	A	A	A	A	A	A	A	*	*	*	*	*	*	
Adult educational facility with <20,000 square feet of floor area	U	U	U	U	U	U	U	*	U	U	U	A	G	A	A	A	U	A	U	A	A	A	A	A	*	
Adult educational facilities with ≥20,000 square feet or more of floor area	U	U	U	U	U	U	U	*	U	U	U	A	G	A	A	A	U	A	U	U	U	U	U	A	*	
Vocational and trade schools	*	*	*	*	*	*	*	*	*	*	*	U	G	A	U	A	U	U	U	A	A	A	A	A	U	

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Office, Medical And Financial Uses																										
Data processing facilities	*	*	*	*	*	*	*	*	*	*	*	A	G	A	C	A	G	A	A	*	A	A	A	*	*	9-6-7(a)
Financial institutions	*	*	*	*	*	*	M	*	M	M	M	U	A	A	A	A	A	A	A	*	*	*	*	*	*	
Hospitals	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	*	
Medical or dental clinics or offices or addiction recovery facilities	*	U	U	U	*	U	U	*	M	U	U	A	A	A	C	A	G	A	A	*	*	*	*	U	*	9-6-7(a)
Medical and dental laboratories	*	*	*	*	*	*	M	*	M	M	M	A	A	A	A	A	*	*	*	U	A	*	U	*	*	
Offices, administrative	*	*	*	*	*	*	*	*	*	*	*	A	A	A	C	A	G	A	A	*	A	A	*	*	*	9-6-7(a)
Offices, professional	*	U	U	U	U	U	M	*	M	M	M	A	A	A	C	A	G	A	A	*	*	*	*	*	*	9-6-7(a)
Offices, technical; with <5,000 square feet of floor area	*	U	U	U	U	U	M	*	M	M	M	A	A	A	C	A	G	A	A	A	A	A	A	*	*	9-6-7(a)
Offices, technical; with >5,000 square feet of floor area	*	U	U	U	U	U	M	*	M	M	M	A	U	A	A	A	G	A	A	*	A	A	A	*	*	9-6-7(a)
Offices - other	*	U	U	U	U	U	M	*	M	M	M	A	A	A	C	A	G	A	A	*	*	*	*	*	*	9-6-7(a)
Parks And Recreation Uses																										
Campgrounds	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	*	*	U	

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Outdoor entertainment	*	*	*	*	*	*	*	*	*	*	*	U	*	U	U	U	U	U	U	*	*	*	*	U	*	
Park and recreation uses	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Indoor recreational or athletic facilities	*	*	*	*	*	U	U	*	U	U	A	A	A	A	A	A	A	A	A	A	U	U	A	*	*	
Commercial, Retail, And Industrial Uses																										
Service uses:																										
Animal hospital or veterinary clinic	*	*	*	*	*	*	*	*	*	*	*	U	U	A	U	A	*	*	U	A	A	A	U	*	*	
Animal kennel	*	*	*	*	*	*	*	*	*	*	*	*	U	U	A	U	*	*	*	A	A	U	A	*	*	
Antennas for wireless telecommunications services	*	*	*	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	9-6-9(a)
Broadcasting and recording facilities	*	U	U	U	U	U	U	*	M	M	M	A	G	A	A	A	A	A	A	A	A	A	A	*	*	
Business support services <10,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	A	A	A	A	U	U	A	*	*	
Business support services ≥10,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	U	A	A	A	A	A	A	U	U	U	U	*	*	

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Non-vehicular repair and rental services without outdoor storage	*	*	*	*	*	*	*	*	*	*	*	*	*	U	A	U	U	U	U	A	U	*	A	*	*	
Neighborhood business center	*	U	U	*	*	U	U	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-9(f)
Personal service uses	*	U	U	U	*	U	A	U	A	A	A	A	A	A	A	A	A	A	A	*	*	*	*	*	*	
Retail sales uses:																										
Accessory sales	*	*	*	*	*	A	A	*	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	9-16
Convenience retail sales ≤2,000 square feet	*	U	U	U	*	U	A	*	A	*	A	U	A	A	U	U	*	A	A	C	C	*	C	*	*	
Convenience retail sales >2,000 square feet	*	*	*	*	*	U	U	*	M	M	*	U	A	A	A	U	A	A	A	*	C	*	C	*	*	
Retail fuel sales (not including service stations)	*	U	U	U	*	U	U	*	U	U	U	U	C	C	U	C	*	U	U	C	C	*	U	*	*	9-6-9(d)
Retail sales ≤5,000 square feet	*	*	*	*	*	*	*	*	U	*	U	*	A	A	A	A	A	A	A	*	*	*	*	*	*	
Retail sales >5,000 square feet but ≤20,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	A	A	A	*	*	*	*	*	*	
Retail sales >20,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	U	U	A	A	A	A	U	*	*	*	*	*	*	

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Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Building material sales ≤15,000 square feet of floor area	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	A	A	A	A	*	*	
Building material sales >15,000 square feet of floor area	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	U	*	*	*	U	U	U	U	*	*	
Temporary sales	*	*	*	*	*	*	*	*	*	*	*	C	C	C	C	C	C	C	C	C	C	C	C	*	*	9-6-5(c)
Vehicle-related uses:																										
Automobile parking lots, garages, or car pool lots as a principal use	U	U	U	U	U	U	U	U	U	U	U	U	U	A	U	U	*	U	U	A	A	A	U	U	*	9-6-9(b)
Car washes	*	*	*	*	*	*	*	*	*	*	*	*	*	U	A	U	U	U	U	*	*	*	*	*	*	
Drive-thru uses	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	*	U	U	*	*	*	*	*	*	9-6-9(c)
Gasoline service stations or retail fuel sales	*	*	*	*	*	*	*	*	*	*	*	U	U	C	C	C	*	U	C	C	C	*	U	*	*	9-6-9(d)
Sales and rental of vehicles	*	*	*	*	*	*	*	*	*	*	*	*	*	U	A	U	*	*	*	A	A	*	*	*	*	
Sales and rental of vehicles within 500 feet of a residential use module	*	*	*	*	*	*	*	*	*	*	*	*	*	U	C	C	*	*	*	C	C	*	*	*	*	9-6-9(i)

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existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Service of vehicles with no outdoor storage	*	*	*	*	*	*	*	*	*	*	*	*	U	U	A	U	*	*	*	A	A	A	A	*	*	
Service of vehicles with limited outdoor storage	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	*	*	*	A	A	*	A	*	*	
Industrial uses:																										
Building and landscaping contractors	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	*	*	*	*	A	A	A	A	*	*	
Cleaning and laundry plants	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	*	*	
Cold storage lockers	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	U	U	A	A	A	A	*	*	
Computer design and development facilities	*	*	*	*	*	*	*	*	*	*	*	A	G	A	C	A	G	A	A	*	A	A	A	*	*	9-6-7(a)
Equipment repair and rental with outdoor storage	*	*	*	*	*	*	*	*	*	*	*	*	*	U	A	U	U	U	U	A	A	A	A	*	*	
Lumber yards	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	*	*	*	*	
Manufacturing uses ≤15,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	A	A	A	*	*	
Manufacturing uses >15,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	*	*	*	*	A	A	A	A	*	*	

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existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Manufacturing uses with potential off-site impacts	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	*	*	*	9-6-9(e)
Outdoor storage	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	U	A	*	*	*	
Outdoor storage of merchandise	*	*	*	*	*	*	*	*	*	*	*	*	*	C	*	C	*	*	*	C	C	C	C	*	*	9-6-9(g)
Printers and binders	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	*	*	
Recycling centers	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	U	*	*	
Recycling collection facilities - large	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	*	*	*	U	U	U	U	U	*	9-6-9(h)
Recycling collection facilities - small	*	*	*	*	*	*	*	*	*	*	*	*	C	C	C	U	U	U	U	C	C	C	C	C	*	9-6-9(h)
Recycling processing facilities	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	U	*	U	*	9-6-9(h)
Self-service storage facilities	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	U	*	*	*	*	
Telecommunications use	*	*	*	*	*	*	*	*	*	*	*	A	G	A	U	A	G	A	A	*	A	A	A	*	*	
Warehouse or distributions facilities	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	*	*	
Wholesale business	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	*	*	

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existing (to be deleted)	RR ER LRE	MRE LRD	MRD MRX	MXR E	MXR D	HRE HRD HRX HZE	HR1X	MH	MUX	MUD	RMS	TBE TBD	BMS	CBD CBE	CSE	RBE RBD	RB1E	RB1X	RB2X RB3X RB2E RB3E	ISE ISD	IGE IGD	IME IMD	IMS	P	A	
Use modules	**R1**	**R2**	**R3**	**R4**	**R5**	**R6**	**R7**	**MH**	**M1**	**M2**	**M3**	**B1**	**B2**	**B3**	**B4**	**B5**	**D1**	**D2**	**D3**	**I1**	**I2**	**I3**	**I4**	**P**	**A**	**Specific Use Standard**
Agriculture And Natural Resource Uses																										
Open space, grazing and pastures	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	
Crop production	A	A	A	A	A	A	A	A	A	A	A	*	*	*	*	*	*	*	*	*	*	*	*	A	A	
Mining industries	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	U	
Firewood operations	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	*	*	*	
Greenhouse and plant nurseries	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	A	A	
Accessory																										
Accessory buildings and uses	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	9-16

Ordinance No. 7522 (2007).

A: Allowed use. **C**: Conditional use. See section 9-2-2 for administrative review procedures. *: Use prohibited. **U**: Use review. See section 9-2-15 for use review procedures. **G**: Allowed use provided that it is located above or below the ground floor. **M**: Allowed use provided at least 50% of the floor area is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise use review. **N**: Allowed use provided at least 50% of floor area is for nonresidential use, otherwise by use review. **n/a**: Not applicable; more specific use applications apply.

9-6-2 Specific Use Standards - General.

(a) Purpose And Scope: The purpose of this chapter is to set forth additional requirements for specified uses of land. The requirements are intended to ensure that the use is compatible with the surrounding area. Conditional uses are those uses which are appropriate in a given zoning district if the applicable conditional use criteria have been satisfied. The city manager will determine after a review of all of the facts presented whether a proposal satisfies the conditional use criteria. Land uses which require a use review are those uses which may be acceptable if it is demonstrated that the use is suitable for the location in accordance with the procedures and criteria in section 9-2-15, "Use Review," B.R.C. 1981, and, when required, the standards and criteria in this chapter.

Ordinance No. 5679 (1994).

(b) Application Requirements For Use Review And Conditional Uses: Applications for a conditional use will be reviewed in accordance with the procedures established in section 9-2-2, "Administrative Review Procedures," B.R.C. 1981. Use review applications will be reviewed in accordance with the procedures established in section 9-2-15, "Use Review," B.R.C. 1981.

(c) Conditional Use Standards, Criteria, Review, And Expiration:

(1) Standards And Criteria: Conditional uses shall be permitted if the use meets the criteria set forth in this chapter and other requirements of this code and any other ordinance of the city. The criteria set forth in this chapter cannot be met by using the variance process. Conditional uses shall not be located on nonstandard lots except as otherwise permitted.

(2) Review: It shall be the responsibility of the applicant to demonstrate to the city manager that the applicable criteria have been satisfied.

(3) Violations: No person shall violate a provision of a conditional use approval.

(4) Expiration: Any conditional use review approval which is not established within one year of its approval, discontinued for at least one year, or replaced by another use of land shall expire.

Ordinance No. 7117 (2001).

9-6-3 Specific Use Standards - Residential Uses.

(a) Accessory Units:

(1) General Requirements: Three types of accessory units are permitted: Accessory Dwelling Units, Owner's Accessory Units, and Limited Accessory Units. The following standards apply to all three types of accessory units:

(A) Standards:

(i) Owner Occupied: The owner of the property must reside in one of the permitted dwelling units on the site.

(ii) Occupancy Requirement: The occupancy of any accessory unit must not exceed two persons. The occupancy of the owner occupied dwelling unit does not exceed the occupancy requirements set forth in section 9-8-5, "Occupancy Of Dwelling Units," B.R.C. 1981, for one dwelling unit.

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(iii) Additional Roomers Prohibited: The property is not also used for the renting of rooms pursuant to paragraph 9-8-5(a)(1), B.R.C. 1981.

Ordinance No. 7522 (2007).

(B) Application: All applicants shall apply on forms provided by the city manager showing how and in what manner the criteria of this subsection are met, provide a statement of current ownership and a legal description of the property, pay the application fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981, and submit plans as may be required by the city manager.

(C) Public Notice: Notice of the application shall be provided consistent with "Public Notice Type 4," as defined by subsection 9-4-3(a), B.R.C. 1981.

(D) Review And Approval: All applications for accessory units shall be reviewed under the procedures of section 9-2-2, "Administrative Review Procedures." B.R.C. 1981.

(E) Declaration Of Use Required: Before receiving the permit, all owners shall sign a declaration of use, including all the conditions for continued use, to be recorded in the office of the Boulder County Clerk and Recorder to serve as actual and constructive notice of the legal status of the owner's property.

(F) Expiration And Revocation Of Permit: An accessory unit permit granted by the city manager or planning board automatically expires one hundred eighty days after the date on which it is granted unless a rental license for the unit is obtained within such period. The manager may grant an extension of this period for good cause shown, but only if application therefore is made prior to the expiration of the period. After revocation or expiration of the accessory unit permit, the city manager will inspect the property to ensure that the accessory unit has been removed.

(i) Expiration: An accessory unit permit expires upon the failure of the permittee to satisfy any condition prescribed by this subsection (a) or upon the sale, conveyance, or transfer of the property upon which the unit is located.

(ii) Revocation: An accessory unit permit may be revoked by the city manager upon the permittee's or the permittee's tenant's conviction of a violation of this title or any provision of chapter 5-9, "Noise," section 6-1-21, "Animals As Nuisance Prohibited," chapter 6-2, "Weed Control," 6-3, "Trash," or section 9-9-21, "Signs," B.R.C. 1981.

(iii) Removal Required: Upon notification of permit expiration or revocation, the permittee may request a hearing as provided in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Within thirty days of revocation or expiration of a permit, no owner shall fail to remove the accessory unit and return the property to its single-family use status as a single dwelling unit. The applicant shall either:

a. Remove the kitchen within the accessory unit and any physical separation between the accessory unit and the balance of the unit; or

b. Remove any physical separation between the accessory unit and the balance of the unit and sign a declaration of use in a form acceptable to the city manager, which will be recorded with the Boulder County Clerk and Recorder, stating the property will remain owner occupied for so long as the accessory unit kitchen remains and that the dwelling unit is used by the owner and the owner's family in a manner consistent with section 9-8-5, "Occupancy Of Dwelling Units," B.R.C. 1981. No person shall fail to remove the additional kitchen installed pursuant to this subsection if the dwelling unit is no longer

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owner occupied and if the dwelling unit requires a rental license under chapter 10-3, "Rental Licenses," B.R.C. 1981.

(G) Limitations On Re-Application After Revocation: Upon revocation of a permit, the owner may not reapply for an accessory dwelling unit permit for any location in the city for a period of three years following the date of revocation or conviction.

(H) Transfer: An accessory dwelling unit permit may be transferred to the new owner of a dwelling unit that has an existing, approved accessory unit, if there is no person on the waiting list within the dwelling unit's neighborhood area. A new property owner may apply to transfer an accessory unit permit into its name if the following standards are met:

(i) Proof Of Ownership: The transfer applicant shall provide proof of ownership or of pending ownership of the dwelling unit.

(ii) Declaration Of Use Required: The transfer applicant shall sign a declaration of use, that will be recorded with the Boulder County Clerk and Recorder acknowledging that the accessory dwelling unit is not automatically transferable to subsequent purchasers, that no vested right to duplex status arises by virtue of the city's granting of the accessory dwelling unit permit or a building permit to construct the same, and that lists all the conditions for the continued use of the accessory dwelling unit.

(iii) Rented Or Occupied: The transfer applicant shall provide proof that the accessory dwelling unit has been rented or occupied in the year prior to the application for the transfer.

(iv) Expiration: If a new owner fails to apply for a transfer of the permit within thirty days of the purchase of the dwelling unit, the permit shall automatically expire and the reestablishment of an accessory dwelling unit will require a new application.

(v) Fees: The applicant shall pay the fee required by section 4-20-43, "Development Application Fees," B.R.C. 1981, and all necessary fees for recording documents with the Boulder County Clerk and Recorder.

(vi) Rental License Required: The new owner shall apply for a rental license after the transfer of the accessory dwelling unit has been approved.

Ordinance No. 7522 (2007).

(2) Accessory Dwelling Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to accessory dwelling units. The owner or the owners of a lot or parcel with an existing single-family dwelling unit may establish and maintain an accessory dwelling unit within the principal structure of a detached dwelling unit in the RL-1, RL-2, RE, RR-1, RR-2, A, or P districts if all of the following conditions are met and continue to be met during the life of the accessory dwelling unit:

(A) Neighborhood Area: In the RL-1, RL-2, RE, RR-1, RR-2, A, or P zoning districts, no more than ten percent of the single-family lots or parcels in a neighborhood area contain an accessory dwelling unit. For the purpose of this subparagraph:

(i) The "neighborhood area" in RL-1, RL-2, and P zoning districts is the area circumscribed by a line three hundred feet from the perimeter of the lot line within which any accessory dwelling unit will be located.

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(ii) The "neighborhood area" in RE, RR-1, RR-2, and A zoning districts is the area circumscribed by a line six hundred feet from the perimeter of the lot line within which any accessory dwelling unit will be located.

(iii) For the purpose of calculating the ten percent limitation factor, a legal, nonconforming structure containing two or more units or a limited accessory unit is counted as an accessory dwelling unit. The city manager may promulgate regulations defining additional methods to be used in calculating the ten percent limitation factor and the neighborhood area.

(iv) If an application for an accessory dwelling unit exceeds the ten percent requirement set forth in this subparagraph (a)(2)(A), the city manager will place the applicant on a waiting list for the neighborhood area. At such time as there is room for an additional accessory dwelling unit within a neighborhood area, the city manager will notify the first eligible person on the waiting list. Such person on the waiting list shall be required to provide notice of intent to file an application within thirty days and file an application within sixty days of such notice.

(B) Parking: In addition to the parking required in each district, one off-street parking space is provided on the lot upon which the detached dwelling unit is located meeting the setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, unless a variance to the setback is granted pursuant to section 9-2-3, "Variances And Interpretations," B.R.C. 1981.

(C) Criteria: The accessory dwelling unit is clearly incidental to the principal dwelling unit and meets the following criteria:

(i) The accessory dwelling unit is created only in a single-family detached dwelling unit on a lot of six thousand square feet or more.

(ii) The accessory dwelling unit is a minimum of three hundred square feet, and does not exceed one-third of the total floor area of the principal structure, unless a variance is granted pursuant to section 9-2-3, "Variances And Interpretations," B.R.C. 1981, or one thousand square feet, whichever is less.

(iii) The accessory dwelling unit utilizes only those utility hookups and meters allotted to the detached dwelling unit.

(iv) The accessory dwelling unit is created only through internal conversion of the principal structure. Minor exterior changes may be made on the building, however, if the square footage added constitutes no more than five percent of the principal structure's existing foundation area.

(v) If there is an interior connection between the accessory dwelling unit and the principal dwelling prior to the creation of the accessory dwelling unit, the connection shall be maintained during the life of the accessory dwelling unit. Any additional entrance resulting from the creation of an accessory dwelling unit may face the side of the lot fronting on the street only if such entrance is adequately and appropriately screened in a manner that does not detract from the single-family appearance of the principal dwelling.

(D) Permits For Existing Units: No permit for an accessory dwelling unit shall be granted for a detached dwelling that is not at least five years old.

(E) Accessory Unit Will Not Become A Nonconforming Use: If the provisions of this subsection are repealed by this or any future city council, the legal use of an accessory unit

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must be terminated within five years from the date of repeal, and the accessory unit will not become a nonconforming use.

(3) Limited Accessory Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to limited accessory units. An existing nonconforming duplex or two detached dwelling units located on the same lot and within the R1 use module may be converted to limited accessory dwelling units. A limited accessory dwelling unit may be modified and expanded as a conditional use. Conversion to a limited accessory dwelling unit is subject to compliance with all of the following standards:

(A) Applicability: This subsection (a)(3) is only applicable to dwelling units that legally existed, were actively used as multiple dwelling units, and had a valid rental license on January 1, 2005.

(B) Expansion Limitation: The cumulative total of any expansion shall not exceed twenty percent of the total floor area that was documented at the time of the initial expansion. Any expansion of the restricted accessory unit shall not exceed ten percent. In no case shall any expansion cause the cumulative size of the restricted dwelling units to exceed the maximum allowable floor area ratio of the underlying zoning district as set forth in section 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981.

(C) Parking: The minimum number of off-street parking spaces shall not be less than three spaces. All parking shall comply with the design and access requirements set forth in section 9-9-6, "Parking Standards," B.R.C. 1981. A minimum of one off-street parking space shall be available for use by the restricted accessory dwelling unit.

(D) Loss Of Prior Nonconforming Status: If a nonconforming duplex or two detached dwelling units are converted to limited accessory units through the conditional use process, any prior nonconforming status is lost.

(4) Owner's Accessory Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to owner's accessory units. An owner or the owners of a lot or parcel with an existing single-family dwelling unit may establish and maintain an owner's accessory unit within the principal structure of the detached dwelling unit, or within an accessory structure meeting the size restrictions described below, on a lot or parcel in the RR, RE, and RMX districts if all of the following conditions are met and continue to be met during the life of the owner's accessory unit:

(A) Parking: In addition to the parking required in each district, one paved off-street parking space is provided on the lot upon which the detached dwelling unit is located meeting the setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, unless a variance to the setback is granted pursuant to section 9-2-3, "Variances And Interpretations," B.R.C. 1981. To the extent practical, any additional off-street parking that is constructed in the RR or RE zoning district required for the owner's accessory unit shall be screened from the view of properties that directly abut a property line of the owner's accessory unit.

(B) Incidental To Principal Dwelling Unit: The owner's accessory unit is clearly incidental to the principal dwelling unit and meets the following criteria:

(i) The owner's accessory unit is created on a lot of six thousand square feet or larger, which contains only one detached single-family dwelling in the RMX zoning district. The owner's accessory unit is created on a lot that meets the minimum lot size requirements of the underlying zoning district in the RR or RE zoning districts and contains only one detached single-family dwelling.

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(ii) If the owner's accessory unit is located within the detached dwelling unit, the principal structure shall be at least one thousand five hundred square feet in size, excluding garage space.

(iii) The owner's accessory unit does not exceed one-third of the total floor area of the principal structure, unless a variance is granted pursuant to section 9-2-3, "Variances And Interpretations," B.R.C. 1981, or one thousand square feet, whichever is less.

(iv) If there is an interior connection between the owner's accessory unit and the principal dwelling prior to the creation of the owner's accessory unit, the connection shall be maintained during the life of the owner's accessory unit. Any additional entrance resulting from the creation of an owner's accessory unit, within the principal building, may face the side of the lot fronting on the street only if such entrance is adequately and appropriately screened in a manner that does not detract from the single-family appearance of the principal dwelling.

(v) The following design standards apply to owner's accessory units in a detached accessory structure:

a. If garage doors are placed on the unit, they shall be single-car doors (no two-car-wide doors).

b. All units shall be designed to have a pitched roof of 6:12 or greater. No flat roofs or lower pitched roofs shall be permitted unless consistent with the architecture of the existing house on the property.

c. Maximum height of accessory buildings with an owner's accessory unit shall not be greater than twenty feet unless the roof pitch is greater than 8:12 and the resulting ratio of the height of the roof (measured from the eave line to the top of the roof) to the height of the side walls (measured from the low point of grade to the eave line) is less than a 1:2 ratio. In no case may a building be taller than twenty-five feet.

d. An owner's accessory unit shall have a minimum of sixty square feet of private open space provided for the exclusive use of the occupants of the owner's accessory unit. Private open space may include porches, balconies or patio areas. Decks, porches, patios, terraces, and stairways, located at a height greater than thirty inches above grade, shall be considered part of the building coverage.

e. Architectural design and materials shall be consistent with the existing residence on the site or the adjacent building(s) along the side yards of the lot.

f. Setbacks shall comply with accessory building setbacks. Where the rear yard of a property in the RR or RE zoning district directly abuts an RL zoning district, the rear yard accessory building setback shall be the same as the side yard setback for accessory buildings for such zoning district.

g. The owner's accessory unit is in a building that has a building coverage of less than five hundred square feet and the owner's accessory unit does not exceed four hundred fifty square feet of floor area.

Ordinance No. 7535 (2007).

(C) Variance Of Building Coverage: The city manager may grant a variance to the building coverage requirements of subparagraph (a)(4)(B)(v)g of this section upon finding that the following conditions are met:

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(i) The owner's accessory unit is created in a building that was legally in existence prior to June 3, 1997; and

(see following page for continuation of Section 9-6-3)

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(ii) A reduction in the building footprint size of the existing building to conform to the five hundred square foot limitation would create a substantial hardship for the applicant.

(b) Cooperative Housing Units: Cooperative housing units may provide another option for home ownership in the community. Cooperative housing units are intended to further the goals of increased use of alternative modes of transportation; conservation and efficient use of public and private resources; and to provide for creation of a diverse housing mix and affordable housing to help meet the needs of those that work in the city. The following standards and criteria apply to any cooperative housing unit located in a residential district:

(1) Application: All applicants for a cooperative housing unit shall apply on forms provided by the city manager demonstrating how the standards and criteria of this subsection are met and will continue to be met; provide written consent of the property owner for the application; provide a list of all property owners within three hundred feet of the boundaries of the applicant's property; provide a statement of current ownership and a legal description of the property; provide a list of the proposed resident owners in the cooperative housing unit; provide the name of the local agent; and pay the application fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981.

(2) Conditional Use Review Required: Any cooperative housing unit shall be reviewed in accordance with the following:

(A) Notice: After receiving an application, the city manager will cause the property to be posted and notify, by first-class mail, all property owners within three hundred feet of the boundaries of the applicant's property indicating that a cooperative housing unit application has been filed and that more detailed information may be obtained from the planning department. Failure to provide such notice, however, does not affect the validity of any approval subsequently granted.

(B) Review And Approval: If after reviewing the application, but no fewer than ten days after posting the property, the city manager determines that the criteria of this subsection are met, the manager will grant the applicant a nontransferable approval of a cooperative housing unit. The city manager shall deny the application if any of the standards and criteria are not met. Before receiving an approval, all owners shall sign a declaration of use, including the conditions for continued use, to be recorded in the office of the Boulder County Clerk and Recorder to serve as actual and constructive notice of the legal status of the property.

(C) Approval Renewal: An approval shall be valid for up to five years after the date of approval. The applicant shall be required to apply for a renewal prior to the end of the five-year period. There shall be no fee for the renewal of a valid cooperative housing unit use approval. The new approval will be granted if the use continues to meet the standards for a cooperative housing unit. The city manager will not renew the approval if the applicant fails to meet the standards of this subsection.

(3) Approval Required: No person shall maintain a cooperative housing unit without a cooperative housing unit approval pursuant to this subsection.

(4) Standards: The city manager may grant a cooperative housing unit application if the applicant can demonstrate that all the following conditions are met and will continue to be met during the life of the cooperative housing unit:

(A) No person other than a resident owner shall maintain an ownership interest in a cooperative housing unit unless such ownership interest is held by a nonprofit organization that has tax exempt status under 26 U.S.C. 501(c)(3);

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(B) No more than a total of twenty cooperative housing unit applications no more than half of which may be in the RL zone may be approved for calendar years 1999 and 2000;

(C) No more than ten percent of the principal structures in a neighborhood area shall be group homes, accessory dwelling units, or cooperative housing units in the RR, RE, and RL districts. No more than ten percent of the principal structures in the following defined areas shall be a cooperative housing unit in the RM, MU, RMX, and RH districts. For the purposes of this subparagraph, such area means an area circumscribed by a line three hundred feet in the RL, RM, RMX, RH, and MU districts and six hundred feet in the RR and RE districts from the perimeter of the lot line within which any building holding a cooperative housing unit will be located;

(D) A maximum of six occupants on a conforming lot, or, on a lot that is twice the minimum lot area per dwelling unit, a maximum of eight occupants, may occupy any cooperative housing unit in an RR, RE, RL, RM, RMX, or MU zoning district. In the RH zoning district, a maximum of four occupants are allowed for each dwelling unit that is otherwise allowed on the site. For the purpose of this subsection, "habitable floor area" means the total square footage of all levels included within the outside walls of a building or portion thereof, but excluding courts, garages useable for the storage of motor vehicles, and uninhabitable areas that are located above the highest inhabitable level or below the first floor level. An "uninhabitable area" is a room that has less than a seven-foot floor-to-ceiling height. The unit shall provide a minimum of three hundred square feet of habitable floor area for each occupant;

(E) No person shall use any room in a cooperative housing unit for sleeping purposes unless it meets the minimum habitability requirements set forth in sections 10-2-12, "Light, Ventilation, Window And Door Standards," 10-2-13, "Egress Standards," and 10-2-14, "Minimum Space, Use, And Location Requirements," B.R.C. 1981;

(F) The cooperative housing unit shall be owned by the resident occupants as provided in subparagraph (b)(4)(A) of this section. All resident occupants in the cooperative housing unit are required to use the cooperative housing unit as a principal residence, and seventy-five percent of the resident occupants of the cooperative housing unit shall have an ownership interest in the cooperative housing unit. Children under the age of twenty-one of a resident occupant shall not count against the maximum of twenty-five percent tenants that do not have an ownership interest, but shall count against the total occupants allowed in the cooperative housing unit;

(G) No resident owner may own less than a five percent equity interest in a cooperative housing unit. No resident owner or nonprofit organization that has tax exempt status under 26 U.S.C. 501(c)(3) may own more than a forty-nine percent equity interest in a cooperative housing unit. All resident owners in the cooperative housing unit shall have an equal vote in the governance of the cooperative housing unit;

(H) The resident owners of a cooperative housing unit shall appoint a resident owner to serve as local agent of the cooperative housing unit. Notices given to the local agent or any resident owner shall be sufficient to satisfy any requirement of notice to the owner or operator of the property. The resident owners shall notify the city manager in writing of any change of the local agent within seven days of such change;

(I) A minimum of one off-street parking space per two occupants shall be provided for each cooperative housing unit. The approving authority may grant a parking reduction or parking deferral of up to fifty percent of the required parking if the applicant can demonstrate that the criteria set forth in sections 9-9-6(e) and (f), B.R.C. 1981, have been met. A cooperative housing unit shall have a minimum of two off-street parking spaces;

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(J) All occupants over sixteen years of age shall obtain and continue to maintain a local access bus pass with the Regional Transportation District;

(K) One cooperative housing unit is permitted on a building lot;

(L) The cooperative housing unit shall not have more than one kitchen unless the additional kitchen was installed pursuant to permits approved pursuant to chapter 10-5, "Building Code," B.R.C. 1981, prior to an application for a cooperative housing unit; and

(M) No cooperative housing unit shall have an accessory dwelling unit.

(5) Information On Operation: The cooperative housing unit and the local agent shall provide the city manager, in writing, with any changes in information required by this subsection, including, without limitation, the names of all resident owners, other occupants, and the local agent within seven days of the change.

(6) Expiration Of Permit: An approval for a cooperative housing unit automatically expires at the end of the five-year period if the approval is not renewed, if the entire property has been conveyed by the resident owners to another person, or if the property is no longer used as a cooperative housing unit.

(7) Revocation Of Approval: The city manager will revoke an approval of a cooperative housing unit for violations of the following conditions unless, due to extenuating circumstances that the applicant has presented to the city manager, the city manager finds that the resident owners of the cooperative housing unit will make changes to the cooperative housing unit that will prevent future violations:

(A) Upon the first conviction in an RL zoning district or the second conviction in the remaining zoning districts in Boulder municipal court for any violation of any of the following, within any two-year period based on events that occurred in the cooperative housing unit: chapter 5-9, "Noise," B.R.C. 1981;

(B) Upon the first conviction in an RL zoning district or the second conviction in the remaining zoning districts in Boulder municipal court for any violation of any of the following within any two-year period based on events that occurred at the cooperative housing unit: chapter 6-2, "Weed Control," or section 6-3-3, "Trash Accumulation Prohibited," B.R.C. 1981; or

(C) For exceeding the maximum occupancy allowed for the cooperative housing unit.

(8) Prohibitions: No occupant of a cooperative housing unit shall fail to comply with all provisions of this subsection including, without limitation, the provisions of paragraph (b)(4) of this section.

(9) Hearings: Upon notification of a revocation, the resident owners of the cooperative housing unit may request a hearing as provided in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, before the planning board. Within sixty days of revocation or expiration of an approval, no owner shall fail to remove the cooperative housing unit and return the property to a use permitted in the zoning district.

(10) No Nonconforming Use: If the provisions of this subsection are repealed for any zoning district by this or any future city council, the legal use of a cooperative housing unit must be terminated within fifteen years from the date of such repeal; and the property owner shall remove the cooperative housing unit and return the property to a use that is permitted in the zoning district. The cooperative housing unit use will not become a nonconforming use.

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(c) Detached Dwelling Units With Two Kitchens: The following criteria apply to any detached dwelling units with two kitchens:

(1) Second Kitchen Shall Not Create An Additional Dwelling Unit: The second kitchen shall be incidental to occupancy of the entire house in common by all occupants and shall not be designed or used to create or allow for the creation of a second dwelling unit. In determining whether the second kitchen creates or may create an additional dwelling unit, the city manager shall consider whether the proposed kitchen can be separated from the remainder of the dwelling unit, with other rooms, including a bathroom, with a separate exterior access.

(2) Owner Occupied: The detached dwelling unit within which the second kitchen is located is actually and physically occupied as a principal residence by at least one owner of record of the lot or parcel upon which the detached dwelling unit is located who possesses at least an estate for life or a fifty percent fee simple ownership interest.

(3) Agreement Required: If such use is approved, the city manager and the property owner shall record an agreement with the Boulder County Clerk and Recorder, whereby the property owner acknowledges and agrees that the dwelling unit shall only be used as a single dwelling unit and in compliance with the conditional use approval. The agreement shall also bind the owner and occupants and the owner's heirs, successors-in-interest, assigns, and lessees.

Ordinance Nos. 7079 (2000); 7364 (2004).

(d) Group Home Facilities: The following criteria apply to any group home facility:

(1) For purposes of density limits in section 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981, and occupancy limits, eight occupants, not including staff, in any group home facility constitute one dwelling unit, but the city manager may increase the occupancy of a group home facility to ten occupants, not including staff, if:

(A) The floor area ratio for the facility complies with standards of the Colorado State Departments of Health and Social Services and chapter 10-2, "Housing Code," B.R.C. 1981; and

(B) Off-street parking is appropriate to the use and needs of the facility and the number of vehicles used by its occupants, regardless of whether it complies with other off-street parking requirements of this chapter.

(2) In order to prevent the potential creation of an institutional setting by concentration of group homes in a neighborhood, no group home facility may locate within three hundred feet of another group home facility, but the city manager may permit two such facilities to be located closer than three hundred feet apart if they are separated by a physical barrier, including, without limitation, an arterial collector, a commercial district, or a topographic feature that avoids the need for dispersal. The planning department will maintain a map showing the locations of all group home facilities in the city.

(3) No person shall make a group home facility available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. A determination that a person poses a direct threat to the health or safety of others or a risk of substantial physical damage to property must be based on a history of overt acts or current conduct of that individual and must not be based on general assumptions or fears about a class of disabled persons.

Ordinance No. 7364 (2004).

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(e) Home Occupations:

(1) Standards: A home occupation is a permitted accessory use if the following conditions are met:

(A) Such use is conducted entirely within a principal or accessory building and is not carried on by any person other than the inhabitants living there.

(B) Such use is clearly incidental and secondary to the residential use of the dwelling and does not change the residential character thereof.

(C) The total area used for such purposes does not exceed one-half the first floor area of the user's dwelling unit.

(D) There is no change in the outside appearance of the dwelling unit or lot indicating the conduct of such home occupation, including, without limitation, advertising signs or displays.

(E) There is no on-site sale of materials or supplies except incidental retail sales.

(F) There is no exterior storage of material or equipment used as a part of the home occupation.

(G) No equipment or process is used in such home occupation that creates any glare, fumes, odors, or other objectionable condition detectable to the normal senses at the boundary of the lot if the occupation is conducted in a detached dwelling unit, or outside the dwelling unit if conducted in an attached dwelling unit.

(H) No traffic is generated by such home occupation in a volume that would create a need for parking greater than that which can be accommodated on the site or which is inconsistent with the normal parking usage of the district.

(2) Prohibitions: No person shall engage in a home occupation except in conformance with all of the requirements of paragraph (e)(1) of this section.

Ordinance No. 7364 (2004).

(f) Residential Care, Custodial Care, And Congregate Care Facilities: The following criteria apply to any residential care facility, custodial care facility, or congregate care facility:

(1) For purposes of density limits in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, and occupancy limits, six occupants, including staff, in any custodial, residential or congregate care facility constitute one dwelling unit, but the city manager may increase the occupancy of a residential care facility to eight occupants, including staff, if:

(A) The floor area ratio for the facility complies with standards of the Colorado State Departments of Health and Social Services and chapter 10-2, "Housing Code," B.R.C. 1981; and

(B) Off-street parking is appropriate to the use and needs of the facility and the number of vehicles used by its occupants, regardless of whether it complies with other off-street parking requirements of this chapter.

(2) In order to prevent the potential creation of an institutional setting by concentration of custodial, residential or congregate care facilities in a neighborhood, no custodial, residential or congregate care facility may locate within seven hundred fifty feet of another custodial,

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residential or congregate care facility, but the approving agency may permit two such facilities to be located closer than seven hundred fifty feet apart if they are separated by a physical barrier, including, without limitation, an arterial collector, a commercial district, or a topographic feature that avoids the need for dispersal. The planning department will maintain a map showing the locations of all custodial, residential or congregate care facilities in the city.

(3) Uses allowed in the BMS district must be located above or below the ground floor; otherwise by use review only.

Ordinance No. 7364 (2004).

(g) Residential Development In Industrial Zoning Districts: The following standards and criteria apply to any residential development including attached or detached dwelling units, custodial care units, residential care units, congregate care units, boarding and rooming houses, cooperative housing units, fraternities, sororities, dormitories, and hostels proposed to be constructed in the IG or the IM zoning district classifications:

(1) Application Requirements: An applicant for a dwelling unit in an IG or IM zoning district shall apply on forms provided by the city manager showing how and in what manner the standards and criteria of this subsection have been met. In addition to any information required by sections 9-2-2, "Administrative Review Procedures," and 9-2-15, "Use Review," B.R.C. 1981, the applicant shall provide the following information:

(A) Environmental Assessment: A report that addresses each of the items required by the American Society for Testing and Materials Standards (ASTM) E-1527 and E-1528. The report shall be current and with a completion date within five years of the date of application.

(B) Contiguity Map: A map that demonstrates that the proposed residential development meets the contiguity requirements of paragraph (g)(2) of this section.

(2) Location Within The Industrial Districts: Dwelling units within the IG or IM zoning district classifications may be constructed if located on a parcel that has not less than one-sixth of the perimeter of the parcel contiguous with the residential use that includes one or more dwelling units or contiguous to a residential zone or to a city or county owned park or open space. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right of way, a public or private transportation right of way or area. If a parcel meets this standard, the approving authority shall presume that the standard in paragraph 9-2-15(e)(5), B.R.C. 1981, has been met.

(3) Requirement For Certain Residential Uses: The following uses shall also meet the requirement for such uses in sections 9-6-2 through 9-6-9, B.R.C. 1981: custodial care units, residential care units, congregate care units, and cooperative housing units.

(4) Residential And Nonresidential Uses Within A Project: If residential uses are to be placed on the property, the entire property shall be used exclusively for residential purposes except as otherwise provided in this paragraph. Nonresidential uses are permitted, provided that site design is approved pursuant to the site review criteria in section 9-2-14, "Site Review," B.R.C. 1981, in order to ensure that the site design and building layout will result in compatibility among uses or to mitigate potential impacts between such uses.

(5) Limited Retail Uses Permitted: Convenience store, personal service, or restaurant uses may be permitted as accessory uses to a residential development permitted by this subsection if all of the following standards are met:

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(A) Each convenience store, personal service, or restaurant use does not exceed two thousand five hundred square feet in floor area, and in the case of restaurants, such restaurants shall close no later than 11:00 p.m. unless otherwise approved in a city review process.

(B) The total amount of floor area used for all of the convenience store, personal service, or restaurant uses does not exceed five percent of the total residential floor area of the development.

(C) The uses are permitted only if development is located no closer than one thousand three hundred twenty feet from another property that is described as a business district in section 9-5-2, "Zoning Districts," B.R.C. 1981, or another convenience store, personal service or restaurant use in another development created pursuant to this subsection.

(6) Bulk And Density Requirements: All residential development shall be subject to the bulk and density standards set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, and the landscaping for the underlying zoning district, except as modified by the following:

(A) Lot Size: The minimum lot size shall be at least two acres. Projects over five acres shall also be required to complete a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981.

(B) Side Yard Adjacent To A Street: The minimum side yard landscaped setback from a street for all buildings that contain residential uses shall be twenty feet.

(C) Interior Side Yard: The minimum side yard setback from an interior lot line for all principal buildings and uses shall be twenty feet. If an existing building is converted to residential uses, the side yard setback may be reduced to twelve feet for the existing portion of the building.

(D) Floor Area Ratios: The floor area regulations for the underlying zoning district classification shall only apply to the nonresidential floor area on the site.

(E) Open Space: If the site is not located within the service area of a neighborhood park, as identified in the Parks and Recreation Master Plan, a minimum of forty percent of the required usable open space shall be configured as a common contiguous area that will provide for the active and passive recreational needs of the residents.

(7) Buffers From Adjacent Land Uses: The applicant shall provide visual screening, which may include, without limitation, walls, fences, topographic changes, horizontal separation, or plantings for those areas that are adjacent to loading docks, truck or other delivery vehicle ingress or egress areas, dumpsters or other recycling vessels, and outdoor storage areas.

(8) Environmental Suitability: The applicant shall demonstrate that the proposed use will not be affected by any adverse health or safety impacts associated with potential on-site pollution or contamination beyond that which is customarily acceptable for land that is used for residential purposes. This shall be demonstrated through the use of the environmental assessment required to be submitted with the application. If such environmental assessment identifies any potential adverse health or safety impacts on future residents of the site, the applicant shall also be required to submit further assessments that demonstrate that such concerns are not present or submit a plan for the mitigation measures that are necessary to alleviate any adverse impacts to public health, safety and welfare.

(9) Construction Standards For Noise Mitigation: The applicant shall utilize construction standards that will achieve an interior day-night average noise level of no more than forty-

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five decibels, anticipating potential exterior day-night average industrial noise levels of seventy-three decibels measured at the property line. Such standards shall be in compliance with chapter 10-5, "Building Code," B.R.C. 1981. Noise shall be measured in a manner that is consistent with the federal Housing and Urban Development's standards in sections 24 C.F.R. 51.100 to 106 for the "measure of external noise environments," or similar standard adopted by the city manager in the event that such rule is repealed. The applicant shall provide written certification prior to the issuance of a certificate of occupancy that the sound abatement and attenuation measures were incorporated in the construction and site design as recommended by a professional engineer.

(10) Declaration Of Use Required: Before receiving a building permit, all owners shall sign a declaration of use, including all the conditions for continued use, to be recorded in the office of the Boulder County Clerk and Recorder to serve as actual and constructive notice to potential purchasers and tenants of the owner's property status as a residential use within an industrial zoning district classification.

(11) Modification Of Standards: The approving authority is authorized to modify the standards set forth in section 9-2-14, "Site Review," B.R.C. 1981, or paragraphs (g)(6), (g)(7), (g)(8), and (g)(9) of this section, upon finding that:

(A) The strict application of these standards is not possible due to existing physical conditions;

(B) The modification is consistent with the purpose of the section; and

(C) The modification is the minimum modification that would afford relief and would be the least modification of the applicable provisions of this chapter.

The city manager shall require that a person requesting a modification supply the information necessary to substantiate the reasons for the requested modification.

Ordinance No. 7336 (2004).

(h) Transitional Housing: The following criteria apply to any transitional housing facility:

(1) Density: The maximum number of dwelling units with transitional housing facility shall be the same as is permitted within the underlying zoning district, except that for any zoning district that is classified as an industrial zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the number of dwelling units permitted shall not exceed one dwelling unit for each one thousand six hundred square feet of lot area on the site.

(2) Occupancy: No person shall occupy such dwelling unit within a transitional housing facility except in accordance with the occupancy standards set forth in section 9-8-5, "Occupancy Of Dwelling Units," B.R.C. 1981, for dwelling units.

(3) Parking: The facility shall provide one off-street parking space for each dwelling unit on the site. The approving authority may grant a parking deferral of up to the higher of fifty percent of the required parking or what otherwise may be deferred in the zoning district if the applicant can demonstrate that the criteria set forth in subsection 9-9-6(e), B.R.C. 1981, have been met.

Ordinance Nos. 7132 (2001); 7364 (2004); 7484 (2006).

9-6-4 Agriculture And Natural Resource Uses.

Reserved.

9-6-5 Temporary Lodging, Dining, Entertainment, And Cultural Uses.

(a) Bed And Breakfasts: The following criteria apply to bed and breakfast uses:

(1) The structure is compatible with the character of the neighborhood in terms of height, setbacks, and bulk. Any modifications to the structure are compatible with the character of the neighborhood.

(2) One parking space is provided for each guest bedroom, and one space is provided for the operator or owner's unit in the building.

(3) No structure contains more than twelve guest rooms. The number of guest rooms shall not exceed the occupancy limitations set forth in section 9-8-6, "Occupancy Equivalencies For Group Residences," B.R.C. 1981.

(4) No cooking facilities including, without limitation, stoves, hot plates or microwave ovens are permitted in the guest rooms. No person shall permit such use.

(5) One attached exterior sign is permitted to identify the bed and breakfast, subject to the requirements of section 9-9-21, "Signs," B.R.C. 1981.

(6) No long-term rental of rooms is permitted. No person shall permit a guest to remain in a bed and breakfast for a period in excess of thirty days.

(7) No restaurant use is permitted. No person shall serve meals to members of the public other than persons renting rooms for nightly occupancy and their guests.

(8) No person shall check in or check out of a bed and breakfast or allow another to do so except between the times of 6:00 a.m. and 9:00 p.m.

Ordinance No. 5623 (1994).

(b) Restaurants And Taverns: The intent of this subsection is to ensure that restaurant and tavern owners and operators in close proximity to residential districts are informed of the effects upon neighboring residential properties of operating a business, and are educated about ways to mitigate, reduce, or eliminate potential impacts of a restaurant or tavern operation upon neighboring properties.

The applicant shall include all areas inside the restaurant measured to the inside surface of the outside walls, except for floor area that is used exclusively for storage that is located on another floor of the building, when determining whether the floor area thresholds under section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, necessitate review under this subsection.

(1) Restaurants And Taverns In The DT-1, DT-2, And DT-3 Zoning Districts And Portions Of The BMS Zoning District: Owners and operators of restaurant and tavern uses permitted as a conditional use or pursuant to a use review in the DT-1, DT-2, and DT-3 zoning districts and those portions of the BMS zoning district that are outside of the University Hill General Improvement District are required to organize and participate in a meeting with the surrounding property owners pursuant to section 9-2-4, "Good Neighbor Meetings And Management Plans," B.R.C. 1981.

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(2) Restaurants And Taverns In The University Hill General Improvement District Within The BMS Zoning District: The following criteria apply to restaurants and tavern uses permitted as a conditional use or pursuant to a use review in the BMS zoning district that is also located within the University Hill General Improvement District:

(A) Meeting With Surrounding Property Owners Required: Restaurant and tavern owners and operators shall be required to organize and participate in a good neighbor meeting with the surrounding property owners pursuant to section 9-2-4, "Good Neighbor Meetings And Management Plans," B.R.C. 1981.

(B) Preparation And Distribution Of A Proposed Management Plan: The owner or operator shall prepare a proposed management plan, pursuant to section 9-2-4, "Good Neighbor Meetings And Management Plans," B.R.C. 1981, and present it to the surrounding property owners at the neighbor meeting.

(3) Restaurants And Taverns In The Industrial Districts: The following criteria will apply to any restaurant or tavern use located in an Industrial district:

(A) The use is intended generally to serve the industrial area in which it is located, with no exterior signage that is visible from a major street or higher classification street as shown in appendix A, "Major Streets," of this title;

(B) The use is not located along a major street or higher classification street as shown in appendix A, "Major Streets," of this title;

(C) The use may operate daily only between the hours of 6:00 a.m. and 8:00 p.m.; and

(D) In the IMS district only, the use shall be limited to a maximum size of two thousand square feet of floor area.

(4) Restaurants And Taverns With Outdoor Seating Within Five Hundred Feet Of A Residential Use Module: The following criteria apply to any outdoor seating area that is within five hundred feet (measured from the perimeter of the subject property) of a residential use module. Outdoor dining areas that are within the BMS, DT, and I zoning districts are also subject to the provisions of subparagraph (b)(4)(A), (b)(4)(B) or (b)(4)(C) of this section, when applicable.

(A) Size Limitations: Outdoor seating areas shall not exceed the indoor seating area or seating capacity of the restaurant or tavern.

(B) Parking Required: Parking in compliance with section 9-9-6, "Parking Standards," B.R.C. 1981, shall be provided for all outdoor seating areas except those located in general improvement districts.

(C) Music: No outdoor music or entertainment shall be provided after 11:00 p.m.

(D) Sound Levels: The outdoor seating area shall not generate noise exceeding the levels permitted in chapter 5-9, "Noise," B.R.C. 1981.

(E) Trash: All trash located within the outdoor dining area, on the restaurant or tavern property, and adjacent streets, sidewalks, and properties shall be picked up and properly disposed of immediately after closing.

(c) Temporary Sales Or Outdoor Entertainment:

(1) Standards: The city manager may permit temporary sales or outdoor entertainment events if the following conditions are met:

(A) Such uses are temporary and limited to two consecutive weeks in any three-month period, unless otherwise approved by the city manager;

(B) Such uses conducted from movable structures or upon vacant lots shall submit a site plan, including, without limitation, the location, setback from property line, screening, sign, and fence locations, if applicable, and electric meter locations or power source;

(C) Applicants shall obtain the appropriate sales tax license and, if applicable, temporary fence permits;

(D) All exterior areas used for such uses and the lot or parcel that such uses occur upon shall meet the bulk requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981;

(E) Such uses may not adversely affect the required parking or result in unsafe conditions or unacceptable levels of congestion;

(F) Upon termination of the use pursuant to subparagraph (c)(1)(A) of this section, the lot or parcel shall be returned substantially to its original condition. All litter, fences, borders, tie-down materials, and other items associated with the temporary sale shall be promptly removed. Unless otherwise approved by the city manager, "promptly" as used in this subparagraph shall mean within five days; and

(G) Temporary sales shall only be conducted by the owner or lessee of the property on which it is conducted and only in conjunction with the principal use of the property.

(2) Prohibitions: No person shall sell merchandise or services from a motor vehicle, trailer, mobile home, or tent upon any public or private property, including, without limitation, lots or portions thereof that are vacant or used for parking except as provided in this subsection.

Ordinance Nos. 5784 (1996); 7364 (2004).

9-6-6 **Public And Institutional Uses.**

a) Daycare Centers: The following criteria apply to any daycare center except home daycares:

(1) Fencing is provided around outdoor play areas.

(2) If the use is adjacent to an arterial, collector, or minor arterial as shown in appendix A, "Major Streets," of this title, off-street loading and unloading areas are provided.

(3) Adequate off-street parking is provided for employees, volunteers, and visitors.

(4) Child daycare facilities are properly licensed by the State Department of Social Services.

(5) For nursery care (any child under the age of eighteen months), the facility provides fifty square feet of useable indoor floor area per child or a total of six hundred square feet of useable floor area, whichever is greater.

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(6) For child care other than nursery care, the facility provides thirty square feet of useable indoor floor area per child or a total of six hundred square feet of useable floor area, whichever is greater.

(7) All child day care facilities shall provide a minimum of seventy five square feet of usable outdoor play area per child or a total of two thousand four hundred square feet of useable outdoor play area, whichever is greater.

Ordinance Nos. 5679 (1994); 7364 (2004).

(b) Shelters (Day, Emergency And Overnight):

(1) General Requirements For All Shelters: The following criteria apply to any day, emergency or overnight shelters:

(A) Good Neighbor Meeting And Management Plan: The intent of a good neighbor meeting and management plan is to ensure that shelter owners and operators are informed of the effects upon neighboring properties of operating such a facility, and are educated about ways to mitigate, reduce, or eliminate potential impacts upon neighboring properties. Owners and operators shall implement a good neighbor plan when establishing a shelter that meets the following standards:

(i) Meeting With Surrounding Property Owners Required: The owners or operators of a shelter shall be required to organize and participate in a meeting with the surrounding property owners pursuant to section 9-2-4, "Good Neighbor Meetings And Management Plans," B.R.C. 1981.

(ii) Preparation And Distribution Of A Proposed Management Plan: The owner or operator shall prepare a proposed management plan pursuant to section 9-2-4, "Good Neighbor Meetings And Management Plans," B.R.C. 1981, and present it to the surrounding property owners at the neighbor meeting.

(iii) School Safety Plan: Any facility that is within six hundred feet from a school that proposes to admit clients that may be under the influence of alcohol shall also develop a safety plan, in consultation with the school and the superintendent of the Boulder Valley School District, if applicable, to ensure safety of the school's students. For the purpose of this subsection, "school" means a public, parochial, or nonpublic school that provides a basic academic education in compliance with the school attendance laws for students in grades kindergarten through the eighth grade. "Basic academic education" has the same meaning as set forth in section 22-33-104(2)(b), C.R.S.

(iv) Resubmission And Amendment Of A Management Plan: Every three years, or when the owner or operator changes the operating characteristics in a manner that does not comply with the approved management plan, whichever occurs first, the owner or operator shall resubmit a management plan. No owner or operator shall fail to resubmit a management plan that meets the requirements of this subsection. The city manager is authorized to require an owner or operator to organize, host, and participate in a good neighbor meeting if the city manager determines that such a meeting will be of assistance in identifying additional adverse impacts that may have been created by the facility. The management plan shall address how the facility will address any additional adverse impacts that have been identified by the city manager. The city manager will approve the management plan upon finding that any such additional adverse impacts will be mitigated by amendments to the management plan.

(2) Additional Requirements For Day Shelters: The following additional criteria apply to any day shelter:

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(A) On-Site Staffing: No facility shall be open for use by clients unless there is staff on-site to supervise and oversee the clients.

(B) Waiting Areas: No person shall allow or permit clients of a facility to queue or otherwise wait for the facility to open or to otherwise be admitted into the facility in the public right of way. The facility shall provide an indoor or outdoor waiting area in a size adequate to prevent the anticipated number of clients from queuing into or otherwise waiting in the public right-of-way.

(C) Outdoor Area: The facility shall provide an outdoor area, screened from the surrounding properties and the public right-of-way for use of clients once admitted to the facility.

(D) Parking: The facility shall provide off-street parking at the rates set forth in section 9-9-6, "Parking Standards," B.R.C. 1981, for a nonresidential use. The approving authority may grant a parking deferral of the higher of up to fifty percent of the required parking or what otherwise may be deferred in the underlying zoning district if the applicant can demonstrate that the criteria set forth in subsection 9-9-6(e), B.R.C. 1981, have been met.

Ordinance Nos. 7132 (2001); 7364 (2004).

(3) Additional Requirements For Emergency Shelter: The following additional requirements apply to any emergency shelter:

(A) Waiver Of Good Neighbor Meeting And Management Plan Requirement: The city manager may waive the requirement that the applicant organize, host, and participate in a good neighbor meeting upon finding that the applicant will not require a use review, and that the needs of the facility's clients for anonymity and a safe and secure environment will be compromised by such a meeting.

(B) Parking: The facility shall provide off-street parking at the rates set forth below. The approving authority may grant a parking deferral of up to the higher of fifty percent of the required parking or what otherwise may be deferred in the underlying zoning district if the applicant can demonstrate that the criteria set forth in subsection 9-9-6(e), B.R.C. 1981, have been met.

(i) One space for each employee or volunteer that may be on the site at any given time computed on the basis of the estimated maximum number of employees and volunteers on the site at any given time;

(ii) One parking space for each twenty occupants, based on the maximum occupancy of sleeping rooms and the dormitory type sleeping areas; and

(iii) One parking space for each attached type dwelling unit.

(C) Maximum Occupancy: No person shall permit the maximum occupancy of a facility to exceed the following unless approved pursuant to an occupancy increase:

(i) Sleeping Areas: For emergency shelter facilities that operate with sleeping rooms or with open air dormitory type sleeping areas, the following occupancy standards apply:

a. Residential Districts: For any zoning district that is classified as a residential zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the maximum number of residents of the facility shall not exceed six persons for each dwelling unit that would otherwise be permitted based on the lot area or open space on the site.

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b. Business Districts: For any zoning district that is classified as a commercial zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the maximum number of residents of the facility shall not exceed six persons for each dwelling unit that would otherwise be permitted based on the lot area or open space on the site. Up to two additional persons per dwelling unit equivalents in the business zoning districts is permitted if the property is not adjacent to a residential zoning district classification as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981. For the purpose of this subparagraph, "adjacent" means separated by an alley, a street that is a minor arterial or lesser classification on the Transportation Master Plan functional classification map, or a property line, notwithstanding a break in a survey, that is shared between the facility and another property.

c. Industrial Districts: For any zoning district that is classified as an industrial zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the maximum number of residents of the facility shall not exceed six persons for each one thousand six hundred square feet of lot area on the site. Up to two additional persons for each one thousand six hundred square feet of lot area on the site in an industrial zoning district is permitted if the property is not adjacent to a residential zoning district classification as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981. For the purpose of this subparagraph, "adjacent" means separated by an alley, a street that is a minor arterial or lesser classification on the Transportation Master Plan functional classification map, or a property line, notwithstanding a break in a survey, that is shared between the facility and another property.

d. Occupancy Increase: For applicants that cannot meet the conditional standards for occupancy increases set forth in this subparagraph, or otherwise is limited to six occupants per dwelling unit equivalent, the maximum occupancy of a facility may be increased from six up to ten occupants per dwelling unit equivalents upon approval of a use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

(ii) Attached Housing: For emergency shelter facilities that are located in zoning districts that permit attached housing, that operate as separate attached dwelling units, each dwelling unit equivalent shall constitute two attached dwelling units. No person shall occupy such dwelling unit except in accordance with the occupancy standards set forth in section 9-8-6, "Occupancy Equivalencies For Group Residences," B.R.C. 1981, for dwelling units.

(iii) Detached Housing: For emergency shelter facilities that are located in zoning districts that do not permit attached housing, each detached dwelling unit shall constitute one dwelling unit. No person shall occupy such a dwelling unit except in accordance with the occupancy standards set forth in section 9-8-6, "Occupancy Equivalencies For Group Residences," B.R.C. 1981, for a dwelling unit.

(iv) Calculating Occupancy: The maximum occupancy for a facility shall include the occupants of the facility in addition to the occupants of overnight shelter uses and transitional housing uses that are also located on the property.

(D) Review Standards: Uses designated as conditional uses in section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, shall be processed under the provisions of this paragraph, unless the applicant makes a request to increase the maximum occupancy per dwelling unit equivalent from six persons per dwelling unit equivalent up to ten occupants for sleeping room or dormitory type sleeping areas.

Ordinance Nos. 7132 (2001); 7364 (2004).

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(4) Additional Standards For Overnight Shelters: The following additional criteria apply to any overnight shelter:

(A) On-Site Staffing: No facility shall be open for use by clients unless there is staff on-site to supervise and oversee the clients.

(B) Waiting Areas: No person shall allow or permit clients of a facility to queue or otherwise wait for the facility to open or to otherwise be admitted into the facility in the public right-of-way. The facility shall provide an indoor or outdoor waiting area in a size adequate to prevent the anticipated number of clients from queuing into or otherwise waiting in the public right-of-way.

(C) Parking: The facility shall provide off-street parking at the rates set forth below. The approving authority may grant a parking deferral of up to the higher of fifty percent of the required parking or what otherwise may be deferred in the underlying zoning district if the applicant can demonstrate that the criteria set forth in subsection 9-9-6(e), B.R.C. 1981, have been met.

(i) One space for each employee or volunteer that may be on the site at any given time computed on the basis of the estimated maximum number of employees and volunteers on the site at any given time; and

(ii) One parking space for each twenty occupants, based on the maximum occupancy of the facility.

(D) Maximum Occupancy: No person shall permit the maximum occupancy of a facility to exceed the following unless approved pursuant to an occupancy increase:

(i) Residential Districts: For any zoning district that is classified as a residential zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the maximum number of residents of the facility shall not exceed four persons for each dwelling unit that would otherwise be permitted based on the lot area or open space on the site.

(ii) Business Districts: For any zoning district that is classified as a commercial zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the maximum number of residents of the facility shall not exceed four persons for each dwelling unit that would otherwise be permitted based on the lot area or open space on the site. Up to two additional persons per dwelling unit equivalent in the business zoning districts is permitted if the property is not adjacent to a residential zoning district classification as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981. For the purpose of this subparagraph, "adjacent" means separated by an alley, a street that is a minor arterial or lesser classification on the Transportation Master Plan functional classification map, or a property line, notwithstanding a break in a survey, that is shared between the facility and another property.

(iii) Industrial Districts: For any zoning district that is classified as an industrial zoning district pursuant to section 9-5-2, "Zoning Districts," B.R.C. 1981, the maximum number of residents of the facility shall not exceed four persons for each one thousand six hundred square feet of lot area on the site. Up to two additional persons for each one thousand six hundred square feet of lot area on the site in an industrial zoning district is permitted if the property is not adjacent to a residential zoning district classification as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981. For the purpose of this subparagraph, "adjacent" means separated by an alley, a street that is a minor arterial or lesser classification on the Transportation Master Plan functional classification map, or a property line, notwithstanding a break in a survey, that is shared between the facility and another property.

(iv) Calculating Occupancy: The maximum occupancy for a facility shall include the occupants of the facility in addition to the occupants of emergency shelter uses and transitional housing uses that are also located on the property.

(v) Occupancy Increase: For applicants that cannot meet the conditional standards for occupancy increases set forth in this subparagraph, or otherwise is limited to four occupants per dwelling unit equivalent, the maximum occupancy of a facility may be increased from four or six up to eight occupants per dwelling unit equivalents upon approval of a use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

(E) Review Standards: Uses designated as conditional uses in section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, shall be processed under the provisions of this paragraph, unless the applicant proposes to exceed the following standards. In such cases, the applicant will also be required to complete the use review process pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

(i) High Density Residential: In the RH zoning districts, a use review will also be required if the applicant requests the maximum occupancy per dwelling unit equivalent be increased from four up to eight occupants.

(ii) Business - Community, Business - Main Street, And Business - Transitional Districts: In the BC, BT, and BMS zoning districts, a use review will also be required if the maximum occupancy per dwelling unit equivalent is increased from four up to eight occupants. For the purpose of this subparagraph, "adjacent" means separated by an alley, a street that is a minor arterial or lesser classification on the Transportation Master Plan functional classification map, or a property line, notwithstanding a break in a survey, that is shared between the facility and another property.

Ordinance Nos. 7132 (2001); 7364 (2004).

9-6-7 **Office, Medical, And Financial Uses.**

(a) Offices, Computer Design And Development, Data Processing, Telecommunications, Medical Or Dental Clinics And Offices, Or Addiction Recovery Facilities In The Service Commercial Zoning Districts: The combined total amount of any office, computer design and development facility, data processing facility, telecommunication use, or medical or dental clinic or office or addiction recovery facility shall not exceed fifty percent of the total floor area of the building.

Ordinance No. 7364 (2004).

9-6-8 **Parks And Recreation Uses.**

Reserved.

9-6-9 **Commercial, Retail, And Industrial Uses.**

(a) Antennas For Wireless Telecommunications Services:

(1) Standards: An antenna for wireless telecommunications services is permitted as a principal use on a lot if the following conditions are met:

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(A) Architectural Compatibility: The antenna must be architecturally compatible with the building and wall on which it is mounted and designed and located so as to minimize any adverse aesthetic impact.

(B) Wall Mounts: The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted.

(C) Screening: The antenna shall be painted or fully screened to match as closely as possible the color and texture of the wall on which it is mounted.

(D) Mounts On Roof Appurtenances: The antenna may be attached to an existing conforming penthouse or mechanical equipment enclosure which projects above the roof of the building but may not project any higher than the penthouse or enclosure (no increase in height is permitted).

(E) Roof Mounts On Buildings Less Than Fifty-Five Feet Tall: On buildings fifty-five feet or less in height, the antenna may be mounted on the roof if:

(i) The manager finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall;

(ii) No portion of the antenna or related base station shall cause the height of the building to exceed the limitations set forth in sections 9-7-1, "Schedule Of Form And Bulk Standards," 9-7-5, "Building Height," and 9-7-6, "Building Height, Conditional," B.R.C. 1981;

(iii) No antenna and related base station cover more than ten percent of the roof area of a building, and the aggregate of any antennas, any base stations, and any appurtenances do not exceed an aggregate of twenty-five percent of the roof area;

(iv) Roof-mounted antennas and related base stations are completely screened from view by materials that are consistent and compatible with the building design, color, and materials; and

(v) No portion of the antenna, related base station, and attendant equipment exceeds ten feet above the height of the existing building.

(F) Site Review And PUD Approval: If a proposed antenna is located on a building or lot subject to an approved planned unit development or site review, a minor modification to the approval is required prior to the issuance of a building permit.

(G) Historic Preservation Rules: No antenna shall be permitted on property designated as an individual landmark or as part of a historic district, unless such antenna has been approved through the issuance of a landmark alteration certificate pursuant to sections 9-11-13, "Landmark Alteration Certificate Application," 9-11-14, "Staff Review Of Application For Landmark Alteration Certificate," 9-11-15, "Landmark Alteration Certificate Hearing," 9-11-16, "Call-Up By City Council," 9-11-17, "Issuance Of Landmark Alteration Certificate," and 9-11-18, "Standards For Landmark Alteration Certificate Applications," B.R.C. 1981.

(H) Exclusion Of Competitors Prohibited: No antenna owner or lessee or officer or employee thereof shall act to exclude or to attempt to exclude any other competitor from using the same building for the location of other antennas.

(I) Co-Location Of Facilities: No antenna owner or officer or lessee or employee thereof shall fail to cooperate in good faith to accommodate other competitors in their attempts to

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use the same building for other antennas. If a dispute arises about the feasibility of accommodating another competitor, the city manager may require a third party technical study, at the expense of either or both parties, in the discretion of the manager, based upon the relative fault of the parties, to resolve the dispute.

(J) Technical Standards: No antenna owner or lessee shall fail to assure that the antenna complies at all times with the then current applicable American National Standards Institute or Federal Communications Commission standards, whichever is more stringent, for cumulative field measurements of radio frequency power densities and electromagnetic fields. After installation, but prior to putting the antenna in service, each antenna owner shall provide a certification by an independent professional engineer to that effect.

(K) Interference With T.V. Or Radio Signals Prohibited: No antenna owner or lessee shall fail to assure that the antenna does not cause localized interference with reception of television and radio broadcasts.

(L) Public Zoning District: In the P zoning district, no person shall mount or maintain an antenna on a lot, parcel, or building containing a residential use.

(M) Residential Zoning District Variance: The city manager will grant a variance to the prohibition of antennas for wireless communications in the RR-1, RR-2, RE, RL-1, RL-2, RM-1, RM-2, RM-3, and MH zoning districts, if the applicant, in addition to all of the standards of this subsection, can meet the standards of this subparagraph:

(i) The antennas are located on a building that is used as one of the following uses of land: public elementary, junior, and senior high schools; private elementary, junior, and senior high schools; adult education facilities and vocational schools; religious assemblies; recreational buildings and uses open to the public; offices, professional and technical; medical or dental clinics or offices; essential municipal and public utility services; governmental facilities; and neighborhood business centers;

(ii) The antennas are located on a nonresidential building. To be considered a "nonresidential building," at least fifty percent of the floor area of the building shall be used for nonresidential uses;

(iii) The applicant demonstrates that it cannot provide reliable coverage within the City of Boulder by locating antennas within other zoning districts that allow antennas for wireless communications as a conditional use; and

(iv) If such location is needed as part of an overall comprehensive plan to provide full wireless telecommunications within the City of Boulder or the surrounding area.

(N) Water Towers: Notwithstanding that a water tower may be considered an accessory building or use, antennas may be placed on water towers in zoning districts where antennas for wireless communications are designated as conditional uses in section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, and in compliance with the standards set forth in this subsection. No portion of any antennas or accessory base station shall extend above the height of the water tower walls. For the purposes of this subsection, "water tower" means a freestanding, above ground, water storage facility, usually round or cylindrical in shape.

(O) Prohibition: No person shall locate an antenna for wireless communications services upon any lot or parcel except as provided in this subsection.

(P) Summary Of Appropriate Antenna Locations: Table 6-2 of this section summarizes the appropriate location for an antenna.

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TABLE 6-2: ANTENNA LOCATIONS

Antenna Locations	On building wall	On exiting conforming penthouse or mechanical screen	On a roof	On new mechanical screening or replacement screening	Base station equipment, allowed on roof
On buildings under 55' in height	Yes	Yes, if it does not project above an existing penthouse or mechanical screen	Yes, subject to the standards in subparagraph 9-6-9(a)(1)(E), B.R.C. 1981	Yes, if it does not project above the mechanical screen	Yes, if it does not project above the maximum allowable building height of the underlying zoning district
On buildings over 55' in height	Yes	Yes, if it does not project above an existing penthouse or mechanical screen	No	Yes, if it does not project above the mechanical screen	No

Ordinance No. 7522 (2007).

(b) Automobile Parking Garages: The following criteria shall apply to any automobile parking garage as a principal use on a lot that is over twenty thousand square feet in a DT-1, DT-2, DT-3, or DT-5 zoning district:

(1) Scope: The standards contained herein for automobile parking garages apply only to such uses first approved after June 17, 1997.

(2) Building Setbacks: The building shall be set back fifteen feet from any property line adjacent to a public street, but not an alley, for any portions of the building between thirty-five feet and forty-five feet in height. The facade of the building shall be set back thirty feet from any property line adjacent to a public street, but not an alley, for any portions of the building between forty-five feet and fifty-five feet in height. All portions of a building above the permitted height shall also be required to meet the requirements set forth in section 9-2-14, "Site Review," B.R.C. 1981.

(3) Maximum Number Of Stories: The requirements for the maximum number of stories set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, shall not be applied to the parking areas within automobile parking garages.

(4) First Floor Wrap Required: No person shall build an automobile parking garage pursuant to the provisions of this subsection without providing a first floor retail wrap meeting the following standards:

(A) The depth of the retail wrap is a minimum of twenty-five and a maximum of thirty feet;

(B) The wrap faces on all streets, except alleys, for the entire length of the building, except for those places necessary to provide ingress and egress into the parking areas; and

(C) The space is used for retail, restaurant, and other pedestrian-oriented uses otherwise permitted or approved in the zoning district.

(5) Second Floor Wrap Required: No person shall build an automobile parking garage pursuant to the provisions of this subsection without providing a second floor wrap meeting the following standards:

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(A) The depth of the second floor wrap is a minimum of fifteen feet and a maximum of thirty feet;

(B) The second floor wrap faces on all streets, except alleys, for the entire length of the building; and

(C) The space is for any use otherwise permitted or approved for the zoning district.

(6) Floor Area Ratio Requirements: The maximum floor area ratio for non-parking uses shall be 0.7:1. Uninhabitable space shall not be included in the floor area ratio calculation for non-parking uses. The floor area ratios set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, and the floor area ratio requirements applying to the Downtown (DT) districts, as shown in section 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981, shall not be applied to an automobile parking garage.

(7) Varied Through Site Review: The provisions in paragraphs (b)(2), (b)(4), (b)(5), and (b)(6) of this section may be varied as part of a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981, if the approving authority finds that the design of the structure provides other features that mitigate the adverse effects of the building on the street and on pedestrians.

Ordinance Nos. 5921 (1997); 7364 (2004).

(c) Drive-Thru Uses: The following criteria will apply to any drive-thru use:

(1) No drive-thru facility is allowed in any Downtown (DT) district unless the property is located directly abutting Canyon Boulevard.

(2) Hazardous and other adverse effects on adjacent sites and streets are avoided.

(3) The location of any access to the drive-thru facility from an adjacent street does not impair its traffic-carrying capacity.

(4) Internal circulation and access to and egress from the site do not substantially impair the movement of other modes of transportation, such as bicycles and pedestrians, to and through the site.

(5) Clearly marked pedestrian crosswalks are provided for each walk-in customer access to the facility adjacent to the drive-thru lanes.

(6) The drive-thru use is screened from adjacent rights-of-way and properties through placement of the use, screening, landscaping, or other site design techniques.

(7) Environmental impacts, including, without limitation, noise, air emissions, and glare are not significant for the employees of the facility or the surrounding area.

(8) Any curb cuts serving the use are not located within two hundred feet of any intersection of the rights-of-way of any two of the major streets or major arterials shown on the map of major streets.

(9) The location, size, design, and operating characteristics of the proposed facility are such that the drive-thru operation will be reasonably compatible with and have minimal negative impact on the use of nearby properties.

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(10) The noise generated on the site is inaudible to adjacent residential uses, measured at or inside the property line of property other than that on which the sound source is located.

(11) Nonconforming drive-thrus shall comply with the criteria of subsection 9-10-2(d), B.R.C. 1981.

Ordinance Nos. 5930 (1997); 7522 (2007).

(d) Gasoline Service Stations Or Retail Fuel Sales: The following criteria apply to any gasoline service station or retail fuel sales in a business or industrial district. A gasoline service station use shall comply with paragraphs (d)(1) through (d)(8) of this section. Retail fuel sales uses shall comply with all standards except paragraphs (d)(2) and (d)(6) of this section:

(1) Any gasoline service station that is located adjacent to any residential uses shall meet the requirements of section 9-2-15, "Use Review," B.R.C. 1981.

(2) Areas for the storage of vehicles to be serviced in excess of twenty-four hours are in enclosed areas or shielded from view from adjacent properties.

(3) There is adequate space to allow up to three cars to stack in a line at a pump without using any portion of the adjacent street.

(4) The visual impact of the use is minimized and screened from adjacent rights-of-way and properties through placement of buildings, screening, landscaping, and other site design techniques.

(5) Dispensing pumps are not located within twenty-five feet of a property line abutting a street.

(6) In addition to the parking requirements of sections 9-7-1, "Schedule Of Form And Bulk Standards," and 9-9-6, "Parking Standards," B.R.C. 1981, and the stacking requirements of paragraph (d)(3) of this section, adequate space is provided for the storage of two vehicles per service bay off-street.

(7) The location, size, design, and operating characteristics of the proposed facility are reasonably compatible with the use of nearby properties.

(8) A minimum landscaped side yard setback of twenty feet and a minimum rear yard landscaped setback of twenty-five feet are required where the use abuts residential uses or residential zoning districts.

(9) Retail fuel sales in industrial zones shall only be permitted in association with a convenience retail store pursuant to subsection 9-6-3(g), B.R.C. 1981.

(10) Servicing of vehicles is limited to the checking and adding of fluids and air and the cleaning of windows. No other repair or servicing of vehicles is permitted on site.

(e) Manufacturing Uses With Off-Site Impacts: All manufacturing uses with potential off-site impacts which may produce effects on the environment that are measurable at or beyond the property line, may be permitted pursuant to section 9-2-15, "Use Review," B.R.C. 1981, provided that such uses shall demonstrate that such effects are not detrimental to the public health, safety, or general welfare; that any noise, smoke, vapor, dust, odor, glare, vibration, fumes, or other environmental contamination is controlled in accordance with applicable city, state, or federal regulations; and that a plan of control for the above effects on the environment and an estimate of the measurement of each at the property lines is submitted at the time of such use review application.

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(f) Neighborhood Business Center[1]:

(1) Limitations: A neighborhood business center may be located only in the R2, R3, R6 and R7 use modules. Neighborhood business centers shall also comply with the requirements of sections 9-2-15, "Use Review," and 9-2-14, "Site Review," B.R.C. 1981.

(2) Criteria: No neighborhood business center shall be developed or operated except in conformance with all of the following criteria:

(A) Size: The entire neighborhood business center shall not exceed three acres in size and is located so as to provide services primarily to existing residential development in the surrounding neighborhood;

(B) Type And Size Compatible: The nonresidential uses are of a type and size appropriate for the service and convenience of the residents of the residential development or the surrounding residential neighborhood;

(C) Placement, Design, And Character Compatible: The placement, design, and character of the nonresidential uses are complementary to and compatible with the predominantly residential character of the residential development or the surrounding established residential neighborhood;

(D) Permitted Nonresidential Uses: The nonresidential uses permitted are restaurants, as set forth in subparagraph (f)(2)(E) of this section, and the list of uses and their respective size limitations set forth in table 6-3 of this section, notwithstanding any restrictions within section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981. Each "use" shall be a separate business or commercial operation.

TABLE 6-3: NEIGHBORHOOD BUSINESS CENTER USE RESTRICTIONS

Allowed Uses	Size Restrictions
Daycare center	50 children - not to exceed 2,500 square feet
Offices - professional/technical/general	1,000 square feet maximum per office use and the cumulative total of all office uses shall not exceed 20 percent of the total floor area of the neighborhood business center
Offices - medical/dental/including other health arts, including chiropractors, physical therapists, nutritionists, mental health practitioners	1,000 square feet maximum per office and the cumulative total of all office uses shall not exceed 15 percent of the total floor area of the neighborhood business center
Personal service use	1,500 square feet maximum per use
Establishments for the retailing of convenience goods	1,500 square feet maximum per use, however a convenience food store may be a maximum of 5,000 square feet if it does not exceed 50 percent of the total floor area of the neighborhood business center
Full service food market or grocery store	10,000 square feet maximum, provided that such use does not exceed 50 percent of the neighborhood business center

[1]"Neighborhood Business Centers" were referred to as "Neighborhood Centers" or "Village Centers" in earlier ordinances.

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Allowed Uses	Size Restrictions
General retail	1,000 square feet maximum per use
Art and studio space	1,000 square feet maximum per use

Ordinance No. 7522 (2007).

(E) Restaurant Restrictions: Restaurants are permitted as a use within a neighborhood business center provided the following criteria are met, notwithstanding any restriction within section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981:

(i) No Parking Reduction: No parking reduction may be granted for the neighborhood business center or any contemporaneously developed adjacent residential development unless the applicant can provide adequate assurances that there will be no parking spillover onto the surrounding residential streets;

(ii) Size: The gross floor area of the restaurant does not exceed one thousand five hundred square feet in size, and up to three hundred additional square feet of floor area may be utilized for storage purposes only;

(iii) Proportion Of Development: The restaurant use is included in a development containing other uses approved as part of the neighborhood business center and does not exceed twenty-five percent of the gross floor area of the project;

(iv) Drive-Thru Uses Prohibited: The restaurant does not contain a drive-thru facility;

(v) Trash Storage: A screened trash storage area is provided adjacent to the restaurant use, in accordance with the requirements of section 9-9-18, "Trash Storage And Recycling Areas," B.R.C. 1981;

(vi) Loading Area: A loading area meeting the requirements of section 9-9-9, "Off-Street Loading Standards," B.R.C. 1981, provided adjacent to the restaurant use;

(vii) Signage: Signage complies with a sign program approved as part of the review by the city manager consistent with the requirements of section 9-9-21, "Signs," B.R.C. 1981; and

(viii) Environmental Impacts: Any environmental impact including, without limitation, noise, air emissions and glare is confined to the lot upon which the restaurant use is located and is controlled in accordance with applicable city, state, and federal regulations.

Ordinance Nos. 7079 (2000); 7364 (2004).

(g) Outdoor Display Of Merchandise: The following criteria apply to the outdoor display of merchandise:

(1) Merchandise shall not be located within any required yard adjacent a street.

(2) Merchandise shall not be located within or obstruct required parking and vehicular circulation areas or sidewalks.

(3) Merchandise shall be screened to the extent possible from the view of adjacent streets.

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(4) Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock.

(h) Recycling Facilities:

(1) General Requirements: Small recycling collection facilities, large recycling collection facilities, and recycling processing facilities shall comply with and be operated and maintained in accordance with the provisions of this subsection and with the terms of their special review approval.

(2) Small Recycling Collection Facilities: A small recycling collection facility shall not exceed seven feet in height, shall not be located within thirty feet of land zoned, planned in the Boulder Valley Comprehensive Plan, or occupied for residential use, shall be screened from the public right-of-way and adjacent properties by an opaque fence at least seven feet high, and shall meet the following additional conditions:

(A) A facility is permitted only in conjunction with an existing conforming commercial use or public use.

(B) Space that will be periodically needed for removal of materials or exchange of containers is not counted toward the two hundred fifty square foot limit.

(C) The fence opacity and height screening requirements may be modified or waived by the city manager upon a finding that the design and configuration of the containers in which the recyclable materials are to be deposited are such that screening by such a fence is not necessary.

(D) The facility shall use no power-driven processing equipment, except for reverse vending machines.

(E) All containers shall be constructed of durable waterproof and rustproof material, maintained in that condition, covered when the site is not attended, and secured from unauthorized entry or removal of material.

(F) All recyclable material shall be stored in the containers when an attendant is not present.

(G) The facility shall be maintained free of vermin infestation, and mobile facilities, at which the collection truck or other container is removed at the end of each collection day, shall be swept at least at the end of each collection day.

(H) Collection of deposited recyclable material from a facility located within one hundred feet of a property zoned or occupied for residential use shall occur only during the hours between 7:00 a.m. and 7:00 p.m.

(I) Containers shall be clearly marked to identify the type of material which may be deposited. The facility shall be clearly marked to identify the name and telephone number of the facility operator and the hours of operation, and shall display a notice stating that no material shall be left outside the recycling enclosure or containers.

(J) Any signs relating to the facility in an approved site review shall be consistent with the approved uniform sign program pursuant to subsection 9-9-21(k), B.R.C. 1981.

(K) The facility shall not impair any required landscaping.

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(L) No additional parking spaces are required for customers of a small collection facility located at the established parking lot of a host use, but one additional space shall be provided for the attendant, if needed.

(M) Mobile recycling units shall have an area clearly marked to prohibit other vehicular parking during hours when the mobile unit is scheduled to be present.

(N) Occupation of parking spaces by the facility and by the attendant shall not reduce available parking spaces below the minimum number required for the primary host use unless a parking study shows the existing parking capacity is not already fully utilized during the time the recycling facility will be on the site.

(3) Large Recycling Collection Facilities: A large collection facility shall meet all setback and landscaping requirements of the zoning district in which it is located, and shall meet the following additional conditions:

(A) The facility shall not abut a property zoned for residential use.

(B) The facility shall be screened from the public right-of-way by operating:

(i) Within an enclosed building, or

(ii) Within an area enclosed by an opaque fence at least seven feet in height with landscaping, and at least one hundred and fifty feet from property zoned, planned in the Boulder Valley Comprehensive Plan, or occupied for residential use.

(C) All exterior storage of material shall be in sturdy containers or enclosures which are covered, secured, and maintained in good condition, or shall be baled or pelletized. Storage containers for flammable material shall be constructed of nonflammable material. Oil storage shall be in containers approved by the city fire department. No storage, excluding truck trailers and overseas containers, shall be visible above the height of the fencing.

(D) The site shall be maintained free of vermin infestation and shall be cleaned of litter and loose debris on at least a daily basis.

(E) One parking space shall be provided for each commercial vehicle operated by the recycling facility. Parking requirements are as required in the zone, except that parking requirements for employees may be reduced if it can be shown that such parking spaces are not necessary, such as when employees are transported in a company vehicle to the work facility.

(F) If the facility is located within five hundred feet of property zoned, planned under the Boulder Valley Comprehensive Plan, or occupied for residential use, it shall not operate between 7:00 p.m. and 7:00 a.m.

(G) Any container provided for after-hours donation of recyclable materials shall be at least fifty feet from any property zoned, planned in the Boulder Valley Comprehensive Plan, or occupied for residential use, shall be of sturdy, rustproof construction, shall have sufficient capacity to accommodate materials collected, and shall be secure from unauthorized entry or removal of materials.

(H) The containers shall be clearly marked to identify the type of materials that may be deposited. The facility shall display a notice stating that no material shall be left outside the recycling containers.

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(I) The facility shall be clearly marked with the name and phone number of the facility operator and the hours of operation.

(J) Power-driven processing, including aluminum foil and can compacting, baling, plastic shredding, or other light processing activities necessary for efficient temporary storage and shipment of material, may be approved through special review.

(4) Recycling Processing Facilities: A recycling processing facility shall not be located within one hundred fifty feet of land zoned, planned in the Boulder Valley Comprehensive Plan, or occupied for residential use, and shall comply with the following additional conditions:

(A) Processors shall operate in a wholly enclosed building except for incidental storage, or within an area enclosed on all sides by an opaque fence or wall not less than seven feet in height and landscaped on all street frontages.

(B) Setbacks and landscaping requirements shall be those provided for the zoning district in which the facility is located.

(C) All exterior storage of material shall be in sturdy containers or enclosures which are covered, secured, and maintained in good condition, or shall be baled or pelletized. Storage containers for flammable materials shall be constructed of nonflammable material. Oil storage shall be in containers approved by the city fire department. No storage, except for truck trailers or overseas containers, shall be visible above the height of the fencing.

(D) The site shall be maintained free of vermin infestation, shall be cleaned of litter and loose debris on at least a daily basis, and shall be secured from unauthorized entry and removal of materials when attendants are not present.

(E) Space shall be provided on site for the anticipated peak load of customers to circulate, park, and deposit recyclable materials. If the facility is open to the public, space shall be provided for a minimum of ten customers or the peak load, whichever is higher, unless the city manager determines that allowing overflow traffic is compatible with surrounding businesses and public safety.

(F) One parking space shall be provided for each commercial vehicle operated by the processing center. Parking requirements shall otherwise be as required for the zone in which the facility is located.

(G) If the facility is located within five hundred feet of property zoned, planned in the Boulder Valley Comprehensive Plan, or occupied for residential use, it shall not be in operation between 7:00 p.m. and 7:00 a.m. The facility shall be administered by on-site personnel during the hours the facility is open.

(H) Any containers provided for after-hours donation of recyclable materials shall be at least fifty feet from any property zoned, planned in the Boulder Valley Comprehensive Plan, or occupied for residential use; shall be of sturdy, rustproof construction; shall have sufficient capacity to accommodate materials collected; and shall be secure from unauthorized entry or removal of materials.

(I) Containers shall be clearly marked to identify the type of material that may be deposited. The facility shall display a notice stating that no material shall be left outside the recycling containers.

(J) No dust, fumes, smoke, vibration, or odor from the facility shall be detectable on neighboring properties.

Ordinance No. 7364 (2004).

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(i) Sales Of Vehicles Within Five Hundred Feet Of Residential Use Module: The following criteria shall apply to any use in an industrial zoning district for the sale or lease of motor vehicles, mobile homes, campers, boats, motorized equipment, and accessories for such vehicles, on a lot or parcel located five hundred feet or less from a residential zoning district:

(1) No person shall allow outdoor intercoms and similar devices that electronically amplify sound to be audible at or beyond the property line.

(2) The use shall not be open for business during the hours of 9:00 p.m. through 7:00 a.m.

(3) During regular business hours, outdoor lighting on the property shall not exceed an average of ten footcandles.

(4) During all other times, outdoor lighting on the property shall be in conformance with the standards set forth in section 9-9-16, "Lighting, Outdoor," B.R.C. 1981.

Ordinance Nos. 5971 (1998); 5992 (1998); 7364 (2004).

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TITLE 9 LAND USE CODE

Chapter 7 Form And Bulk Standards[1]

Section:

9-7-1 Schedule Of Form And Bulk Standards.

The purpose of this chapter is to indicate the requirements for lot dimensions and building form, bulk, location, and height for all types of development. All primary and accessory structures are subject to the dimensional standards set forth in table 7-1 of this section. No person shall use any land within the city authorized by chapter 9-6, "Use Standards," B.R.C. 1981, except according to

[1] Adopted by Ordinance No. 7476.

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the following form and bulk requirements unless modified through a use review under section 9-2-15, "Use Review," B.R.C. 1981, or a site review under section 9-2-14, "Site Review," B.R.C. 1981, or granted a variance under section 9-2-3, "Variances and Interpretations," B.R.C. 1981.

(see following page for continuation of Section 9-7-1)

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TABLE 7-1: FORM AND BULK STANDARDS

Former Zoning District Abbreviations	A-E RR-E	RR1-E ER-E	P-E HZ-E HR-E	LR-E MR-E MXR-E	TB-E	TB-D CB-E CB-D RB-E RB-D IS-E IS-D IM-E IM-D IG-E IG-D	LR-D MR-D	HR-D	MU-D	MR-X HR-X	MXR-D	HR1-X	CS-E	MU-X	BMS-X	RB1-X RB2-X RB3-X RB2-E RB3-E	RB1-E	IMS-X RMS-X	MH-E
Form module	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s
SETBACK AND SEPARATION REQUIREMENTS																			
Principal Buildings And Uses																			
Minimum front yard landscaped setback (e)(h)	25'				20'				15'			10'		0'					See section 9-7-10
Minimum front yard setback for all covered and uncovered parking areas	25'				20'				20'			20'	10'	20'					See section 9-7-10
Maximum front yard landscaped setback for corner lots and side yards adjacent a street	n/a				n/a				n/a			10'	n/a	n/a	10'	15'	n/a	10'	n/a
Maximum front yard landscaped setback for an interior lot	n/a				n/a				n/a			15'	n/a	n/a	15'	15'	n/a	15'	n/a
Minimum side yard landscaped setback from a street (a)(i)	25'		12.5'		15'		10'	1' per 2' of bldg. height, 10' min.	0' or 5' (b)	1' per 2' of bldg. height, 10' min.	0' (attached DUs); 1' per 2' of bldg. height, 5' min. (detached DUs)	1' per 2' of bldg. height, 10' min.	10'	0' for first and second stories 12' for third story and above		0'	0'	0'	n/a

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Former Zoning District Abbreviations	A-E RR-E	RR1-E ER-E	P-E HZ-E HR-E	LR-E MR-E MXR-E	TB-E	TB-D CB-E CB-D RB-E RB-D IS-E IS-D IM-E IM-D IG-E IG-D	LR-D MR-D	HR-D	MU-D	MR-X HR-X	MXR-D	HR1-X	CS-E	MU-X	BMS-X	RB1-X RB2-X RB3-X RB2-E RB3-E	RB1-E	IMS-X RMS-X	MH-E
Form module	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s
Minimum side yard setback from an interior lot line (i)	15'	10'		5'	10'	0' or 12'	1' per 2' of bldg. height, 5' min.		0' or 5' (b)	0' or 3'	0' (attached DUs); 1' per 2' of bldg. height, 5' min. (detached DUs)	1' per 3' of bldg. height, 5' min.	0' or 12'	0' or 5'	0' or 5'	0 or 12'	0' or 12'	0' or 5'	See section 9-7-10
Minimum total for both side yard setbacks	40'	25'	20'	15'	20'	n/a			n/a			n/a		n/a					n/a
Minimum rear yard setback (d)	25'				25'	20'			10'	15'	20'	15'	20'	15'	0'	15'	15'	10'	See section 9-7-10
Accessory Buildings And Uses																			
Minimum front yard setback uses (e)	55'				55'				Behind rear wall of principal structure	55'	Behind rear wall of principal structure	Behind rear wall of principal structure	55'	55'	Behind rear wall of principal structure	55'	55'	Behind rear wall of principal structure	See section 9-7-10
Minimum side yard landscaped setback from a street (a)(i)	25'	12.5'		15'	10'	1' per 2' of bldg. height, 10' min.			0' or 5' (b)	1' per 2' of bldg. height, 10' min.	0' (attached DUs); 1' per 2 of bldg. height, 5' min. (detached DUs)	1' per 2' of bldg. height, 10' min.	10'	0'		0'	0'	0'	n/a

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Former Zoning District Abbreviations	A-E RR-E	RR1-E ER-E	P-E HZ-E HR-E	LR-E MR-E MXR-E	TB-E	TB-D CB-E CB-D RB-E RB-D IS-E IS-D IM-E IM-D IG-E IG-D	LR-D MR-D	HR-D	MU-D	MR-X HR-X	MXR-D	HR1-X	CS-E	MU-X	BMS-X	RB1-X RB2-X RB3-X RB2-E RB3-E	RB1-E	IMS-X RMS-X	MH-E
Form module	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s
Minimum side yard setback from an interior lot line	15'	10'	0' or 3' (b)		0' or 3' (b)				0' or 3' (b)			0' or 3' (b)		0' or 3' (b)					See section 9-7-10
Minimum rear yard setback (f)	0' or 3' (b)				0' or 3' (b)				0' or 3' (b)			0' or 3' (b)		0' or 3' (b)					See section 9-7-10
Minimum separation between accessory buildings and any other building	6'				6'				6'			6'		6'					6'
BUILDING SIZE AND COVERAGE LIMITATION (Accessory And Principal Buildings)																			
Maximum size of any principal building	See section 9-8-2 (FAR Requirements)								15,000 sq. ft.	See section 9-8-2 (FAR Requirements)					15,000 sq. ft.	See section 9-8-2 (FAR Requirements)		15,000 sq. ft.	n/a
Maximum accessory building coverage within principal building rear yard setback (9-7-9)	500 sq. ft.		n/a	500 sq. ft.	n/a		500 sq. ft.	n/a	n/a			n/a		n/a					n/a
Maximum cumulative coverage of all accessory buildings regardless of location	For residential uses - no greater than coverage of the principal building																		

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Former Zoning District Abbreviations	A-E RR-E	RR1-E ER-E	P-E HZ-E HR-E	LR-E MR-E MXR-E	TB-E	TB-D CB-E CB-D RB-E RB-D IS-E IS-D IM-E IM-D IG-E IG-D	LR-D MR-D	HR-D	MU-D	MR-X HR-X	MXR-D	HR1-X	CS-E	MU-X	BMS-X	RB1-X RB2-X RB3-X RB2-E RB3-E	RB1-E	IMS-X RMS-X	MH-E
Form module	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s
PRINCIPAL AND ACCESSORY BUILDING HEIGHT																			
Maximum height for principal buildings and uses (c)(d)	35'				35'; 40' (in I-zones)		35'		35'			40'	35'	38'		35'			35'
Conditional height for principal buildings and uses	See section 9-7-6 for conditional height standards																		
Maximum number of stories for a building	3				3		n/a	n/a	2	3		3	2	3		2 (3 on DT-5 corner lots)	2		3
Maximum wall height for detached dwelling units at zero lot line setback (9-7-2(b)(3))	12'				12'				12'			12'		12'					n/a
Maximum height for all accessory buildings, structures and uses (g)	20' (30' in agricultural zone)				20' (25' in industrial zones)				20'			20'		20'					20'
FENCES, HEDGES, AND WALLS (for additional standards see section 9-9-15)																			
Maximum height of fences, hedges or walls	7'				7'				7'			7'		7'					7'
Minimum height of fence on top of retaining wall	42"				42"				42"			42"		42"					42"

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Former Zoning District Abbreviations	A-E RR-E	RR1-E ER-E	P-E HZ-E HR-E	LR-E MR-E MXR-E	TB-E	TB-D CB-E CB-D RB-E RB-D IS-E IS-D IM-E IM-D IG-E IG-D	LR-D MR-D	HR-D	MU-D	MR-X HR-X	MXR-D	HR1-X	CS-E	MU-X	BMS-X	RB1-X RB2-X RB3-X RB2-E RB3-E	RB1-E	IMS-X RMS-X	MH-E
Form module	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s
Maximum combined height of fence/retaining wall in side yard within 3' of lot line with neighbor approval	12'				12'				12'			12'		12'					12'
BUILDING DESIGN REQUIREMENTS																			
Minimum front facade window area (9-9-3)	n/a				n/a				n/a			n/a		n/a	60%			n/a	n/a
Primary building entrance location facing street	n/a				n/a				yes	n/a	yes	yes	n/a	n/a	yes			yes	n/a
Minimum percent of lot frontage that must contain a building or buildings	n/a				n/a				n/a			n/a		n/a	70%			50%	n/a
Minimum front yard setback from a street for all principal buildings and uses for third story and above	n/a				n/a				n/a			n/a		20'	n/a				n/a

Footnotes:
In addition to the foregoing, the following miscellaneous form and bulk requirements apply to all development in the city:

(a) On corner lots, use principal building front yard setback where adjacent lot fronts upon the street.
(b) For zero lot line development, see subsection 9-7-2(b), B.R.C. 1981.

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Footnotes (cont.)

(c) The permitted height limit may be modified only in certain areas and only under the standards and procedures provided in sections 9-2-14, "Site Review," and 9-7-6, "Building Height, Conditional," B.R.C. 1981.
(d) For buildings over 25 feet in height see subsection 9-9-11(c), B.R.C. 1981.
(e) For other setback standards regarding garages, open parking areas, and flagpoles, see paragraph 9-7-2(b)(8), B.R.C. 1981.
(f) Where a rear yard backs on a street, see paragraph 9-7-2(b)(7), B.R.C. 1981.
(g) Not including light poles at government-owned facilities. For additional height standards regarding light poles at government facilities, see section 9-2-14, "Site Review," B.R.C. 1981.
(h) For front yard setback reductions, see subsection 9-7-2(a), B.R.C. 1981.
(i) For side yard setback requirements based on building height, see appendix B, "Setback Relative To Building Height," of this title.

Ordinance Nos. 5623 (1994); 5656 (1994); 5679 (1994); 5690 (1995); 5921 (1997); 5930 (1997); 5971 (1998); 6037 (1998); 6054 (1999); 7079 (2000); 7102 (2000); 7116 (2001); 7182 (2002); 7210 (2002); 7242 (2002); 7310 (2003); 7331 (2004); 7336 (2004); 7364 (2004); 7378 (2004); 7522 (2007).

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9-7-2 Setback Standards.

(a) Front Yard Setback Reductions: The front yard setback required in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may be reduced for a principal structure on any lot if more than fifty percent of the principal buildings on the same block face or street face do not meet the required front yard setback. The setback for the adjacent buildings and other buildings on the block face shall be measured from the property line to the bulk of the building, excluding, without limitation, any unenclosed porches, decks, patios or steps. The bulk of the building setback shall not be less than the average bulk of the building setback for the two adjacent structures. The front yard setback may be reduced to the average of the setback of the closest two buildings on the same block face. (See figure 1 of this section.)

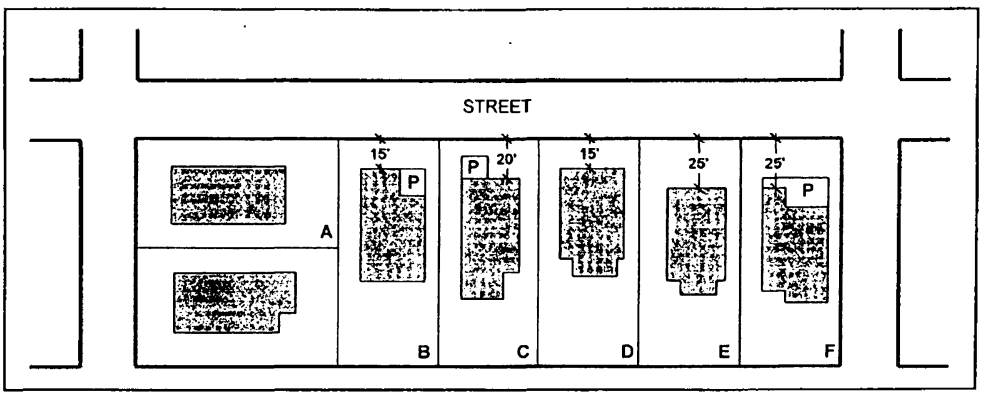

Figure 1: Setback Averaging Example

In this example, lots "B" through "F" are the face block. Lot "A" is not included in the face block, as the front of this lot is on a different street. Setback averaging is measured to the bulk of the buildings and does not include porches (marked "P").

Assuming this block is zoned RL-1, the minimum required front yard setback would be twenty-five feet. The block face shown would qualify for setback averaging, as more than fifty percent of the principal buildings do not meet the required front yard setback. An addition to the front of lot "E" would require the averaging of the setbacks of lots "D" and "F", the two closest buildings on the same block face. In this example the resulting setback would be 20 feet - the average of lot "D" (fifteen feet) and lot "F" (twenty-five feet). An addition to the front of lot "F" would be based on the average of the two closest buildings on the same lot face; in this case, lots "D" and "E."

(b) Side Yard Setback Standards:

(1) Setbacks For Upper Floors In Non-Residential Zoning Districts: A building constructed with a side yard setback of zero for the first story above grade in the BC-2, BR-1, DT-1, DT-2, DT-3, DT-4, DT-5, IS-1, IG, or IM zoning districts, where the side yard setback is noted as "0 or 12," will be allowed to set back stories above the first story that is at or above the finished grade the greater of five feet or the distance required by chapter 10-5, "Building Code," B.R.C. 1981.

(2) Maintenance Easements Required In Residential Zoning Districts: In residential zoning districts that allow a zero side yard or rear yard setback, the applicant shall be required to

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secure a recorded maintenance easement from the adjoining property owner if the zero setback side is not attached to another structure. The easement shall be effective for the life of the accessory building. The easement shall not be less than three feet in width measured parallel to that portion of the building at zero setback.

(3) Wall Height For Residential Zero Lot Line: The maximum wall height for detached dwelling units at the zero setback property line shall be twelve feet.

(4) Calculating Residential Zero Lot Line Side Yard Setbacks: For detached dwelling units, the side yard setback opposite the zero setback property line shall be the sum of both side yards for the district.

(5) Combined Side Yard Setbacks: When combined side yard setbacks are required by section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, the resulting structure, including the existing structure and any addition, must meet the combined side yard setback requirements. (See figure 2 of this section for compliant and noncompliant examples).

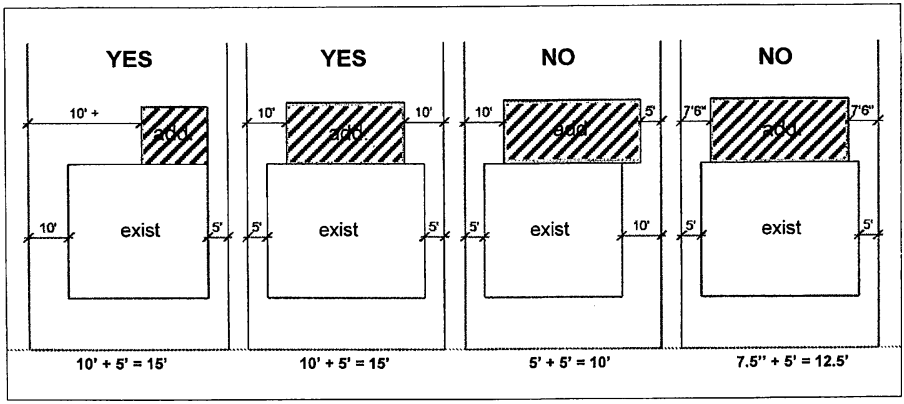

Figure 2: Combined Side Yard Setbacks

Example: In the RL-1 district, the combination of side yard setbacks must be no less than fifteen feet, with a minimum of five feet. Both existing structures and additions (hatched) are included in the calculation.

(6) Existing Nonstandard Side Yard Setbacks For Existing Single-Family Detached Dwelling Units: A second story addition that does not comply with the minimum interior side yard setbacks may be added to an existing single family detached dwelling unit subject to the following:

(A) The interior side yard setback for the existing single family detached dwelling unit complied with the setback requirements in existence at the time of initial construction and was not created by a variance or other procedure;

(B) The resulting interior side yard setback will not be less than five feet and combined side yard setbacks will not be less than ten feet;

(C) That portion of the building in the side yard setback shall vertically align with the existing first story wall.

(7) Rear Yard Setbacks: Where a rear yard backs on a street, the rear yard shall have a minimum landscaped setback equal to the minimum front yard landscaped setback from a street for all buildings and uses required for that zone.

(8) Garages, Carports, Open Parking Areas And Flagpoles: Garages, detached carports, open parking areas, and flagpoles may be located in compliance with the required principal building setbacks or accessory building setbacks.

Ordinance Nos. 5623 (1994); 5656 (1994); Supplement No. 46 (1995); 5971 (1998); 7079 (2000); 7182 (2002); 7484 (2006).

9-7-3 Setback Encroachments.

No structure or building shall be constructed or maintained in the required setback except for:

(a) A balcony, patio, or deck less than thirty inches in height;

(b) A stairway less than thirty inches in height;

(c) An encroachment of no more than thirty inches into the setback by a fireplace;

(d) A maximum of thirty inches of roof overhang; or

(e) The outer four feet of completely open, uncovered, cantilevered balconies that have a minimum of eight feet vertical clearance below, which may project into any required yard except an interior side yard of less than ten feet in width. A balcony may be placed above another balcony if the railings along the exterior boundaries of all such balconies are not more than fifty percent opaque, the railings do not exceed forty-two inches in height, and there are no horizontal connections of any kind between balconies except the wall from which the balconies are cantilevered.

Ordinance No. 7331 (2004).

9-7-4 Setback Encroachments For Front Porches.

(a) Purpose: Front porches have historically contributed to the ambiance of residential streetscapes and encourage social interaction in a neighborhood. The purpose of these porch standards is to set the minimum standards for the construction of front porches that encroach in the minimum front yard and side yard adjacent to a street in residential zoning districts and for the preservation, restoration and replacement of front porches in historic districts or on individual landmarks.

(b) Scope: These standards are applicable to all detached dwelling units in residential zoning districts. These requirements shall also be applicable to all building permit applications in historic districts and for individual landmarks.

(c) Setback Encroachments For Porches: No person shall construct a front porch that encroaches into a front yard or a side yard adjacent to a street unless the front porch meets the following design standards:

(1) Maximum Encroachment Into Setbacks: For a structure that otherwise meets the front yard setback standards, no porch shall encroach more than eight feet beyond the required front yard setback. For a structure that does not meet the front yard setback requirements no porch shall extend more than six feet beyond the bulk of the building. The bulk of the

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building includes the structure, but excludes unenclosed porches, decks, patios, steps, or similar features. In no case, shall the resulting setback from the property line to the porch be less than fifty percent of the required setback of the underlying zoning district;

(2) Size Of Porch: The front porch which encroaches into a front yard or side yard adjacent to a street shall have a minimum surface deck area of fifty square feet. The total area of any encroachment of the porch into a front yard or a side yard adjacent to a street shall not exceed one hundred fifty square feet;

(3) Depth Of Porch: The minimum depth of the porch shall not be less than five feet and the maximum depth of the porch shall not exceed eight feet;

(4) Enclosure Prohibited: The front porch shall be open and shall not be enclosed by any materials including, without limitation, glass or screens;

(5) Railings: A railing not exceeding thirty-six inches in height measured from the floor of the porch may be provided on the periphery of the front porch;

(6) Floor Height: The floor of the front porch shall not be more than thirty-six inches above grade or no higher than the first floor above grade whichever is less;

(7) Roof Required: A minimum of sixty percent of the front porch shall be covered by a roof or a trellis that is an integrated extension of the existing structure;

(8) Roof Height: No portion of a roof or trellis that encroaches into a front yard or side yard adjacent to a street shall be more than twelve feet in height when measured from the floor of the porch;

(9) Foundation: The porch must be supported by columns or foundation walls affixed to the ground;

(10) Requirements For Fences: A fence in the front yard or side yard adjacent to a street of a lot with a porch that encroaches into either setback built in conformance with the standards set forth in this section shall not exceed forty-two inches in height. The lower thirty inches may have a solid appearance. Any portion of the fence above thirty inches shall have at least a fifty percent non-opaque appearance;

(11) Modification Of Existing Porches: An existing porch which encroaches into a front yard or side yard adjacent to a street may be modified in compliance with these standards;

(12) Unlawfully Enclosed Porches: Dwelling units with previously existing porches that encroached into a front yard or a side yard adjacent to a street and have been unlawfully enclosed shall not be eligible for porches permitted by this subsection; and

(13) Side Yards Adjacent To A Street: A front porch may only extend into the side yard setback adjacent to a street if: a) that portion of the porch within the side yard adjacent to a street extends from the front yard around the corner of the structure into the side yard; b) does not exceed the depth of the front porch; and, c) the entire porch does not exceed the maximum size limitations set forth in this subsection.

(d) Setback Encroachment For Individual Landmarks And Buildings Within Historic Districts: A front porch on an individual landmark or a contributing building within a historic district established by chapter 9-11, "Historic Preservation," B.R.C. 1981, may be constructed within a front yard or side yard setback to the extent that the front porch is a restoration or replacement of a historically significant architectural feature. A historically significant front porch may be established through evidence which may include, without limitation, physical

evidence, photographic documentation, and original building plans. The adequacy of such evidence shall be subject to the review of, and approval by, the approval authority for an alteration certificate under chapter 9-11, "Historic Preservation," B.R.C. 1981.

Ordinance Nos. 5764 (1995); 6046 (1999); 6083 (1999); 7041 (2000).

9-7-5 Building Height.

(a) Permitted Height: The height permitted without review within the city is set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, except as provided in paragraph (a)(2) of this section. Buildings greater than the permitted height may be approved under section 9-2-14, "Site Review," B.R.C. 1981.

(1) Modifications To Natural Grade: The height of a building is determined as described in the definition of "height" in chapter 9-16, "Definitions," B.R.C. 1981. (See figure 3 of this section.) If there is evidence that a modification to the natural grade has occurred since the adoption of charter section 84, "Height limit," B.R.C. 1981, on November 2, 1971, the city manager can consider the best available information to determine the natural grade. This may include, without limitation, interpolating what the existing grade may have been using the grade along property lines, topographic information on file with the city, or other information that may be presented to the city manager.

Ordinance No. 7535 (2007).

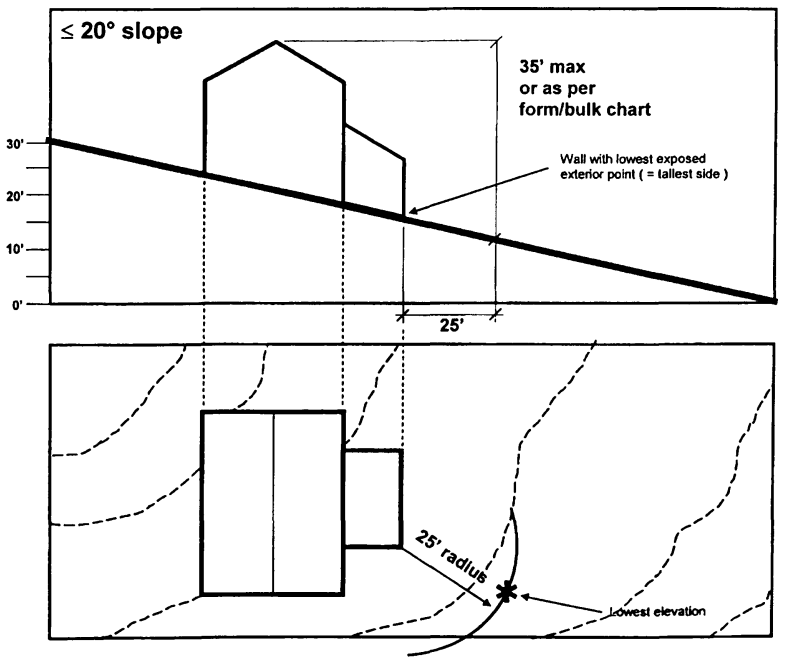

Figure 3: Building Height (Twenty Degree Slope or Less)

9-7-5

(2) Slopes Greater Than Twenty Degrees: On a slope measured within the building envelope created by the required setbacks from property lines that is greater than twenty degrees (36.4 percent slope), the building height may not exceed twenty-five feet. (See figure 4 of this section.) However, under no circumstances shall a structure exceed fifty-five feet as measured under charter section 84 except as provided for poles in section 9-2-14, "Site Review," B.R.C. 1981. The slope percentage shall be calculated by measuring the difference between the high point and the low point within the building envelope and dividing it by the distance between the high and low points.

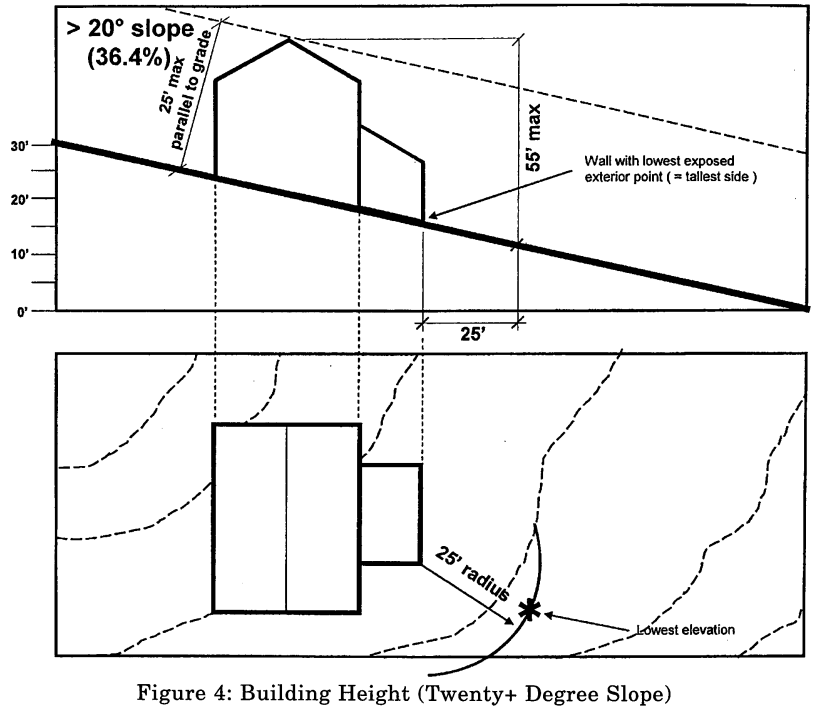

Figure 4: Building Height (Twenty+ Degree Slope)

(b) Nonconformity To Fifty-Five-Foot Limit: No addition to that portion of the building exceeding the current fifty-five foot height limitation is allowed for structures erected at a height conforming to the height limitations applicable at the time of their erection which are now nonconforming as to height. Appurtenances which meet the requirements of section 9-7-7, "Building Height, Appurtenances," B.R.C. 1981, may exceed the fifty-five-foot height limit.

(c) Nonconformity To Permitted Height: There shall be no increase in the highest point or the floor area of buildings greater than the permitted height but less than fifty-five feet in height, unless approved under section 9-2-14, "Site Review," B.R.C. 1981.

(d) Height Calculations For Attached Buildings:

(1) The following shall be considered individual buildings for the purposes of calculating building height:

9-7-5

(A) Buildings that are connected only below grade. (See figure 5 of this section.)

(B) Abutting buildings or buildings built to the common property line, with no setback and having internal connections between buildings. (See figure 6 of this section.)

(C) Buildings attached by an at-grade open or enclosed connection not more than fifteen feet high or twelve feet wide. (See figure 7 of this section.)

(2) Individual buildings in compliance with paragraph (d)(1) of this section, and which exceed the maximum permitted height allowed by section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may be considered by the planning board pursuant to section 9-2-14, "Site Review," B.R.C. 1981.

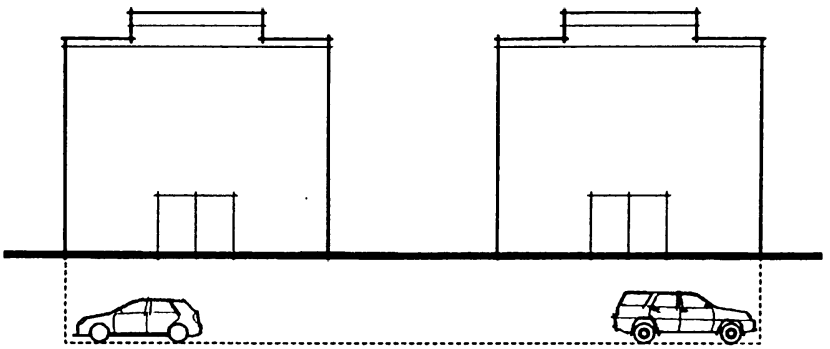

Figure 5: Below Grade Connection

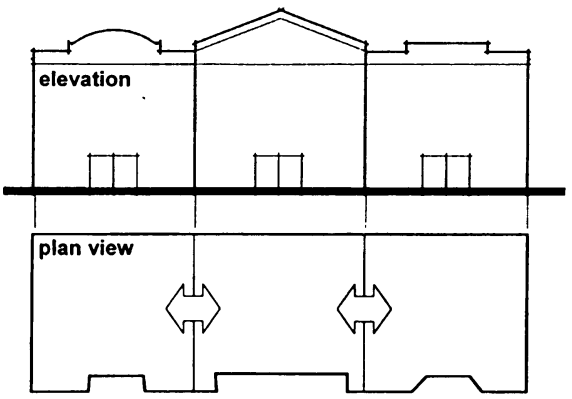

Figure 6: Internal Connection

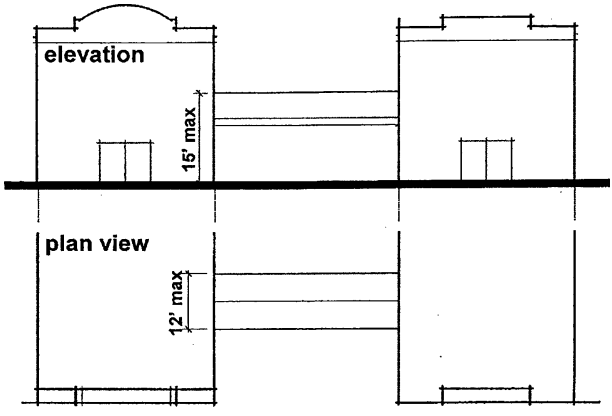

Figure 7: Pedestrian or Breezeway Connection

9-7-6 **Building Height, Conditional.**

(a) High Density Residential District Administrative Review Criteria: In the RH zones, principal building height may be increased to forty feet if:

(1) The building contains no more than three habitable floors;

(2) The finished floor elevation of the highest habitable floor above grade does not exceed twenty-one feet in height calculated by the method set forth in chapter 9-16, "Definitions," B.R.C. 1981; and

(3) The slope of the roof is at least 1:2.

(b) BC, BR, IS, IG, And IM District Review Criteria: In the BC-1, BC-2, BR-1, BR-2, IG, IM, IS-1, and IS-2 zoning districts, principal building height may be increased by up to five feet in excess of the maximum height set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, if:

Ordinance No. 7522 (2007).

(1) The property is not adjacent to any residential district. For the purposes of this paragraph, adjacent properties are properties which directly abut the property or are located directly across a right-of-way that is less than eighty feet wide; and

(2) The property is not adjacent to any property designated for low, medium or high density residential uses in the Boulder Valley Comprehensive Plan. Adjacent properties are properties which directly abut the property or are located directly across a right-of-way that is less than eighty feet wide.

(c) Downtown-5 (DT-5) Review Criteria: In the DT-5 zoning district, principal building height for a building located on a corner lot that faces two public streets may be increased by up to ten feet in height and up to three stories if:

(1) The building contains no more than three stories above the finished grade.

(2) The horizontal dimensions of the third story are no greater than fifty feet along the front yard street frontage by seventy feet along the side yard street frontage.

(3) The vertical planes of the third story are located directly above the vertical planes of the stories below.

(4) The zoning districts on the other three corners of the intersection where the property is located are within the DT-5 or the P zoning districts.

(5) The building is not within a historic district created under the provisions of chapter 9-11, "Historic Preservation," B.R.C. 1981.

Ordinance Nos. 5930 (1997); 5971 (1998); 7079 (2000); 7169 (2001).

9-7-7 Building Height, Appurtenances.

(a) Appurtenances: Appurtenances may be added under the following circumstances:

(1) The addition of an appurtenance to a building is permitted if it does not cause the building height to exceed the height allowed in this section, considering, for this purpose only, the uppermost point of the appurtenance to be the uppermost point of the roof.

(2) The city manager may approve additions of appurtenances to buildings causing a building height to exceed the maximum permitted height if the following standards are met:

(A) There is a functional need for the appurtenance;

(B) The functional need cannot be met with an appurtenance at a lesser height; and

(C) Visible materials and colors are compatible with the building to which the appurtenance is attached.

(3) No appurtenance may have useable floor area except for mechanical equipment installations; have more than twenty-five percent coverage of the roof area of the building; or be more than sixteen feet in height. For the purposes of this paragraph, "coverage" means the total area enclosed by the screening and "roof area" means outside top covering of a building which is parallel to the ground.

(4) All mechanical equipment is screened from view, regardless of the height of the building, unless in the opinion of the city manager such screening conflicts with the function of the mechanical equipment. The city manager will determine if the screening of the equipment is adequate in form, materials, and color based on the following criteria:

(A) Screening is consistent with the building design, colors, and materials;

(B) Appurtenances are placed on the portion of the roof which is least visible from adjacent streets and properties;

(C) The height of the screen is the minimum appropriate to adequately screen the mechanical equipment; and

(D) Screening does not increase the apparent height of the walls of the building. The use of parapet walls to screen mechanical equipment is discouraged. The height of parapet walls should be the minimum necessary to screen mechanical equipment.

(5) A parapet wall may exceed the height requirements of this title by up to eighteen inches if the parapet is necessary to accommodate rooftop drainage or to provide fire protection.

(6) An applicant may appeal the decision of the manager under this section to the planning board under the procedures set forth in section 9-2-7, "Development Review Action," B.R.C. 1981.

(b) Landmarked Appurtenances: Notwithstanding any other provision of this section, appurtenances of buildings landmarked under chapter 9-11, "Historic Preservation," B.R.C. 1981, may be repaired or restored to their previous height, upon approval of the landmarks board. If the board approves such a repair or restoration, the approval is not effective until thirty days after the date of its approval. Promptly after the approval of the repair or restoration, the city manager will forward to the city council a written report, including a description of the repair or restoration and the reasons for the approval. The manager will publish notice of the approval once in a newspaper of general circulation in the city within thirty days after the approval is granted by the board. Upon receiving such report and at any time before the effective date of the approval, the council may rescind the approval and call-up the request for its consideration at a public hearing, which constitutes a revocation of the approval.

9-7-8 Accessory Buildings In Residential Zones.

(a) Maximum Building Coverage: In an RR, RE, RL, or RMX-1 residential zoning district, unless the property has been designated as an individual landmark or is located within a historic district under chapter 9-11, "Historic Preservation," B.R.C. 1981, the total cumulative building coverage of accessory buildings or structures between the principal building rear yard setback and the rear yard property line shall not exceed five hundred square feet. For a property that has been designated as an individual landmark or is located within a historic district under chapter 9-11, "Historic Preservation," B.R.C. 1981, such total cumulative building coverage may be increased to permit the addition of one new accessory building or structure of up to five hundred square feet of coverage if such property has existing structures within the principal building rear yard setback area. There shall be no limitation on building coverage for accessory buildings or structures located entirely within the principal building envelope except as set forth in the definition of "accessory building or structure," in chapter 9-16, "Definitions," B.R.C. 1981.

(b) Connections Between A Dwelling Unit And An Accessory Building Located Within The Principal Building Envelope: In a residential zoning district, a single-family detached dwelling unit may be connected to an accessory building by a breezeway that is built in compliance with the principal building setback standards set forth in this chapter, or the principal building setback standards in place at the time of its construction, if the breezeway meets the following standards:

(1) The sides of the breezeway shall be completely open except for structural support columns and the walls of the garage/carport and the dwelling unit to which it is attached.

(2) No useable floor area is located above the breezeway.

(3) The accessory building and the dwelling unit shall comply with the use limitations for such buildings set forth in chapter 9-16, "Definitions," B.R.C. 1981.

(4) A breezeway shall be classified as building coverage for purposes of calculating the required open space for the dwelling unit.

(c) Breezeway Connections Between Accessory And Principal Buildings: In a residential zoning district, a single-family detached dwelling unit may be connected to an accessory building

which is located partially or entirely within principal building rear yard setback by a breezeway if the breezeway meets the following standards:

(1) No portion of the roof shall exceed a height of twelve feet, measured to the finished grade directly below it, or the height of the accessory building to which it is attached, whichever is less. (See figure 8 of this section.)

(2) No walkways are permitted on the roof of a breezeway.

(3) The width of the breezeway, measured from the outside edge of the supporting columns, shall not exceed six feet.

(4) Each eave, measured from the outside edge of the supporting columns, to the fascia, shall not exceed eighteen inches.

(5) The sides of the breezeway above grade shall remain completely open except for structural support columns and the walls of the accessory building and the single-family detached dwelling unit to which it is attached.

(6) The breezeway shall be set back from the interior side yard the greater of ten feet or the minimum principal building side yard setback for the underlying zoning district.

(7) Any portion of a breezeway that is located within the principal building rear yard setback shall be included in the maximum coverage limitations for accessory buildings set forth in subsection (a) of this section.

(8) A breezeway shall be classified as building coverage for purposes of calculating the required open space for the dwelling unit and shall be included in the residential floor area ratio limitations.

Ordinance Nos. 7210 (2002); 7401 (2004).

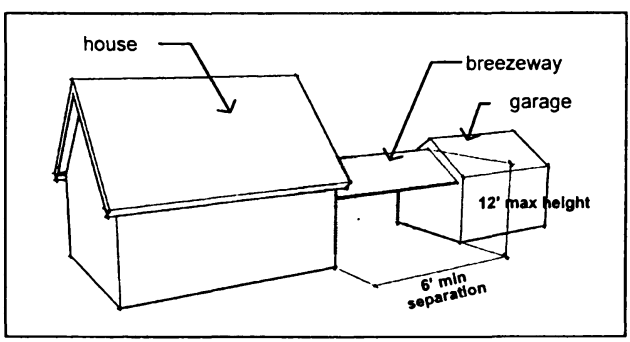

Figure 8: Breezeway

9-7-9 Two Detached Dwellings On A Single Lot.

(a) Standards: In an RM-2, RM-3, RH-1, RH-2, or RH-5 district, two detached dwelling units may be placed and maintained as principal buildings on a lot which fronts on two public streets other than alleys, if the following conditions are met:

(1) Each principal building shall have adjacent to it and convenient to use by its occupants a landscaped area of at least one hundred twenty square feet, with no side less than ten feet in length, and with privacy screening. The screening requirement may be met through any combination of building placement, landscaping, walls, or fencing;

(2) A uniform landscape plan shall be provided and executed, and all existing trees over three inches in caliper measured four inches above the ground shall be preserved, unless this requirement is waived by the city manager for good cause;

(3) In the RM zoning district, one parking space is required for each principal building. In the RH-5 zoning district, for the second principal building, one bedroom requires one off-street parking space, two bedrooms require one and one-half spaces, three bedrooms require two spaces, and four or more bedrooms require three spaces. Required parking is provided on the lot convenient to each principal building. Any two parking spaces fronting on an alley which are adjacent to each other shall be separated from any other parking spaces by a landscaped area at least five feet wide and as deep as the parking spaces;

Ordinance No. 7522 (2007).

(4) Privacy fencing or visual buffering of parking areas is provided;

(5) Each principal building has separate utility services in approved locations;

(6) All utilities are underground for each principal building unless this requirement is waived by the city manager for good cause;

(7) New principal buildings are compatible in character with structures in the immediate vicinity, considering mass, bulk, architecture, materials, and color. In addition, the second principal building placed on a lot shall meet the following requirements:

(A) The second floor shall not exceed sixty percent of the area of the first floor;

(B) Only two floors, exclusive of lofts or towers with floors no larger than one hundred square feet in the aggregate, shall be above grade;

(C) The above grade floor area shall not exceed one thousand two hundred square feet. The floor area for a single-car detached garage which does not exceed two hundred forty square feet and is a minimum of five feet from another principal structure may be added to the one thousand two hundred square feet if the additional floor area does not exceed the FAR in subparagraph (a)(7)(D) of this section; and

(D) The FAR shall not exceed 0.45, calculated as follows:

(i) All above grade floor area, garages, accessory structures, courts, and basements which are located below a floor level which is more than thirty inches above the natural grade shall be included in the floor area; and

(ii) If a subdivision request for the lot is part of the application under this section, the new lot upon which the building will be located shall be the basis for the FAR. If there is no subdivision application, the smaller building site for FAR calculations shall be forty percent of the lot, or such larger portion not to exceed sixty percent as the city manager shall approve as constituting a reasonable lot consistent with the requirements which would have to be met were the lot to be subdivided; and

(E) If the second principal building is the rear building, the roof eaves exclusive of dormers on the alley face of the building shall not be more than twelve feet above grade;

(F) If the second principal building is the rear building, the exterior wall surface area on the alley face of the building over nine feet above the grade of the alley shall not exceed seventy-five percent of the area of that face below nine feet. Exterior wall surface area on the alley face shall include all surfaces which face the alley steeper than a 12/12 pitch which are within ten feet of the wall surface closest to the alley; and

(G) The building height of the second principal building, if it is located at the rear of the lot, shall not exceed twenty-five feet.

(H) Setback requirements shall be modified as follows:

(i) New principal buildings shall maintain the side yard setback requirements for the RM-2 zoning district of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, regardless of the zoning district in which the lot is located;

(ii) At least ten feet shall be maintained between the principal buildings;

(iii) The front yard setback requirement of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, shall be met for the front building;

(iv) If there is an alley at the rear twenty feet or more in width, then there shall be no rear yard setback requirement for the rear building;

(v) If the alley is less than twenty feet wide at the rear for lots which have frontage on two public streets, the rear yard setback for the rear building shall be five feet; and

(vi) If there is no alley at least fifteen feet wide for lots which have frontage on two public streets, the rear yard setback requirement of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, must be met for the rear building.

(b) Subdivision: If two principal buildings are to be or have been constructed on a lot pursuant to subsection (a) of this section, such lot may be subdivided, upon application, into two lots, one for each principal building, if the following requirements are met:

(1) The smaller of the two lots is at least forty percent of the square footage of the original lot;

(2) The lot line created between the two principal buildings shall be substantially perpendicular to the side lot lines;

(3) The subdivision in all other respects complies with the subdivision requirements of chapter 9-12, "Subdivision," B.R.C. 1981, except as those requirements are modified by this section concerning street frontage, density and open space requirements, and setbacks; and

(4) The subdivision agreement recites all of the conditions of this section as continuing limitations on future buildings and uses of each lot, and that one or both lots, whichever may be the case, are nonconforming lots containing nonconforming buildings whose change to or expansion of use, lot, or building is subject to the provisions of this title or their successors concerning nonconformity.

Ordinance No. 5623 (1994).

9-7-10 Mobile Home Park Form And Bulk Standards.

No person shall establish or maintain a mobile home park or mobile home on a lot within a mobile home park except in accordance with the following standards:

(a) Mobile Home Park Form And Bulk Summary Table: Development within a mobile home park in the MH zoning district shall comply with the standards shown in table 7-2 and illustrated in figure 9 of this section.

TABLE 7-2: MOBILE HOME PARK DESIGN STANDARDS (MH DISTRICT)

Size And Intensity	
Minimum mobile home park size - MH zone RL-2, RM, and RH zones	 5 acres 10 acres
Maximum allowable density - RL-2 zone MH, RM, and RH zones	 6 units per acre 10 units per acre
Minimum site area reserved for recreational facilities	8 percent of mobile home park
Lot Area And Open Space	
Minimum lot area if subdivided	3,500 square feet
Minimum average lot area per mobile home	4,350 square feet
Minimum outdoor living and service area (with no dimension less than 15 feet)	300 square feet
Minimum usable open space per mobile home	600 square feet
Parking Requirements	
Minimum number of off-street parking spaces per mobile home	1
Setbacks And Separation	
Minimum side to side separation	15 feet
Minimum end to end separation	10 feet
Minimum distance from tongue to any adjacent sidewalk	2 feet
Minimum setback from a street (from edge of street pavement)	10 feet
Accessory Buildings (10-12, B.R.C.)	
Maximum size of storage buildings	150 square feet
Minimum setback from adjacent mobile homes to all accessory buildings and structures	10 feet
Minimum separation between mobile home and accessory building (on the same lot)	6 feet

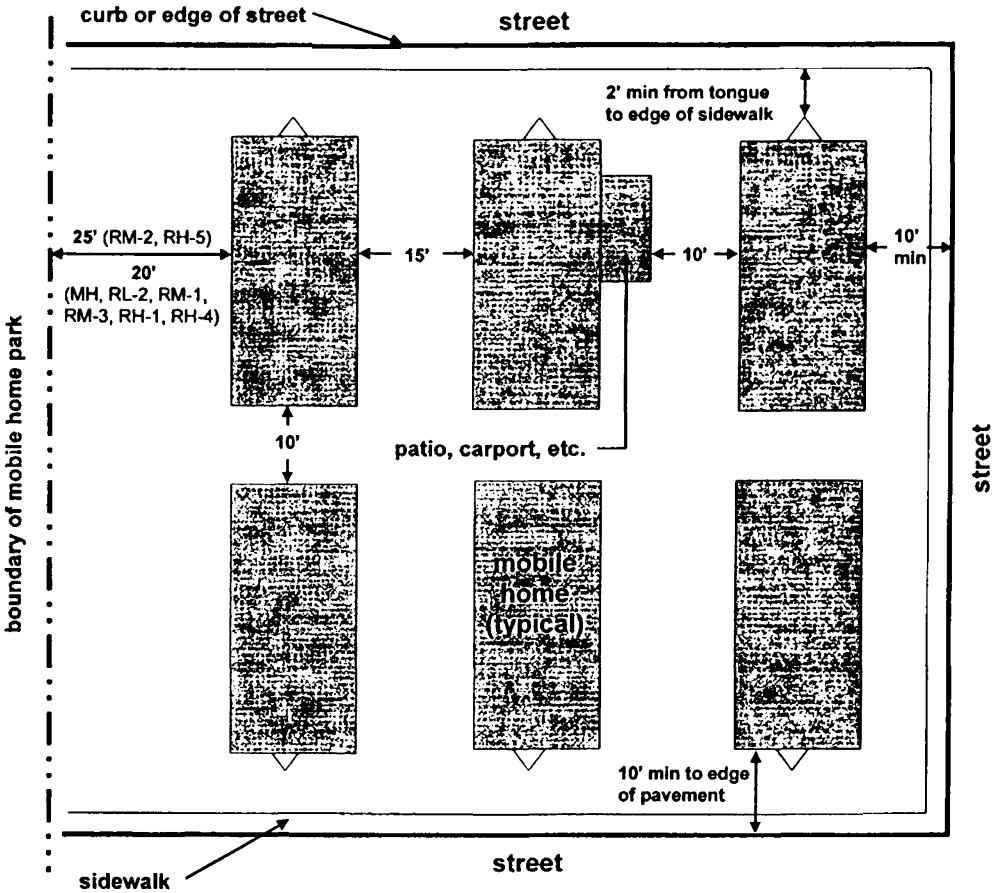

Figure 9: Mobile Home Park Setback Standards

Minimum setback to the boundary of the mobile home park depends on the zoning district. All other setback requirements apply in all mobile home parks. The required setback from a street is measured from the edge of street pavement. The required tongue setback is measured to the edge of the sidewalk.

(b) Area Requirements: In determining the required yard and space areas, the use of double-wide mobile homes and accessory structures shall be considered. The minimum average lot area per mobile home does not include additional area required by this chapter for access roads, off-street parking and storage areas, service buildings, recreation areas, and office and similar mobile home needs.

(c) Driveways: Paved driveways with a minimum width of ten feet shall be provided where necessary for convenient access to each mobile home.

(d) Parking: Mobile homes in all zoning districts other than the MH district shall provide 1.5 off-street parking spaces per mobile home. Off-street spaces shall be located on or within three hundred feet of the mobile home space for which the parking is required.

(e) Setbacks From Boundary Lines: All mobile homes in RM-2 and RH-5 zoning districts shall be located at least twenty five feet from the boundary lines of the mobile home park. All mobile homes located in RL-2, RM-1, RM-3, MH, RH-1, and RH-4 zoning districts shall be located at least twenty feet from the boundary of the mobile home park.

(f) Reduction Of Setbacks From Boundary Lines: Mobile home setback distances along park boundary lines adjacent to other lots may be reduced to ten feet as part of a site review or use review approval if the mobile home park owner demonstrates that there is a need for such reductions and that no detrimental effect will result to uses on adjoining properties or to residents of the mobile home park.

(g) Obstructions Prohibited: No mobile home or portion thereof shall overhang or obstruct any driveway, access road, or walkway.

(h) Screening: All mobile home parks adjacent to other residential uses, commercial uses, or industrial uses shall be provided with screening, such as opaque fencing or landscaping, along the property boundary separating the mobile home park from such adjacent land uses.

TITLE 9 LAND USE CODE

Chapter 8 Intensity Standards[1]

Section:

9-8-1 Schedule Of Intensity Standards.

The purpose of this chapter is to indicate the requirements for the allowed intensity of all types of development, including maximum density for residential developments based on allowed number of units and occupancy. All primary and accessory structures are subject to the standards set forth in table 8-1 of this section. No person shall use any land within the city authorized by

[1]Adopted by Ordinance No. 7476.

9-8-1

chapter 9-6, "Use Standards," B.R.C. 1981, except according to the following requirements unless modified through a use review under section 9-2-15, "Use Review," B.R.C. 1981, or a site review under section 9-2-14, "Site Review," B.R.C. 1981, or granted a variance under section 9-2-3, "Variances And Interpretations," B.R.C. 1981.

(see following page for continuation of Section 9-8-1)

9-8-1

TABLE 8-1: INTENSITY STANDARDS (REVISED TO INCLUDE FORMER DISTRICT NAMES)

Former Zoning District Abbreviations	Intensity District	Minimum Lot Area (in square feet unless otherwise noted)	Minimum Lot Area Per Dwelling Unit (square feet)	Maximum Number Of Dwelling Units Per Acre	Minimum Open Space Per Dwelling Unit	Minimum Open Space On Lots (Residential Uses)	Minimum Open Space On Lots (Non-residential Uses)[a]	Minimum Private Open Space (Residential Uses)	Maximum Floor Area Ratio
					See section 9-9-11 for additional open space requirements. For mixed use developments, use the requirements of either the residential or nonresidential standards that result in the greatest amount of open space.				
A-E	1	5 acres	5 acres	0.2	0	–	10 – 20%	0	0
RR-E RR1-E	2	30,000	30,000	1.4	0	–	10 – 20%	0	0
ER-E	3	15,000	15,000	2.9	0	–	10 – 20%	0	0
LR-E	4	7,000	7,000	6.2	0	–	10 – 20%	0	0.8:1
P-E	5	7,000	7,000	6.2	0	–	10 – 20%	0	0
LR-D	6	0	0	–	6,000	–	10 – 20%	0	0
MXR-E	7	6,000	6,000	7.3	600	–	10 – 20%	0	0
MXR-D	8	0	0	10 (up to 20 by review)	0	15%	15%	60	0
MR-D	9	0	0	–	3,000	–	10 – 20%	0	0
IS-D	10	0	0	–	600	–	10 – 20%	60	0.5:1
IS-E	11	7,000	0	–	0	–	10 – 20%	60	0.5:1
HR-X HZ-E	12	6,000 (b)	3,200 (c)	13.6	600	–	10 – 20%	0	0
MR-E MR-X	13	6,000	3,500	14.5	–	–	10 – 20%	0	0

9-8-1

Former Zoning District Abbreviations	Intensity District	Minimum Lot Area (in square feet unless otherwise noted)	Minimum Lot Area Per Dwelling Unit (square feet)	Maximum Number Of Dwelling Units Per Acre	Minimum Open Space Per Dwelling Unit	Minimum Open Space On Lots (Residential Uses)	Minimum Open Space On Lots (Non-residential Uses)[a]	Minimum Private Open Space (Residential Uses)	Maximum Floor Area Ratio
					See section 9-9-11 for additional open space requirements. For mixed use developments, use the requirements of either the residential or nonresidential standards that result in the greatest amount of open space.				
HR1-X	14	0	0	–	0	60%	60%	60	0
HR-D TB-D CB-D	15	0	0	–	1,200	–	10 – 20%	0	0
RB-D	16	0	0	–	0	40%	10 – 20%	60	0
BMS-X	17	0	0	–	0	15%	15%	60	0.67 (1.85 if within CAGID or UHGID)
RMS-X IMS-X MU-D	18	0	0	–	0	15%	15%	60	0.6:1
HR-E CB-E	19	6,000	1,600	27.2	600 (400 by site review if in a mixed use development)	–	10 – 20%	0	0
IM-E IM-D	20	7,000	1,600	27.2	600	40% (20% if within a park service area)	10 – 20%	60	0.4:1
TB-E	21	6,000	1,600	27.2	600	–	10 – 20%	0	0.5:1
IG-E IG-D	22	7,000	1,600	27.2	600	40% (20% if within a park service area)	10 – 20%	60	0.5:1

9-8-1

Former Zoning District Abbreviations	Intensity District	Minimum Lot Area (in square feet unless otherwise noted)	Minimum Lot Area Per Dwelling Unit (square feet)	Maximum Number Of Dwelling Units Per Acre	Minimum Open Space Per Dwelling Unit	Minimum Open Space On Lots (Residential Uses)	Minimum Open Space On Lots (Non-residential Uses)[a]	Minimum Private Open Space (Residential Uses)	Maximum Floor Area Ratio
					See section 9-9-11 for additional open space requirements. For mixed use developments, use the requirements of either the residential or nonresidential standards that result in the greatest amount of open space.				
RB-E	23	6,000	1,600	27.2	0	–	10 – 20%	0	2.0:1
MU-X	24	0	0	–	0	15%	15%	60	1.0:1
RB3-E RB3-X	25	0	0	–	0	–	10 – 20%	60	1.0:1
RB2-X	26	0	0	–	0	–	10 – 20%	60	1.5:1
RB1-E RB2-E RB1-X	27	0	0	–	0	–	10 – 20%	60	1.7:1
CS-E	28	–	–	–	–	–	10 – 20%	–	–

Footnotes:

(a) This requirement may increase based on building height pursuant to subsection 9-9-11(c), B.R.C. 1981.

(b) For the RH-1 zoning district (former HR-X) the minimum lot area (in square feet unless otherwise noted) is 5,000 square feet.

(c) For the RH-1 zoning district (former HR-X) the minimum lot area is 1,600 square feet.

Ordinance No. 7522 (2007).

9-8-2 Floor Area Ratio Requirements.

(a) Purpose: The purpose of the floor area ratio requirements is to limit the impacts of the use that result from increased building size.

(b) Maximum Floor Area Ratio: The maximum floor area ratio on a lot or parcel shall be the greatest of the following:

(1) The floor area set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981;

(2) The floor area approved prior to June 3, 1997, as part of a valid existing or unexpired planned development (PD), planned residential development (PRD), planned unit development (PUD) or a site review; or

(3) The floor area on the lot or parcel on June 3, 1997.

(c) Registration And Calculation Of FAR For Existing Buildings: Building floor area on a lot or parcel that exceeds the floor area ratio set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may be registered with the city manager by June 16, 1998. The city manager shall determine the type of information necessary to verify the floor area. If such floor area is not registered within one year, the floor area of the lot or parcel shall be the greater of the following:

(1) The floor area ratios for the underlying zoning district;

(2) The floor area on the lot or parcel on June 3, 1997, according to city building records or county assessor records.

Upon a determination that an error exists in the calculation of the floor area under paragraph (c)(2) of this section, the city manager will correct such error.

(d) Calculating Floor Area Ratios And Floor Area Ratio Additions: The floor area ratio shall be calculated based on all buildings on a lot, except as indicated by table 8-2 of this section. Areas not included in the floor area ratio calculation are considered a "floor area ratio addition."

(see following page for continuation of Section 9-8-2)

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TABLE 8-2: FLOOR AREA RATIO ADDITIONS

	DT-1	DT-2	DT-3	DT-4	DT-5	MU-1	MU-2	MU-3	BT-2	BMS	IS-1/2	IG	IM	IMS	BR-1 (c)
Base FAR	1.0	1.5	1.7	1.7	1.7	0.6	0.6	1.0	0.5	0.67 (a)	0.5	0.5	0.4	0.6	n/a
Maximum total FAR additions (FAR)	1.0	0.5	1.0	0.5	1.0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
FAR addition components:															
1) Residential floor area (FAR)	0.5	0.5	0.5	0.5	0.5 (b)	0	0	0	0	0	0	0	0	0	n/a
2) Residential floor area if at least 35% of units are permanently affordable and at least 50% of total floor area is residential (FAR)	0	0	0	0	0	0.07	0	0	0	0	0	0	0	0	n/a
3) Residential floor area for a project NOT located in a general improvement district that provides off-street parking	0	0	0	0	0	0	0	0	0	0.33	0	0	0	0	n/a
4) On-site parking provided entirely within the principal structure, or above grade parking structure	All, to max. of 0.5 FAR	All, to max. of 0.5 FAR	All, to max. of 0.5 FAR	0	All, to max. of 0.5 FAR	All	All	All	0	All	All	All	All	All	n/a
5) Below grade area used for occupancy	50% below grade area	50% below grade area	50% below grade area	50% below grade area	50% below grade area	0	0	0	All	50% below grade area	0	0	0	0	n/a

9-8-2

	DT-1	DT-2	DT-3	DT-4	DT-5	MU-1	MU-2	MU-3	BT-2	BMS	IS-1/2	IG	IM	IMS	BR-1 (c)
Maximum allowable FAR (sum of base plus all available additions)	2.0	2.0	2.7	2.2	2.7	0.67 + row 4 of this table	0.6 + row 4 of this table	1.0 + rows 4 and 5 of this table	0.5 + row 5 of this table	1.0 + rows 4 and 5 of this table	0.5 + row 4 of this table	0.5 + row 4 of this table	0.4 + row 4 of this table	0.6 + row 4 of this table	4.0 (c)

Footnotes:

(a) FAR up to 1.85:1 if property is located in a general improvement district providing off-street parking.

(b) 1.0 if parking bonus NOT used.

(c) See subparagraph 9-2-14(h)(2)(J), B.R.C. 1981.

Ordinance No. 7522 (2007).

(e) District-Specific Standards:

(1) Maximum Floor Area In RL-1: In the RL-1 district, the maximum floor area above a basement shall be a floor area ratio of 0.8:1. The floor area above the basement is all the floor area of all levels, not including a basement, but including fifty percent of the floor area of a partially exposed lower level of a detached single-family residential building in which less than fifty percent of the perimeter of the walls of that level are more than two feet above the adjacent grade, including, without limitation, walk-out levels or terrace levels. All of the floor area of a partially exposed lower level of a detached single-family residential building which exceeds two feet above grade for fifty percent or more of the perimeter of the walls shall be counted as floor area.

(2) Maximum Floor Area In DT-2: In the DT-2 district, the maximum amount of residential floor area or detached garages or parking within a principal building that shall not be included in the FAR calculation shall be 0.5.

(3) Floor Area Transfers In The DT-5 Zoning Districts: In the DT-5 district, floor area may be transferred from one lot or parcel to another lot or parcel, as provided for by this paragraph. Approval of a floor area transfer shall permit the transfer of the entire floor area bonus permitted by table 8-2 of this section to another lot or parcel and permit the same amount of unrestricted floor area to be constructed on the parcel from which the bonus floor area was sent. A floor area transfer will be approved if the approving authority finds that the following criteria have been met as a part of a site review approval pursuant to section 9-2-14, "Site Review," B.R.C. 1981:

(A) The lot or parcel from which the floor area is transferred is adjacent to, with a common boundary between the two lots or parcels. Adjacency shall not be affected by the existence of a public right-of-way;

(B) Both the sending and receiving lots or parcels are located in the same zoning district as the lot that will receive the additional floor area;

(C) The floor area on either lot or parcel does not exceed the floor area allowed, with floor area bonuses for each lot or parcel; and

(D) A phasing plan, that addresses the timing of the construction of all of the floor area is approved, that insures that the bonus floor area will be constructed prior to or concurrent with any unrestricted floor area that is transferred to another lot or parcel.

Ordinance Nos. 5623 (1994); 5930 (1997); 7079 (2000); 7351 (2004).

(4) Floor Area Transfers In The MU-1 District: In an MU-1 zoning district, the floor area permitted by section 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981, and this section may be transferred from one lot or parcel to another lot or parcel, in excess of the single lot requirements, if the approving authority finds that such transfer meets the site design criteria and is approved as part of a single site review application under section 9-2-14, "Site Review," B.R.C. 1981.

Ordinance Nos. 5930 (1997); 7117 (2001); 7210 (2002); 7535 (2007).

(5) General Improvement Districts Providing Off-Street Parking: In the BMS district, the FAR may be increased up to 1.85 if the property is located in a general improvement district providing off-street parking.

(6) BR-1 Districts: In the BR-1 district, the FAR may be increased pursuant to section 9-2-14, "Site Review," B.R.C. 1981.

Ordinance No. 5930 (1997).

(7) Floor Area Transfers In The IG, IM, Or IS Zoning Districts: In an IG, IM, or IS zoning district, floor area may be transferred to a lot or parcel in excess of the maximum floor area ratio set forth in table 8-2 of this section, if the approving authority finds that the following criteria have been met as a part of a site review approval pursuant to section 9-2-14, "Site Review," B.R.C. 1981:

(A) The lot or parcel from which the floor area is transferred is adjacent to and in the same zoning district as the lot that will receive the additional floor area; and

(B) The lot or parcel from which the floor area is transferred is vacant.

Ordinance Nos. 5930 (1997); 7484 (2006).

9-8-3 Density In The RH-1, RH-2 And RH-3 Districts.

(a) Number Of Dwelling Units: The maximum number of dwelling units in the RH-2 and RH-3 zoning districts shall not exceed that permitted in chapter 9-7, "Form And Bulk Standards," B.R.C. 1981, and this chapter.

(b) Fractions Of Dwelling Units: Notwithstanding the provisions of section 1-1-22, "Rounding Rule," B.R.C. 1981, a fraction of a permitted unit allowed by the minimum lot area per dwelling unit requirement may be included in calculating the allowable floor area.

(c) Maximum Floor Area: In the RH-2 zoning districts, eight hundred square feet of floor area will be permitted for each dwelling unit in a development:

(1) The floor area shall include all habitable area within the dwelling unit that is designed for or intended to be used for living, sleeping, eating, cooking, laundry, or personal storage.

(2) The floor area does not include garages and common facilities. Common facilities are elements routinely used in multi-family projects which include, without limitation, hallways, stairs, and utility rooms that are shared by all occupants of a development.

(3) The total floor area permitted in a development is the product of the number of allowed dwelling units multiplied by eight hundred, and such dwelling units and square footage may be configured in any way which produces a number equal to or less than such product.

(d) Additional Density In The RH-1 District: In the RH-1 zoning district, the planning board may reduce the minimum lot area of one thousand six hundred square feet per dwelling unit to eight hundred square feet of lot area per dwelling unit pursuant to site review approval.

Ordinance No. 7522 (2007).

(e) Additional Density In The RH-2 District: In the RH-2 zoning district, the planning board may reduce the minimum lot area of three thousand two hundred square feet per dwelling unit to one thousand six hundred square feet of lot area per dwelling unit pursuant to site review approval.

(f) Additional Density In The RH-3 District: In the RH-3 zoning district, the open space per lot may be reduced from sixty percent to thirty percent of the lot if at least half of the open space provided meets the open space requirements of paragraph 9-9-11(e)(3), B.R.C. 1981.

(g) Minimum Lot Area For Two Dwelling Units: Two attached units may be developed on a lot in the RH-2 district without a site review if the lot is a minimum of five thousand square feet in area and the structures meet the setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, or the requirements of section 9-7-9, "Two Detached Dwellings On A Single Lot," B.R.C. 1981, are met.

(h) Exemption For Existing Single-Family Dwellings: Single-family dwellings in the RH-2 district constructed prior to September 2, 1993, may be increased in size without planning board review and shall be exempt from the parking requirements of table 9-1, subsection 9-9-6(b), B.R.C. 1981, if the following conditions are satisfied:

(1) Prior to the issuance of a building permit, the owner of the property executes a declaration of use, in a form acceptable to the city manager, stating that the dwelling will continue to be used as a single-family dwelling;

(2) The dwelling contains no more than one kitchen; and

(3) At least one off-street parking space, in compliance with city standards, is provided.

9-8-4 Housing Types And Density Bonuses Within An RMX-2 Zoning District.

(a) Minimum Number Of Housing Types: No person shall develop land in the RMX-2 zoning district with residential uses unless the following housing types are provided:

(1) For lots or parcels one acre or less, at least one housing type;

(2) For lots or parcels that are greater than one acre but less than five acres, at least two housing types; and

(3) For lots or parcels that are five acres or more, at least three housing types. The minimum number of any housing type for lots or parcels that are more than five acres shall be five dwelling units.

(b) Maximum Percentage Of Any One Housing Type: No person shall develop a lot or parcel of one acre or more with more than fifty percent of any one housing type in the RMX-2 zoning district.

(c) Density Bonus For The Provision Of Additional Affordable Housing: The approving authority may approve a maximum density increase up to ten additional dwelling units per acre if all of the following standards are met:

(1) Site Review Required: The plan for the development is approved as part of a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981;

(2) Five Unit Per Acre Bonus: At least thirty percent of all units that are proposed to be built in the development shall meet the requirements for permanently affordable units set forth in chapter 9-13, "Inclusionary Zoning," B.R.C. 1981, to be eligible for a density bonus for up to five additional dwelling units per acre;

(3) Eight Unit Per Acre Bonus: At least thirty-five percent of all units that are proposed to be built in the development shall meet the requirements for permanently affordable units set forth in chapter 9-13, "Inclusionary Zoning," B.R.C. 1981, to be eligible for a density bonus for up to eight additional dwelling units per acre;

(4) Ten Unit Per Acre Bonus: At least forty percent of all units that are proposed to be built in the development shall meet the requirements for permanently affordable units set forth in chapter 9-13, "Inclusionary Zoning," B.R.C. 1981, to be eligible for a density bonus for up to ten additional dwelling units per acre; and

(5) Limits On A Density Bonus: The approving authority may prohibit or limit an increase in density if the applicant fails to demonstrate that it can satisfy the criteria of approval set forth in section 9-2-14, "Site Review," B.R.C. 1981.

Ordinance No. 7116 (2001).

9-8-5 Occupancy Of Dwelling Units.

(a) General Occupancy Restrictions: Subject to the provisions of chapter 10-2, "Housing Code," B.R.C. 1981, no persons except the following persons shall occupy a dwelling unit:

(1) Members of a family plus one or two roomers. The quarters that the roomers use shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate dwelling unit;

Ordinance No. 7522 (2007).

(2) Up to three persons in P, A, RR, RE, and RL zones;

(3) Up to four persons in MU, RM, RMX, RH, BT, BC, BMS, BR, DT, IS, IG, IM, and IMS zones; or

(4) Two persons and any of their children by blood, marriage, guardianship, including foster children, or adoption.

(b) Accessory Dwelling Unit, Owner's Accessory Unit Or Limited Accessory Dwelling Unit: The occupancy of an accessory dwelling unit, owner's accessory unit, or limited accessory dwelling unit, must meet the requirements of subsection 9-6-3(a), B.R.C. 1981.

(c) Nonconformity: A dwelling unit that has a legally established occupancy higher than the occupancy level allowed by subsection (a) of this section may maintain such occupancy of the dwelling unit as a nonconforming use, subject to the following:

(1) The higher occupancy level was established because of a rezoning of the property, an ordinance change affecting the property, or other city approval;

(2) The rules for continuation, restoration, and change of a nonconforming use set forth in chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and section 9-2-15, "Use Review," B.R.C. 1981;

(3) Units with an occupancy greater than four unrelated persons shall not exceed a total occupancy of the dwelling unit of one person per bedroom; and

(4) The provisions of chapter 10-2, "Housing Code," B.R.C. 1981.

9-8-6 Occupancy Equivalencies For Group Residences.

The permitted density/occupancy for the following uses shall be computed as indicated below. The density/occupancy equivalencies shall not be used to convert existing uses referenced in this

section to dwelling units. The number of allowed dwelling units shall be determined by using section 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981:

(a) Boarding Or Rooming House, Fraternity, Sorority, Or Dormitory: Accommodations for three occupants in any boarding or rooming house, fraternity, sorority, or dormitory constitute one dwelling unit.

(b) Hotel, Motel, And Bed And Breakfast: Three hotel and motel units or three guest rooms in a bed and breakfast constitute one dwelling unit.

(c) Hostel: Accommodations for three occupants in any hostel constitute one dwelling unit, but the planning board may increase the density of a hostel to four occupants per dwelling unit through a use review as provided in section 9-2-15, "Use Review," B.R.C. 1981.

(d) Custodial Care And Residential Care Facilities: The occupancy of a custodial care or a residential care facility must meet the requirements of subsection 9-6-3(f), B.R.C. 1981.

(e) Group Home Facilities: The occupancy of a group home facility must meet the requirements of subsection 9-6-3(d), B.R.C. 1981.

(f) Cooperative Housing Unit: The occupancy of a cooperative housing unit must meet the requirements of subsection 9-6-3(b), B.R.C. 1981.

(g) Congregate Care Facility: In congregate care facilities, five sleeping rooms or accommodations without kitchen facilities constitute one dwelling unit, three attached dwelling units constitute one dwelling unit, and one detached dwelling unit constitutes one dwelling unit.

(h) Bed And Breakfast: In any bed and breakfast, up to twelve guest rooms are permitted, provided the required parking can be accommodated on site and the provisions of subsection 9-6-5(a), B.R.C. 1981, and the density and occupancy requirements of subsection (b) of this section are met.

(i) Conversion Of Rooming Units To Dwelling Units: Rooming units in RM and RH zoning districts that were legally established under prior zoning ordinances and have continued a legal nonconforming use may be converted to dwelling units at a ratio of four rooming units to one dwelling unit.

9-8-7 Density And Occupancy Of Efficiency Living Units.

(a) Dwelling Unit Equivalents For Efficiency Living Units: For purposes of the density limits of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, two efficiency living units constitute one dwelling unit.

(b) Dwelling Unit Equivalents For Growth Management Allocations: For purposes of counting dwelling units under the provisions of chapter 9-14, "Residential Growth Management System," B.R.C. 1981, two efficiency living units equal one dwelling unit.

(c) Dwelling Unit Equivalents For Moderate Income Housing: For purposes of counting dwelling units under the provisions of Ordinance 4638, as amended, "Moderate Income Housing," one efficiency living unit equals one dwelling unit.

(d) Maximum Occupancy: No more than two persons shall occupy an efficiency living unit.

TITLE 9 LAND USE CODE

Chapter 9 Development Standards[1]

Section:

[1]Adopted by Ordinance No. 7476.

9-9-1 Intent.

The purpose of this chapter is to indicate the site improvement standards, including related public improvements, for all development. The development standards are the code requirements that describe how specific portions of a project must be designed. Development standards address the physical relationship between new development and redevelopment and adjacent properties, public streets, neighborhoods, and the natural environment. They are intended to ensure that new development is consistent with the quality and character of the built environment in the city.

9-9-2 General Provisions.

No person shall use or develop any land within the city except according to the following standards, unless modified through a use review under section 9-2-15, "Use Review," B.R.C. 1981,

or a site review, section 9-2-14, "Site Review," B.R.C. 1981, or a variance granted under section 9-2-3, "Variances And Interpretations," B.R.C., 1981.

(a) Fire And Life Safety: All development shall meet the applicable requirements of chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

(b) Maximum Permitted Buildings On A Lot: No more than one principal building shall be placed on a lot in the RR, RE, RL, and RM zoning districts unless approved under the provisions of section 9-2-14, "Site Review," or 9-7-9, "Two Detached Dwellings On A Single Lot," B.R.C. 1981.

(c) Parcel As Building Lot And Merger Of Nonstandard Lots Or Parcels: The following standards shall apply for the purposes of determining whether there is a building site:

(1) Single Parcel Under More Than One Ownership: Where a single parcel of land under more than one ownership has not been subdivided as required by this code, another ordinance of the city, state law, or judicial decree, it shall be deemed to be one building lot.

(2) Merger Of Nonstandard Lots Or Parcels In All Classifications Except RR And RE: A nonstandard lot or parcel and a contiguous lot or parcel, whether nonstandard or conforming, in all zoning districts except RR-1, RR-2, and RE shall be deemed merged as one building lot if such lots have been held under one ownership continuously at any time since February 8, 1984.

(3) Merger Of Nonstandard Lots Or Parcels In RR And RE: A nonstandard lot or parcel and a contiguous lot or parcel, whether nonstandard or conforming, in the RR-1, RR-2, and RE zoning district classification shall be deemed to be merged as one building lot if:

(A) Such lots or parcels have been held under one ownership continuously at any time since February 8, 1984; and

(B) Such lots or parcels were not created as a building site that met the minimum lot size for the zoning district in place at that time of subdivision; were not subdivided under City of Boulder subdivision regulations in place on and after September 18, 1951; and do not meet the minimum development requirements for nonstandard lots or parcels in subsection 9-10-3(b), B.R.C. 1981.

(4) Sale Of A Portion Of A Merged Lot Or Parcel Prohibited: No portion of such a merged building lot or parcel shall be used or sold in a manner which diminishes compliance with the minimum lot requirements established by this chapter.

(d) Zoning Standards For Lots In Two Or More Zoning Districts: Existing buildings located in more than one zoning district shall be regulated according to the applicable use standards for the zoning district in which the majority of the existing building is located. Any building additions or site improvements shall be regulated according to the zoning district in which such additions or improvements are located. In the event that an existing building is split in half between two zoning districts, the city manager shall determine which use standards shall apply based upon the historic use of the building and the character of the surrounding area.

(e) Entire Use Located On One Lot: No person shall include as part of a lot area, open space, off-street parking area, or yard required by this chapter for any building or use any part of a lot area, open space, off-street parking area, or yard required by this chapter for any other building or use, unless approved under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

9-9-3 Building Design.

(a) Window Requirements For Buildings: Window areas required by section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, must be located on any ground floor facade facing a public street and shall be made of transparent materials, meaning glass or other similar materials that possess a minimum sixty percent transmittance factor and a reflectance factor of not greater than 0.25, or otherwise designed to allow pedestrians to view activities inside the buildings. This standard shall not apply to residential uses that occur along the ground floor facade.

9-9-4 Public Improvements.

(a) Design And Construction Standards: The City of Boulder *Design And Construction Standards* is hereby adopted by reference, and has the same force and effect as though fully set forth in the Boulder Revised Code, 1981.

(b) Design And Construction Of Public Improvements: All development shall meet the applicable requirements of the Boulder Revised Code, 1981, including, without limitation, chapter 8-2, "Streets And Sidewalks," and title 11, "Utilities And Airport," and all public improvements shall be designed and constructed in accordance with the City of Boulder *Design And Construction Standards*.

9-9-5 Site Access Control.

(a) Access Control: Vehicular access to property from the public right-of-way shall be controlled in such a manner as to protect the traffic-carrying capacity and safety of the street upon which the property abuts and access is taken, ensuring that the public use and purpose of public rights-of-way is unimpaired as well as to protect the value of the public infrastructure and adjacent property. The requirements of this section apply to all land uses, including single-family residential land uses, as follows:

(1) Nonresidential Uses: For all uses, except single-family residential, the standards shall be met prior to a final inspection for any building permit for new development; redevelopment exceeding twenty-five percent of the Boulder County Assessor's actual value of the existing structure; or the addition of a dwelling unit.

(2) Residential Uses: For single-family residential uses, the standards of this section shall be met prior to a final inspection for any building permit for new development; the demolition of a principal structure; or the conversion of an attached garage or carport to a use other than use as a parking space.

(b) Access For Properties Subject To Annexation: Each parcel of land under a single ownership at the time of its annexation will be reviewed in terms of access as one parcel (regardless of subsequent sales of a portion) unless the property is subdivided at the time of its annexation.

(c) Standards And Criteria For Site Accesses And Curb Cuts: Any access or curb cut to public rights-of-way shall be designed in accordance with the City of Boulder *Design And Construction Standards* and the following standards and criteria:

(1) Number Of Access Points Permitted: One access point or curb cut per property will be permitted, unless a site plan or traffic study, approved by the city manager, demonstrates that additional access points and curb cuts are required to adequately address accessibility, circulation, and driveway volumes, and only where additional accesses and curb cuts would

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not impair any public use of any public right-of-way, or create safety or operational problems, or be detrimental to traffic flow on adjacent public streets.

(2) Access Restrictions: On arterial and collector streets, or if necessary for the safe and efficient movement of traffic, all accesses shall be designed and constructed with physical improvements and appropriate traffic control measures to assist or restrict turning movements, including, without limitation, acceleration or deceleration lanes, access islands, street medians, and signage, as may be required of the development if the city manager finds that they are necessary to preserve the safety or the traffic-carrying capacity of the existing street. The city manager shall determine the length and degree of the required access restriction measures for the property.

(3) Residential Access To Arterial And Collector Streets Restricted: No residential structures shall have direct access onto an arterial. However, if no alternative street access is possible, an access may be permitted subject to the incorporation of any design standards determined to be necessary by the city manager to preserve the safety and the traffic-carrying capacity of the arterial or collector.

(4) Access From Lowest Category Street Required: A property that has frontage on more than one street, alley or public access shall locate its access or curb cut on the lowest category street, alley or public access frontage. If more than one access point or curb cut is necessary, an additional access or curb cut will be permitted only where the proposed access or curb cut satisfies the requirements in this section.

(5) Property Right To Access: If a property cannot be served by any access point or curb cut that satisfies this section, the city manager will designate the access point or curb cut for the subject property based on optimal traffic safety.

(6) Multiple Access Points For Single-Family Residential: The city manager will permit multiple access points on the same street for single-family residential lots upon finding that there is at least one hundred linear feet of lot frontage adjacent to the front yard on such street, the area has a limited amount of pedestrian activity because of the low density character, and there is enough on-street parking within three hundred feet of the property to meet the off-street parking needs of such area. The total cumulative width of multiple curb cuts shall not exceed the maximum permitted width of a single curb cut. The minimum spacing between multiple curb cuts on the same property shall not be less than sixty-five feet.

(7) Shared Driveways For Residential Structures: A detached single-family residential lot that does not have frontage on the street from which access is taken may be served by a shared driveway that meets all of the standards and criteria for shared driveways set forth in the City of Boulder *Design And Construction Standards.*

(8) Minimum Driveway Width: The minimum width of a driveway leading to an off-street parking space shall not be less than nine feet. A driveway, or portion of a driveway, may be located on an adjacent property if an easement is obtained from the impacted property owner. (See figure 10 of this section.)

(see following page for continuation of Section 9-9-5)

9-9-5

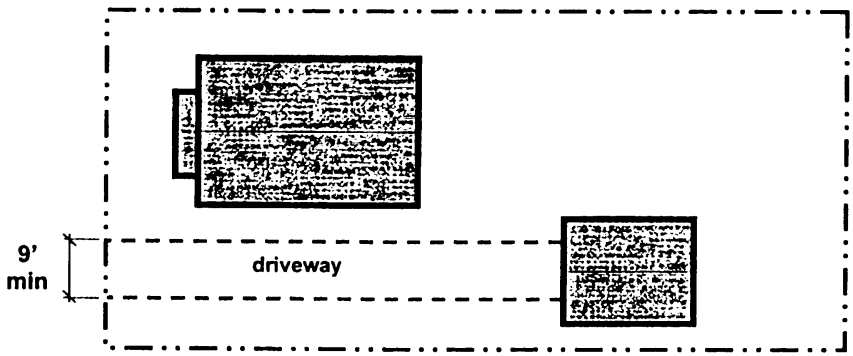

Figure 10: Minimum Driveway Width

(9) Exceptions: The requirements of this section may be modified under the provisions of section 9-2-14, "Site Review," B.R.C. 1981, to provide for safe and reasonable access. Exceptions to this section may be made if the city manager determines that:

(A) The topography, configuration of a lot, or other physical constraints makes taking access from the lowest category street, alley or public access frontage impractical, or the character of the existing area is such that a proposed or existing access to the street, alley or public access frontage is compatible with the access of properties in such area;

(B) The site access and curb cuts would not impair public use of the public right-of-way; create safety or operational problems or be detrimental to traffic flow on adjacent public streets; and

(C) The site access and curb cuts will minimize impacts to the existing on-street parking patterns.

(d) Access Permit Required: Prior to the issuance of a building permit, a proposed site access or curb cut to public right-of-way must receive any necessary permits, including:

(1) City Streets: Any site access or curb cut proposed and constructed in city rights-of-way, including, without limitation, streets and alleys, require a permit under chapter 8-5, "Work In The Public Right-Of-Way And Public Easements," B.R.C. 1981.

(2) State Highways: In addition to the permit required in paragraph (d)(1) of this section, any site access or curb cut proposed, constructed, modified, or accessing a site where a change of use is being proposed on a State Highway requires a State Highway access permit as specified in the State Highway Access Code (SHAC). Applications for a State Highway access permit shall be made to the City of Boulder, which is the Issuing Authority. The city, in conjunction with the Colorado Department of Transportation, will review all applications for conformance with SHAC design and construction requirements prior to issuance of a State Highway access permit.

Ordinance Nos. 5986 (1998); 7287 (2003).

9-9-6 **Parking Standards.**

(a) Rationale: The intent of this section is to provide adequate off-street parking for all uses, to prevent undue congestion and interference with the traffic carrying capacity of city streets, and to minimize the visual and environmental impacts of excessive parking lot paving.

(b) Off-Street Parking Requirements: The number of required off-street parking spaces shall be provided in tables 9-1, 9-2, 9-3, and 9-4 of this section:

(1) Residential Parking Requirements:

TABLE 9-1: RESIDENTIAL PARKING REQUIREMENTS BY ZONING DISTRICT AND UNIT TYPE

Zone District Standard	RR, RE, MU-1, BMS, DT 1-5, A	RMX-2, MU-2, MH, IMS	MU-3	RL, RM, RMX-1, RH-3, RH-4, RH-5, BT, BC, BR, IS, IG, IM, P	RH-1, RH-2
Minimum number of off-street parking spaces for a detached dwelling unit (DU)	1	1	n/a	1	1 space for detached DUs construction prior to 9/2/1993. Use the requirements below for DUs built after 9/2/1993
Minimum number of off-street parking spaces for an attached DU	1	1 for a 1- or 2-bedroom DU 1.5 for 3-bedroom DU 2 for a 4 or more bedroom DU	1 for 1-bedroom DU 1.5 for 2-bedroom DU 2 for a 3 or more bedroom DU	1 for 1-bedroom DU 1.5 for 2-bedroom DU 2 for 3-bedroom DU 3 for a 4 or more bedroom DU	1 space for first 500 square feet and 1 additional space for each 300 square feet or portion thereof not to exceed 4 spaces per DU
Accessible space requirement	0 spaces for the first 7 DUs, 1 space per 7 DUs thereafter				
Bicycle parking requirement	No bicycle parking spaces are required in the A, RR, RE, RL, RM, and RMX districts. In all other zoning districts, at least 3 bicycle parking spaces or 10 percent of the required off-street parking spaces, whichever is greater, are required. After the first 50 bicycle parking spaces are provided, the required number of additional bicycle parking spaces is 5 percent of the required off-street parking spaces.				

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(2) Supplemental Requirements For Residential Uses:

TABLE 9-2: SUPPLEMENTAL PARKING REQUIREMENTS FOR SPECIFIC USES IN ALL ZONES

Use	Parking Requirement
Roomers within a single-unit dwelling	1 space per 2 roomers
Residential developments in which 1-bedroom units are 60 percent or more of the total	1.25 spaces per 1-bedroom unit
Rooming house, boarding house, fraternity, sorority, group quarters, and hostels	2 spaces per 3 occupants
Efficiency units Transitional housing	1 space per DU
Bed and breakfast	1 space per guest room + 1 space for operator or owner's DU within building
Accessory dwelling unit Owner's accessory unit	1 space, paved, in addition to the requirement for the principal DU
Group homes Residential, custodial, or congregate care	Off-street parking appropriate to use and needs of the facility and the number of vehicles used by its occupants, as determined through review
Cooperative housing units	1 space per 2 occupants
Overnight shelter	1 space for each 20 occupants, based on the maximum occupancy of the facility, plus 1 space for each employee or volunteer that may be on site at any given time computed on the basis of the maximum numbers of employees and volunteers on the site at any given time
Day shelter	Use the same ratio as general nonresidential uses in the zone
Emergency shelter	1 space for each 20 occupants, based on the maximum occupancy of the facility, plus 1 space for each employee or volunteer that may be on site at any given time computed on the basis of the maximum numbers of employees and volunteers on the site at any given time, plus 1 space for each attached type dwelling unit
Existing duplexes or multi-family dwelling units in the RL-1 zoning district	Greater of 1.5 spaces per unit or number of spaces required when units were established

(3) Nonresidential Parking Requirements:

TABLE 9-3: NONRESIDENTIAL PARKING REQUIREMENTS BY ZONING DISTRICT[1]

Zone District / Standard	DT, RH MU-3 and BMS (within a parking district)	BCS, BR-1, IS, IG, IM, A	RMX-2,MU-2, IMS BMS (not in a parking district)	MU-1 MU-3 (not in a parking district)	RR, RE, RL, RM, RMX-1, BT, BC, BR-2
Minimum number of off-street parking spaces per square foot of floor area for nonresidential uses and their accessory uses	0	1:400	1:400 if residential uses comprise less than 50 percent of the floor area; otherwise 1:500	1:300 if residential uses comprise less than 50 percent of the floor area; otherwise 1:400	1:300
Accessible Parking Requirement	A proportion of spaces in any parking facility provided to serve nonresidential uses shall be reserved as accessible parking spaces according to the following: Total Number Of Parking Spaces Provided → Required Minimum Number Of Accessible Spaces 1 to 25 → 1 26 to 50 → 2 51 to 75 → 3 76 to 100 → 4 101 to 150 → 5 151 to 200 → 6 201 to 300 → 7 301 to 400 → 8 401 to 500 → 9 501 to 1,000 → 2 percent of total Over 1,000 → 20 plus 1 for each 100 over 1,000				
Bicycle Parking Requirement	No bicycle parking spaces are required in the A, RR, RE, RL, RM, and RMX districts. In all other zoning districts, at least 3 bicycle parking spaces or 10 percent of the required off-street parking spaces, whichever is greater, are required. After the first 50 bicycle parking spaces are provided, the required number of additional bicycle parking spaces is 5 percent of the required off-street parking spaces.				

Ordinance No. 7522 (2007).

(see following page for continuation of Section 9-9-6)

[1]See also table 9-4 of this section.

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(4) Supplemental Requirements For Nonresidential Uses:

TABLE 9-4: SUPPLEMENTAL PARKING REQUIREMENTS FOR NONRESIDENTIAL USES IN ALL ZONES

Use	Parking Requirement
Large daycare (less than 50 children)	Determined through review
Nonresidential uses in General Improvement Parking Districts	No parking required
Restaurant or tavern - interior seating	Greater of 1 per 3 seats, or the ratio for the use module
Restaurant or tavern - outdoor seating:	
a. Outside seats for restaurant or tavern with up to and including ≤50 interior seats if outside seats do not exceed the greater of 6 seats or 25 percent of interior seats or b. Outside seats for restaurant or tavern with more than ≥50 interior seats if outside seats do not exceed the greater of 12 seats or 20 percent of indoor seats	No additional parking spaces required
c. Outside seats for restaurants or taverns in excess of requirements of subsection a or b of this use	1 space per 3 outdoor seats in excess of exempted outdoor seats
d. Outside seats for restaurants that do not meet the parking requirement for their indoor seats	The maximum number of outdoor seats shall be calculated in accordance with the following formula: (the number of parking spaces provided on site) x 3 x (the percentage of seats permitted in subsection a or b of this use) = the maximum number of outdoor seats that may be provided without providing additional parking
Motels, hotels and bed and breakfasts	1 space per guest room or unit, plus required spaces for nonresidential uses at 1 space per 300 square feet of floor area
Theater	Greater of 1 parking space per 3 seats, or the parking ratio for the zone district
Gasoline service station	General ratio for the use zone plus storage of 2 vehicles per service bay
Religious assembly:	(See paragraph (f)(8) of this section for permitted parking reductions)
a. Religious assemblies created prior to 9/2/1993	1:300

Use	Parking Requirement
b. Religious assemblies created after 9/2/1993	1 space per 4 seats, or 1 per 50 square feet of assembly area if there are no fixed seats - assembly area includes the largest room plus any adjacent rooms that could be used as part of the assembly area
c. Uses accessory to a religious assembly and created after 9/2/1993	Uses accessory to the religious assembly shall meet the standards applicable to the use as if the use is a principal use
d. Total parking of a religious assembly and accessory uses created after 9/2/1993	Parking for the religious assembly use and any accessory use shall be for the use which has the greatest parking requirement
Small recycling collection facility	1 space for attendant if needed
Large recycling collection facility	General parking ratio for the zone plus 1 space for each commercial vehicle operated by the facility
Recycling processing facility	Sufficient parking spaces for a minimum of 10 customers, or the peak load, whichever is greater, plus 1 space for each commercial vehicle operated by the facility

Ordinance No. 7522 (2007).

(c) General Parking Requirements:

(1) Rounding Rule: For all parking space requirements resulting in a fraction, the fraction shall be:

(A) Rounded to the next higher whole number when the required number of spaces is five or less; or

(B) Rounded to the next lower whole number when the required number of spaces is more than five.

(2) Parking Requirements For Lots In Two Or More Zoning Districts: For lots that have more than one zoning designation, the required parking for the use(s) on the lot may be provided on any portion of the lot, subject to the provisions of this title.

(d) Parking Design Standards:

(1) Location Of Open Or Enclosed Parking: Open or enclosed parking areas are subject to the following requirements:

(A) No parking areas shall be located in any required landscaped setback abutting a street. However, in RR, RE, or RL-1 districts, if all off-street parking requirements of this chapter have been met, persons may park up to two additional vehicles in the driveway leading to the parking area. The requirements of this subsection may be varied to allow the required off-street parking to be located within the front yard setback pursuant to a variance being approved by the BOZA per subsection 9-2-3(j), B.R.C. 1981.

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(B) Required parking areas shall be located on the lot or parcel containing the use for which they are required.

(C) No parking areas shall be located closer than ten feet from a side yard adjacent to a public street in the BMS and MU-2 zoning districts.

(2) Parking Stall Design Standards: Parking stalls shall meet the following standards, based on stall type. In all cases, the minimum maneuvering area to the rear of any parking stall shall be no less than twenty-four feet. If the proposed use anticipates long-term parking as the major parking demand, the city manager may reduce those minimum parking stall sizes.

TABLE 9-5: STANDARD PARKING DIMENSION STANDARDS

Parking Angle (degrees)	Curb Length C	Stall D	Aisle Width		Bay Width	
			One Way A1	Two Way A2	One Way B1	Two Way B2
90	9'	19'	24'	24'	62'	62'
60	10.4'	21'	18'	22'	60'	64'
45	12.7'	19.8'	13'	20'	52.6'	59.6'
30	18'	17.3'	12'	20'	45.6'	54.6'
0	23'	8'	12'	20'	20'	36'

TABLE 9-6: SMALL CAR PARKING DIMENSION STANDARDS

Parking Angle (degrees)	Curb Length C	Stall D	Aisle Width		Bay Width	
			One Way A1	Two Way A2	One Way B1	Two Way B2
90	7.75'	15'	24'	24'	54'	54'
60	9.2'	17'	18'	22'	52'	56'
45	11.2'	15.1'	13'	20'	45.2'	52.2'
30	15.5'	14.3'	12'	20'	40.6'	48.6'
0	20'	8'	12'	20'	28'	36'

(see following page for continuation of Section 9-9-6)

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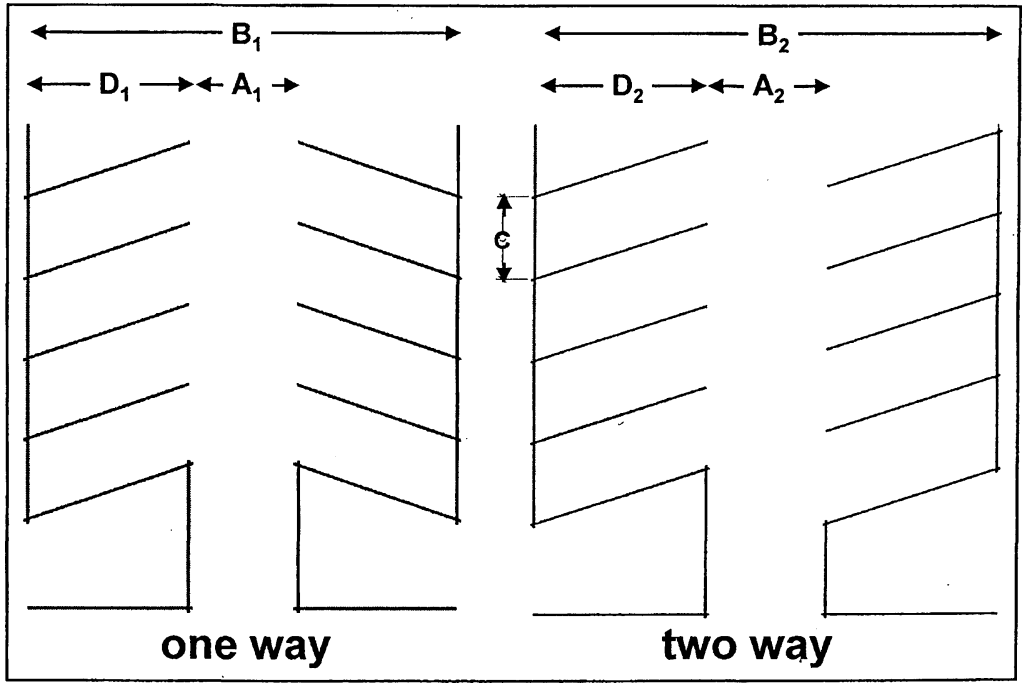

Figure 11: Parking Dimensions Diagram

(A) Standard Stalls: All off-street standard parking spaces shall meet the minimum size requirements as indicated in table 9-5 and figure 11 of this section.

Ordinance No. 7522 (2007).

(B) Small Car Stalls:

(i) Small Car Stalls Allowed: A proportion of the total spaces in each parking area may be designed and shall be signed for small car use according to table 9-7 of this section.

TABLE 9-7: SMALL CAR STALLS

Total Spaces Required	Allowable Small Car Stalls
5 – 49	40 percent
50 – 100	50 percent
101 or greater	60 percent

(ii) Dimensional Standards: All small car stalls shall meet the minimum size requirements as indicated in table 9-6 and figure 11 of this section.

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(C) Accessible Parking Stalls:

(i) Dimensional Standards: Accessible parking spaces shall be eight feet wide and nineteen feet in length, with the standard width drive lane. Individual spaces shall have an additional five foot-wide, diagonally striped aisle abutting the passenger side of the space. If such spaces are provided in adjacent pairs, then one five foot aisle may be shared between the two spaces. Accessible parking spaces shall conform to the construction and design standards in the City of *Boulder Design And Construction Standards* and be located to maximize convenience of access to the facility and minimize the need to cross the flow of vehicular traffic. (See figure 12 of this section.)

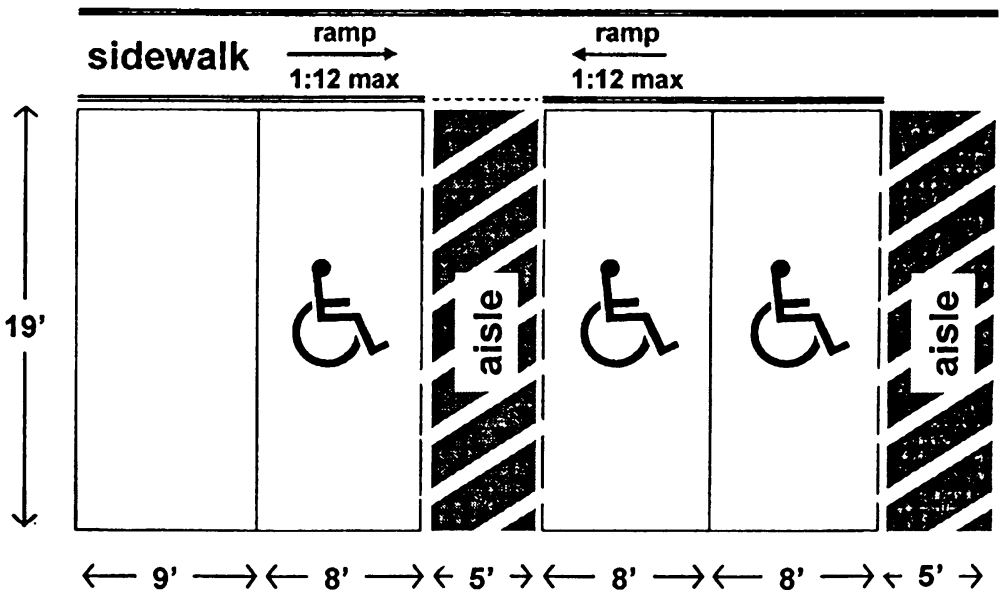

Figure 12: Accessible Parking Space Design

Accessible spaces must measure eight feet by nineteen feet and be flanked by a five foot diagonally-striped aisle. Two adjacent spaces may share a single five foot aisle. The aisle must be at the same grade as the accessible space and any adjacent sidewalk must slope to meet the grade of the aisle. The slope may not exceed 1:12.

(ii) Parking Waiver For Previously Conforming Accessible Parking Spaces: If a previously conforming required accessible parking space was rendered nonstandard by the amendment to subparagraph (d)(2)(C)(i) of this section which required the five foot aisle, and its owner desires to add such an aisle, and the addition will reduce the available parking below that required for the premises, such owner may apply to the city manager for a parking waiver. The manager shall grant such a waiver insofar as it is necessary and appropriate to permit all required parking spaces for the disabled to be conforming spaces.

Ordinance No. 7522 (2007).

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(3) Drive Aisles:

(A) There is a definite and logical system of drive aisles to serve the entire parking area. Drive aisles shall have a minimum eighteen-foot width clearance for two-way traffic and a minimum ten foot width clearance for one-way traffic unless the city manager finds that the parking stalls to be served require a greater or lesser width. A physical separation or barrier, such as vertical curbs, may be required in order to separate parking areas from the travel lanes. (See figure 13 of this section.)

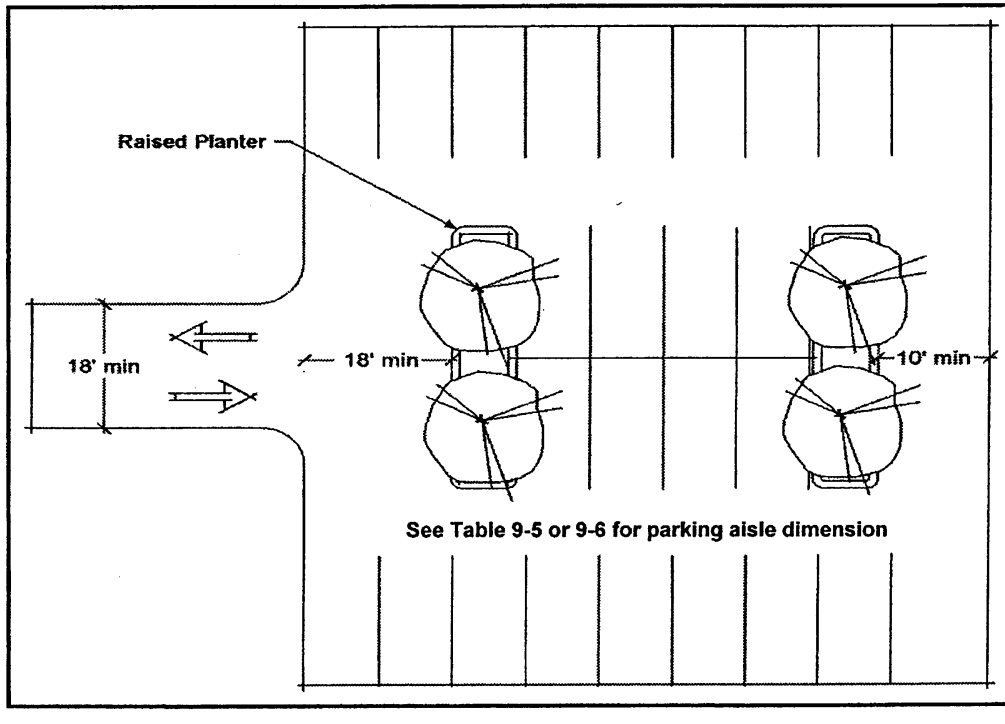

Figure 13: Drive Aisles

Drive aisles provide access to parking areas but not to individual spaces. Drive aisles serving two-way traffic must be a minimum of eighteen feet wide. Drive aisles serving one-way traffic must be a minimum of ten feet wide. Raised planters, curbs, or other physical barriers may be necessary to separate parking areas from travel lanes. See tables 9-5 and 9-6 of this section for parking aisle dimensions.

(B) Turnarounds are provided for dead-end parking bays of eight stalls or more. Turnarounds must be identified with a sign or surface graphic and marked "no parking." The use of accessible parking spaces as the required turnaround is not permitted. (See figure 14 of this section.)

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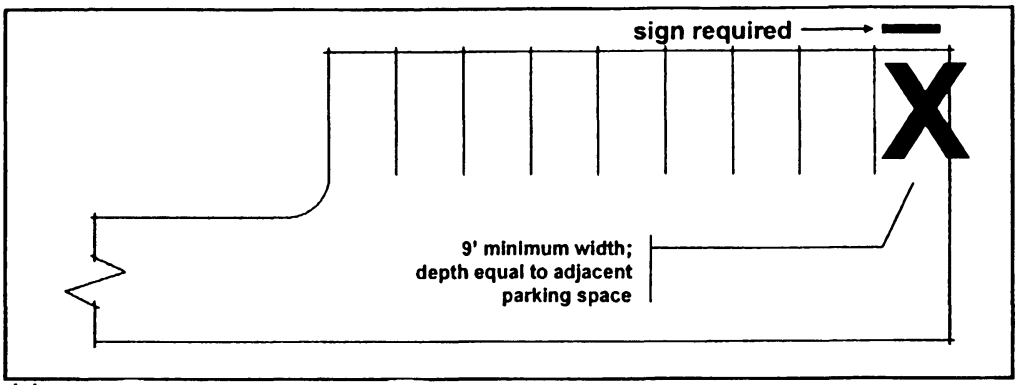

Figure 14: Parking Turnaround Spaces

In dead-end parking bays with eight or more stalls, a turnaround space must be provided and properly marked.

(4) Parking Access:

(A) No parking stall is located so as to block access by emergency vehicles.

(B) Driveways located in required yards are situated at an angle of approximately ninety degrees to the street to which they connect.

(5) Parking Design Details:

(A) If parking lot lighting is provided, all lighting shall comply with section 9-9-16, "Lighting, Outdoor," B.R.C. 1981.

(B) All parking areas are paved with asphalt, concrete, or other similar permanent, hard surface except for parking areas for detached dwelling units.

(C) Suitable curbs or barriers to protect public sidewalks and to prevent parking in areas where parking is not permitted are provided, except for parking areas for detached dwelling units.

(D) All open off-street parking areas with five or more spaces shall be screened from the street and property edges, and shall provide interior lot landscaping in accordance with section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981.

(E) Driveways parallel to public sidewalks are separated from such walks by an eight-foot landscaped area or a solid wall at least forty-two inches in height.

(F) Wheel or bumper guards are located so that no part of a vehicle extends beyond a parking area boundary line, intrudes on a pedestrian way, or contacts any wall, fence, or planting. A vehicular overhang may, however, intrude into a private pedestrian way located on the perimeter of a parking lot if the pedestrian way is not less than six feet in width. (See figure 15 of this section.)

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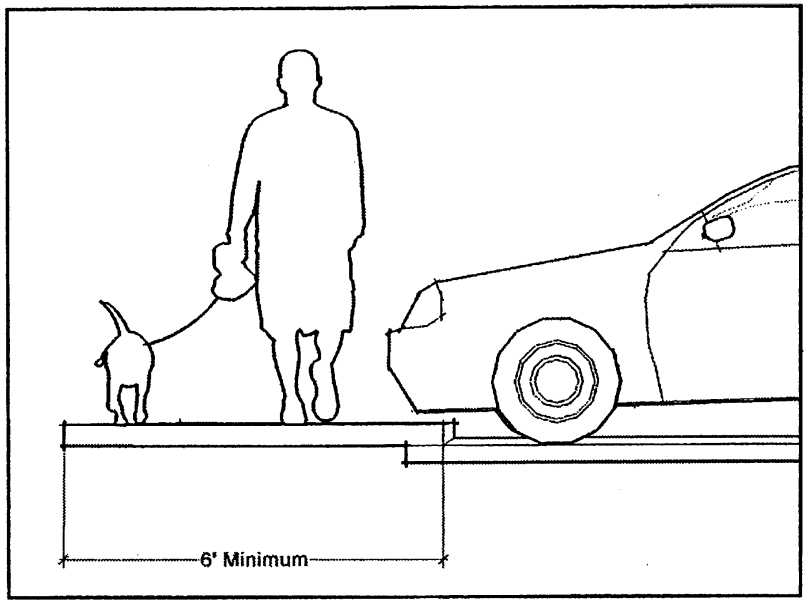

Figure 15: Permitted Vehicular Overhang

(G) Within the DT zoning districts, at-grade parking is not permitted within thirty feet of a street right-of-way unless approved as part of a site review approval under section 9-2-14, "Site Review," B.R.C. 1981. For the purpose of this subparagraph, the term "street" does not include "alley."

(6) Parking Study: At the discretion of the city manager, a parking study may be required to demonstrate that adequate parking is provided either for parking provided per zoning requirements or in conjunction with a parking reduction request. The scope of a parking study may consist of analysis of any or all of the following factors: joint use of parking areas, peak parking demand for each land use, unusual parking demand based on type of land use, availability of nearby on-street parking, vicinity of high frequency transit, and Institute of Transportation Engineers Parking Generation estimates.

(e) Parking Deferrals:

(1) Criteria For Parking Deferral: The city manager may defer the construction and provision of up to ninety percent of the off-street parking spaces required by this section, in an industrial district, thirty-five percent in a commercial district, and twenty percent in any other district if an applicant demonstrates that:

Ordinance No. 7522 (2007).

(A) The character of the use lowers the anticipated need for off-street parking, and data from similar uses establishes that there is not a present need for the parking;

(B) The use is immediately proximate to public transportation that serves a significant proportion of residents, employees, or customers;

(C) There is an effective private or company car pool, van pool, bus, or similar group transportation program; or

(D) The deferred percentage of residents, employees, and customers regularly walk or use bicycle or other nonmotorized vehicular forms of transportation.

(2) Parking Deferral With A Concurrent Use Review: If a proposed use requires both a review pursuant to section 9-2-15, "Use Review," B.R.C. 1981, and a public hearing, the city manager will make a recommendation to the approving agency to approve, modify and approve, or deny the parking deferral as part of the use review approval.

(3) Site Plan: Applicants for a parking deferral shall submit a site plan demonstrating that the total required parking can be accommodated on-site and designating the land to be reserved for future parking.

(4) Landscaping: Landscaping shall be provided as required under section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, and shall be indicated on the site plan.

(5) Notice Of Change Of Condition: No person having an interest in property subject to a parking deferral shall fail to notify the city manager of any change in the conditions set forth in paragraph (e)(1) of this section that the manager considered in granting the deferral.

(6) Construction Of Deferred Parking Areas: The city manager may require the construction of the deferred parking at any time upon thirty days' written notice by mail to commence construction of such parking. No person having an interest in the property shall fail to comply with such a notice.

(f) Parking Reductions:

(1) Parking Reduction: The city manager may grant a parking reduction for commercial developments, industrial developments and mixed use developments to allow the reduction of at least one parking space, with the total reduction not to exceed twenty-five percent of the required parking. The city manager may grant a parking reduction exceeding twenty-five percent for those uses that comply with the requirements of subparagraph (f)(1)(B) of this section. Parking reductions are approved based on the operating characteristics of a specific use. No person shall change a use of land that is subject to a parking reduction except in compliance with the provisions of this subsection.

(A) Parking Reduction For Housing For The Elderly: The city manager may reduce by up to seventy percent the number of parking spaces required by this chapter for governmentally sponsored housing projects for the elderly.

(B) Uses With Nonconforming Parking: The city manager is authorized to approve a parking reduction to allow an existing nonresidential use that does not meet the current off-street parking requirements of subsection (b) of this section, to be replaced or expanded subject to compliance with the following standards:

(i) An existing permitted nonresidential use in an existing building may be replaced by another permitted nonresidential use if the new use has the same or lesser parking requirement as the use being replaced.

(ii) A nonconforming nonresidential use in an existing building may be replaced by a conforming nonresidential use or another nonconforming nonresidential use, pursuant to

subsection 9-10-3(c), B.R.C. 1981, if the permitted or nonconforming replacement use has the same or lesser parking requirement as the use being replaced

(iii) An existing or replacement nonresidential use, whether conforming or nonconforming, that does not meet current parking requirements, shall not be expanded in floor area, seating, or be replaced by a use that has an increased parking requirement unless a use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981, and a corresponding parking reduction pursuant to this subsection (f) are approved.

(iv) Before approving a parking reduction pursuant to this subsection, the city manager shall evaluate the existing parking arrangement to determine whether it can accommodate additional parking or be rearranged to accommodate additional parking in compliance with the design requirements of subsection (d) of this section. If the city manager finds that additional parking can reasonably be provided, the provision of such parking shall be a condition of approval of the requested reduction.

(v) A nonconforming use shall not be replaced with a use, whether conforming or nonconforming, that generates a need for more parking.

(2) Residential Parking Reductions: Parking reductions for residential projects may be granted as part of a site review approval under section 9-2-14, "Site Review," B.R.C. 1981.

(3) Parking Reduction Criteria: Upon submission of documentation by the applicant of how the project meets the following criteria, the city manager may approve reductions of up to and including twenty-five percent of the parking requirements of this section (see tables 9-1, 9-2, 9-3 and 9-4), if the manager finds that:

Ordinance No. 7522 (2007).

(A) The parking needs of the use will be adequately served through on-street parking or off-street parking;

(B) A mix of residential uses with either office or retail uses is proposed, and the parking needs of all uses will be accommodated through shared parking;

(C) If joint use of common parking areas is proposed, varying time periods of use will accommodate proposed parking needs; or

(D) The applicant provides an acceptable proposal for an alternate modes of transportation program, including a description of existing and proposed facilities, proximity to existing transit lines, and assurances that the use of alternate modes of transportation will continue to reduce the need for on-site parking on an ongoing basis.

(4) Alternative Parking Reduction Standards For Mixed Use Developments: The parking requirements in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, may be reduced if the following standards are met. These standards shall not be permitted to be combined with the parking reduction standards in subsections (f)(3) and (f)(5) of this section, unless approved as part of a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981. A mixed use development may reduce that amount of required parking by ten percent in the BMS, IMS, MU-1, MU-2, MU-3 and RMX-2 zoning districts, or in all other nonresidential zoning districts in section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, a twenty-five percent parking reduction if the following requirements are met:

Ordinance No. 7522 (2007).

(A) The project is a mixed use development that includes, as part of an integrated development plan, both residential and nonresidential uses. Residential uses shall comprise at least thirty-three percent of the floor area of the development; and

(B) The property is within a quarter of a mile walking distance to a high frequency transit route that provides service intervals of fifteen minutes or less during peak periods. This measurement shall be made along standard pedestrian routes from the property.

(5) Limiting Factors For Parking Reductions: The city manager will consider the following additional factors to determine whether a parking reduction may be appropriate for a given use:

(A) A parking deferral pursuant so subsection (e) of this section, is not practical or feasible for the property.

(B) The operating characteristics of the proposed use are such that granting the parking reduction will not cause unreasonable negative impacts to the surrounding property owners.

(C) The parking reduction will not limit the use of the property for other uses that would otherwise be permitted on the property.

(6) Parking Reduction With A Concurrent Use Review: If a proposed use requires both a review pursuant to section 9-2-15, "Use Review," B.R.C. 1981, and a public hearing, the city manager will make a recommendation to the approving agency to approve, modify and approve, or deny the parking reduction as part of the use review approval.

(7) No Changes To Use: No person benefiting from a parking reduction shall make any changes to the use that would increase parking.

(8) Parking Reductions For Religious Assemblies: The city manager will grant a parking reduction to permit additional floor area within the assembly area of a religious assembly which is located within three hundred feet of the Central Area General Improvement District if the applicant can demonstrate that it has made arrangements to use public parking within close proximity of the use and that the building modifications proposed are primarily for the weekend and evening activities when there is less demand for use of public parking areas.

(g) Bicycle Parking:

(1) Required Bicycle Spaces: Bicycle parking spaces must be provided as required by tables 9-1 and 9-3 of this section.

(2) Bicycle Facilities: Both bicycle lockers and racks, shall:

(A) Provide for storage and locking of bicycles, either in lockers or medium-security racks or equivalent installation in which both the bicycle frame and the wheels may be locked by the user.

(B) Be designed so as not to cause damage to the bicycle.

(C) Facilitate easy locking without interference from or to adjacent bicycles.

(D) Consist of racks or lockers anchored so that they cannot be easily removed and of solid construction, resistant to rust, corrosion, hammers, and saws.

(E) Be consistent with their environment in color and design and be incorporated whenever possible into building or street furniture design.

(F) Be located in convenient, highly visible, active, well-lighted areas but shall not interfere with pedestrian movements.

(h) Parking And Storage Of Recreational Vehicles: No person shall park, store, or use a travel trailer, tent trailer, pickup camper or coach, motorized dwelling, boat and boat trailer, snow vehicle, cycle trailer, utility trailer and van, horse trailer or van, or similar vehicular equipment in a residential district unless the following requirements are met:

(1) Such vehicular equipment is stored or parked on private property no closer than eighteen inches to any proposed or existing public sidewalk and so as not to project into the public right-of-way;

(2) On corner lots, any such vehicular equipment that exceeds thirty-six inches in height is not parked in the triangular area formed by the three points established by the intersection of property lines at the corner and the points thirty feet back from this intersection along each property line;

(3) No travel trailer, tent trailer, pickup camper or coach, motorized dwelling, or van is used for the conduct of business or for living or housekeeping purposes except when located in an approved mobile home park or in a campground providing adequate sanitary facilities;

(4) Any travel trailer, tent trailer, detached pickup camper or coach, boat and boat trailer, cycle trailer, utility trailer and van, horse trailer and van parked or stored out-of-doors is adequately blocked or tied down or otherwise secured so that such vehicle does not roll off the lot and is not moved about by high winds; and

(5) No vehicular equipment regulated by this section is stored out-of-doors on a residential lot unless it is in condition for safe and effective performance of the functions for which it is intended.

Ordinance No. 7484 (2006).

9-9-7 **Sight Triangles.**

(a) Sight Triangle Required: Where a driveway intersects a public right-of-way or where property abuts the intersection of two public rights-of-way, unobstructed sight distance as described in subsection (c) of this section shall be provided at all times within the sight triangle area on the property adjacent to the intersection in order to ensure that safe and adequate sight distance is provided for the public use of the right-of-way.

(b) Obstruction Prohibited: No person shall place or maintain any structures, fences, landscaping, or any other objects within any sight triangle area described in subsection (c) of this section that obstructs or obscures sight distance visibility through such structures, fencing, landscaping, or other objects by more than twenty-five percent of the total view in the vertical plane above the sight triangle area between a height of thirty inches and ninety-six inches above the roadway surface, except for the following:

(1) Landscaping, structures, or fences that protrude no more than thirty inches above the adjacent roadway surface may be permitted within the sight triangle area.

(2) Trees may be planted and maintained within the sight triangle area if all branches are trimmed to maintain a clear vision for a vertical height of ninety-six inches above the roadway surface and the location of the trees planted, based on the tree species expected

mature height and size, does not obstruct sight visibility by more than twenty-five percent of the sight triangle area.

Ordinance No. 7522 (2007).

(c) Sight Triangle Area: For purposes of this section, the sight triangle area is:

(1) Driveways: The area formed at a corner intersection of public right-of-way and a driveway, whose two sides are fifteen feet, measured along the right-of-way line of the street and the edge of the driveway, and whose third side is a line connecting the two sides (see figure 16 of this section);

(2) Alleys: The area formed at a corner intersection of an alley public right-of-way and a street right-of-way whose two sides are fifteen feet, measured along the right-of-way line of the alley and the right-of-way line of the street, and whose third side is a line connecting the two sides (see figure 16 of this section); or

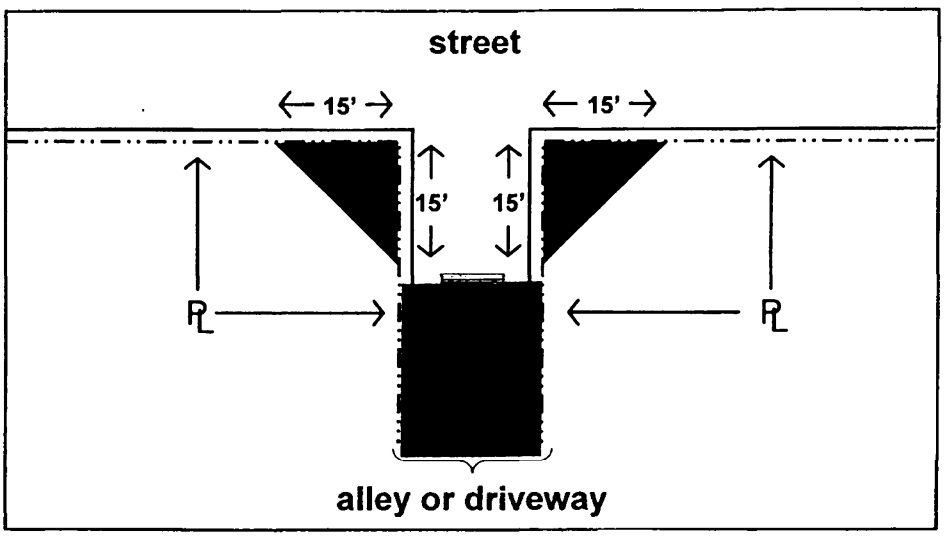

Figure 16: Sight Triangle at the Intersection of a Driveway or Alley and a Street

The shaded area is required to be kept free of all structures, landscaping, fences, and other materials. The triangle is measured from the property line within alleys and the edge of pavement for driveways, as in this example.

(3) Streets: The area formed at a corner intersection of two public rights-of-way lines defined by a width of dimension X and a length of dimension Y as shown in table 9-8 and figure 17 of this section. The Y dimension will vary depending on the speed limit and configuration of the intersecting street, and is outlined in the table below. The X distance shall be thirteen feet measured perpendicular from the curb line of the intersecting street. This triangular area is significant for the determination of sight distance requirements for right angle intersections only.

9-9-7

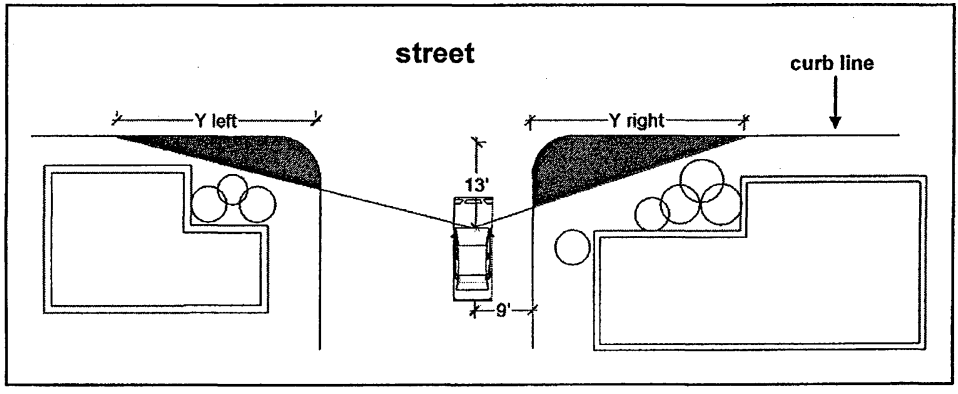

Figure 17: Sight Triangle at Intersection of Streets

The shaded area is required to be kept free of all structures, fences, landscaping and other materials. The size of the sight triangle is based on the size of the road and speed limit, as shown in the table below.

TABLE 9-8: SIGHT TRIANGLE REQUIREMENTS

Lane Usage	Additional Facilities	Speed Limit	Y Distance (Left)	Y Distance (Right)
2 lanes	None	25 mph	155 feet	105 feet
		30/35 mph	210 feet	145 feet
	Bike lane or on-street parking	25 mph	110 feet	85 feet
		30/35 mph	150 feet	115 feet
	Bike lane and on-street parking	25 mph	90 feet	75 feet
		30/35 mph	125 feet	100 feet
3 or 4 lanes	None	25 mph	155 feet	80 feet
		30/35 mph	210 feet	110 feet
		40/45 mph	265 feet	135 feet
	Bike lane or on-street parking	25 mph	110 feet	65 feet
		30/35 mph	150 feet	90 feet
		40/45 mph	195 feet	115 feet
	Bike lane and on-street parking	25 mph	90 feet	60 feet
		30/35 mph	125 feet	80 feet
		40/45 mph	160 feet	100 feet

Lane Usage	Additional Facilities	Speed Limit	Y Distance (Left)	Y Distance (Right)
5 or more lanes	None	25 mph	155 feet	60 feet
		30/35 mph	210 feet	85 feet
		40/45 mph	265 feet	110 feet
	Bike lane or on-street parking	25 mph	110 feet	55 feet
		30/35 mph	150 feet	75 feet
		40/45 mph	195 feet	95 feet
	Bike lane and on-street parking	25 mph	90 feet	50 feet
		30/35 mph	125 feet	65 feet
		40/45 mph	160 feet	85 feet

(d) Modifications: The requirements of this section may be modified by the city manager, pursuant to section 9-2-2, "Administrative Review Procedures," B.R.C. 1981, if accepted engineering practice would indicate that a modified visibility distance, either greater or lesser, would be acceptable or necessary for the safety of pedestrians, motorists, and bicyclists.

(e) Violations: No person shall violate or fail to prevent or remedy any violation of the provisions of this section on such property. When a violation of this section is observed, the city manager will provide a written notice to correct the condition to the property owner or occupant, whichever is applicable. Personal service of such notice or mailing such notice to the last known address of the owner of the premises by certified mail shall be deemed sufficient service. Any such notice shall describe the violation, describe the corrective measures necessary, and set forth a time limit for compliance, dependent upon the hazard created, which time limit shall not be less than seven days from the service of the notice.

(f) Failure To Comply: In the event that there is failure to comply with the notice when the time limit prescribed therein has expired, the city manager may trim or cause to be trimmed, or otherwise remove the obstruction described in the notice. Such action shall not preclude any prosecution for violation of the terms of this section. The costs of such action shall be paid by the property owner, and, if not paid, may be certified by the city manager to the county treasurer for collection as taxes.

(g) Public Nuisance: Notwithstanding any other provision in this section, any landscaping, structure, fence or other obstruction which the city manager deems as an immediate and serious danger to the public, is hereby declared a public nuisance and shall be trimmed or removed within twenty-four hours after notification by the city manager. If the property owner or occupant fails to do so, the city manager may trim or remove the nuisance. The costs of such action shall be paid by the property owner, and, if not paid, may be certified by the city manager to the county treasurer for collection as taxes.

Ordinance No. 5986 (1998).

9-9-8 Reservations, Dedication, And Improvement Of Rights-Of-Way.

(a) Purpose: The city is authorized to acquire right-of-way by purchase, gift, or condemnation. Additionally, the city is also instructed to establish and maintain a city street system pursuant to sections 43-2-123 to 43-2-125, C.R.S. The purposes of this section are:

(1) To ensure public access to all lots and parcels of land and for the provision of fire, police and emergency services, mail delivery, garbage collection and recycling services, and public and quasi-public utility services.

(2) To promote and create an interconnected city through acquisition of right-of-way to allow for transportation systems that provide for the integrated and multi-modal movement of all modes of transportation including, without limitation, pedestrians, bicycles, skaters, and motor vehicles.

(3) To create an interconnected transportation system that will enhance the safe, convenient, and efficient movement of all modes of transportation.

(4) To provide for the installation or placement of utility services including, without limitation, water, sewer, electricity, gas, drainage, telephone, and cable television services for properties abutting city streets and alleys.

(5) To establish minimum standards for public rights-of-way and public improvements in order to ensure the consistent and equitable provision of public streets and alleys.

(b) Conformance With The Comprehensive Plan And Right-Of-Way Plans: The arrangement, character, extent, and location of all rights-of-way shall conform to the Boulder Valley Comprehensive Plan and to all right-of-way plans approved by the city council, including, without limitation, the North Boulder Right-of-Way Plan and the Transportation Master Plan. No person shall place any structure in an area designated as a public street, alley, bike path, path, or sidewalk in the Boulder Valley Comprehensive Plan or any other right-of-way plan approved by the city council.

(c) Reservation Of Right-Of-Way:

(1) Streets Designated As Collectors Or Greater: If the Boulder Valley Comprehensive Plan requires a greater width for an abutting street than thirty feet from the centerline, and the additional right-of-way is not required by subsection (d) of this section to serve the subject property, then the area beyond thirty feet from the centerline shall be reserved for future purchase by the city.

(2) Approved Right-Of-Way Plans: All right-of-way on the property as shown on the Boulder Valley Comprehensive Plan, Transportation Master Plan, or approved right-of-way plan shall be reserved for future dedication to or purchase by the city.

(3) Modification Of Right-Of-Way Plans: Rights-of-way, not designated by the Transportation Master Plan, required to be reserved or dedicated pursuant to paragraph (c)(2) of this section may be modified. The city manager is authorized to adopt rules pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, as amended, to provide for the modification of right-of-way plans. For the purposes of this paragraph, "modification" means a change which introduces new elements into the details, or cancels some of the elements, but leaves the general purpose and effect of the plan intact. A modification may include, without limitation, moving the location of a street or right-of-way, changing the width of a right-of-way, or the design standards for a street cross section.

(4) Right-Of-Way Width: A reservation area for right-of-way shown on an approved street plan shall not be less than sixty feet in width. The reservation area shall be wider if an approved street plan anticipates the need for a larger street.

(5) Setback From Reservation Area: The setback shall be as set forth in chapter 9-7, "Form And Bulk Standards," B.R.C. 1981, or the reservation area boundary, whichever is greater.

(d) Dedication Of Right-Of-Way: At time of annexation, subdivision, or issuance of a building permit for new development, or redevelopment involving a change in use or the addition of a dwelling unit, all street and alley rights-of-way abutting, crossing, and necessary to serve the subject property as designated in the Boulder Valley Comprehensive Plan or an approved right-of-way plan, or as proposed as part of any project or development proposal, shall be dedicated to the city as set forth in this section.

(1) Right-Of-Way Dedication Required For New Streets And Alleys: The right-of-way required for a new street or alley shall be wide enough to include and accommodate all of the necessary public improvements: the paved roadway section including, without limitation, travel lanes, turning and speed change lanes, transit lanes, bicycle lanes, and parking lanes; curbs and gutters or drainage swales; roadside and median landscaping areas; sidewalks; and any necessary utility corridors. The minimum width of right-of-way to be dedicated shall be:

(A) New streets - sixty feet;

(B) New alleys - twenty feet; or

(C) In accordance with the City of Boulder *Design And Construction Standards*, approved pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, for residential streets and alleys.

(2) Right-Of-Way Dedication Along Existing Streets: The city manager will require dedication of additional right-of-way along existing streets if the impacts generated by the existing use or new use are roughly proportionate to the dedication required, after considering any of the following conditions:

(A) The existing right-of-way abutting the subject property is narrower than the right-of-way abutting adjacent properties within the street block and is narrower than the minimum right-of-way width required by paragraph (d)(1) of this section.

(B) The existing street right-of-way has not previously been improved with street paving, curbs and gutters, and sidewalks meeting previous or current city standards and is narrower than the minimum right-of-way width required by paragraph (d)(1) of this section.

(C) Additional right-of-way is required pursuant to paragraph (d)(3) of this section.

(3) Additional Right-Of-Way Dedication: The city manager may require right-of-way dedication in excess of the right-of-way dedication requirements set forth in this subsection if public right-of-way improvements that provide a benefit to and are necessary to serve the subject property or development require additional right-of-way.

(4) Dedication Not Required: Dedication of additional right-of-way will not be required along existing streets or alleys where the existing right-of-way has been improved with street paving, curbs and gutters, and sidewalks meeting previous or current city standards and the impacts of proposed development or redevelopment would not require additional public right-of-way improvements as set forth in paragraph (d)(3) of this section, or where the existing right-of-way is wider than the minimum right-of-way width set forth in paragraph (d)(1) of this section and the impacts of proposed development or redevelopment would not require additional public right-of-way improvements pursuant to paragraph (d)(3) of this section.

(e) Dedication Of Rights-Of-Way For Other Than Streets And Alleys: Rights-of-way for utilities and transportation movements other than streets or alleys shall be dedicated to the city, purchased by the city, or funds sufficient for purchase shall be provided to the city, if and to the extent that such right-of-way provides a benefit to a property or offsets an impact of the

annexation, subdivision, or development of the property, as the case may be, that is roughly proportionate to the cost of the dedication.

(f) Apportionment Of Costs: The city manager may assess the acquisition costs of any right-of-way area and all public improvements required to construct a street, alley, bike path, path, or sidewalk thereon to other property owners in the surrounding area, if and to the extent that the street provides a benefit to a property that is roughly proportionate to the cost of such dedication or improvement. Such costs shall be collected no later than the time of annexation, subdivision, issuance of a building permit for new development, or redevelopment involving a change of use or the addition of at least one dwelling unit.

(g) Right-Of-Way Improvements: All street, alley, or pedestrian rights-of-way abutting, crossing, and necessary to serve the subject property shall be improved at the time of issuance of a building permit for new development, or redevelopment involving a change of use or the addition of a dwelling unit[1]. All right-of-way improvements shall meet the following standards:

(1) Right-Of-Way Improvements For New Streets And Alleys: The right-of-way improvements required for new streets and alleys shall meet or exceed the following minimum standards:

(A) The right-of-way improvements shall include the following elements: the roadway paving including, without limitation, travel lanes, turning and speed change lanes, transit lanes, bicycle lanes, and parking lanes; curbs and gutters or drainage swales; roadside and median landscaping; sidewalks and trails; and any necessary utilities.

(B) The minimum right-of-way improvements for new streets and alleys shall meet or exceed the base street standards, or residential street and alley standards approved pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, required in the City of Boulder *Design And Construction Standards*.

(2) Right-Of-Way Improvements To Existing Streets And Alleys: The city manager may require right-of-way improvements up to the half width or centerline of the right-of-way along existing streets and alleys given any of the following conditions:

(A) The existing street right-of-way has not previously been improved with street paving, curbs and gutters, and sidewalks meeting previous or current city standards.

(B) Additional right-of-way improvements are required pursuant to paragraph (d)(3) of this section.

(C) Sidewalk construction or reconstruction is required by section 8-2-17, "When Sidewalks Are To Be Constructed Or Reconstructed," or 8-2-22, "Sidewalk Required Prior To Issuance Of Building Permit," B.R.C. 1981.

(3) Additional Right-Of-Way Improvements: The city manager may require right-of-way improvements in excess of the right-of-way improvement requirements set forth in this section, if public right-of-way improvements that directly benefit and are necessary to serve the subject property or development require additional right-of-way improvements.

(4) Improvements Not Required: Right-of-way improvements will not be required if:

(A) The city manager has determined that right-of-way improvements are not appropriate at the time of development or redevelopment, given the future construction of right-of-way improvements completed as part of a planned or scheduled public improvements project

[1]See also section 8-2-23, "Alley Paving Required Prior To Issuance Of Building Permit," B.R.C. 1981.

as designated in the Boulder Valley Comprehensive Plan, Transportation Master Plan, capital improvements program, or an approved right-of-way plan, and the city manager has accepted a suitable and adequate financial guarantee to guarantee the completion of the minimum and required right-of-way improvements that directly benefit and are necessary to serve the subject property.

(B) Along existing streets or alleys, the existing right-of-way has been improved with street paving, curbs and gutters, and sidewalks meeting previous or current city standards and the impacts of proposed development or redevelopment would not require additional public right-of-way improvements pursuant to this section.

(C) The right-of-way improvement would be for an alley located in low-density and medium-density residential zoning districts; such alley improvements are only required as part of an assessment district.

(h) Subdivision Requirements: The requirements of this section are in addition to those prescribed by chapter 9-12, "Subdivision," B.R.C. 1981.

Ordinance Nos. 5747 (1995); 5986 (1998); 6093 (1999).

9-9-9 Off-Street Loading Standards.

(a) Off-Street Loading Requirements: Any use having or requiring off-street parking shall provide an off-street delivery/loading space. The spaces shall be sufficient in size to accommodate vehicles which will serve the use. The location of the delivery/loading space shall not block or obstruct any public street, parking area, parking area circulation, sidewalk or pedestrian circulation area. Loading areas shall be screened pursuant to paragraph 9-9-12(d)(5), B.R.C. 1981.

(b) Modifications: The off-street loading requirements may be modified by the city manager if the property owner demonstrates that the use of the building does not require an off-street loading space and that the safety of pedestrians, motorists, and bicyclists is not impaired. Process requirements for such administrative modifications are contained in section 9-2-3, "Variances And Interpretations," B.R.C. 1981.

9-9-10 Easements.

(a) Off-Site Easements: No person shall construct or maintain a part of any structure that projects onto an adjacent property without a recorded easement or covenant granting such a right from the owner of such adjacent property.

(b) Structures In Public Easements Prohibited: No person shall construct or maintain a part of any structure in a public easement without first obtaining the written consent of the easement owner.

(c) Structures In Private Easements: No person shall construct or maintain a part of any structure in a private easement without:

(1) Obtaining the written consent of the easement owner, or

(2) Providing notice to the easement owner and demonstrating, to the satisfaction of the city manager, that the applicant has the appropriate property interest necessary to construct such structure.

9-9-11 **Useable Open Space.**

(a) Purpose Of Open Space: The purpose of useable open space is to provide indoor and outdoor areas for passive and active uses to meet the needs of the anticipated residents, tenants, employees, customers and visitors of a property, and to enhance the environment of a development or building. Open space can be used to:

(1) Create spaces that encourages social interaction;

(2) Provide useful, attractive outdoor spaces that include both sun and shade;

(3) Provide interesting and usable places, both public and private, active and passive, inside or outside of a building, where people can be aware of the environment in and around a building or group of buildings;

(4) Provide visual connections between small open areas on a site, and larger open spaces beyond;

(5) Provide connections between the inside and the outside of a building; and

(6) Provide separation between buildings and uses.

(b) Open Space Requirements: Open space shall be provided in the quantities specified in chapter 9-8, "Intensity Standards," B.R.C. 1981.

(c) Open Space Standards For Buildings Over Twenty-Five Feet In Height: Certain building types shall provide open space in the following amounts:

(1) Nonresidential Buildings Between Twenty-Five And Thirty-Five Feet In Height: Any building that contains a business or industrial use which is over twenty-five feet and up to thirty-five feet in height shall provide at least ten percent of the total land area as usable open space.

Ordinance No. 7522 (2007).

(2) Buildings Between Thirty-Five And Forty-Five Feet In Height: Any building over thirty-five feet but less than forty-five feet in height shall provide at least fifteen percent of the total land area as useable open space.

(3) Buildings Over Forty-Five Feet In Height: Any building over forty-five feet but less than fifty-five feet in height shall provide at least twenty percent of the total land area as useable open space.

(d) Use Of Required Setbacks To Meet Open Space Requirements: Setbacks may be used to meet open space requirements so long as the setbacks meet all other standards of this section.

(e) Types Of Useable Open Space: Useable open space includes:

(1) Landscaped areas meeting the requirements of sections 9-9-12, "Landscaping And Screening Standards," and 9-9-13, "Streetscape Design Standards," B.R.C. 1981; including open air plazas; fountains and waterfalls; pedestrian arcades; small seating areas; and vest-pocket parks.

(2) Outdoor activity or recreational elements such as play fields, swimming pools or hot tubs, and hard surface areas constructed at the ground level, that are unenclosed by an overhead structure, including, without limitation, tennis, volleyball, or basketball courts.

(3) An outdoor garden or landscaped courtyard, designed for the use for the occupants of the building, with a minimum dimension of at least twenty feet. Seating and other elements encouraging use and occupation shall be included in its design and it should form an integral part of the circulation pattern within the project.

(4) All landscape areas, plazas and patios, used as open space, and located adjacent to a street, alley, driveway, or parking lot, and protected from vehicular encroachment by a vehicular barrier which may include, without limitation, a bollard, wall, fence, or curb.

(5) Exterior paved surfaces, except public sidewalks less than five feet in width and those paved areas specifically prohibited in subsection (h) of this section, may be used as open space subject to meeting the following additional standards:

Ordinance No. 7522 (2007).

(A) The pavement surface shall be decorated with elements such as brick, stone, concrete pavers, exposed aggregate, textured concrete, patterned concrete, or colored concrete. A decorative surface shall not include a standard, uncolored concrete or asphalt surface, unless it is stamped with a pattern.

(B) The paved areas shall be accessible and open for use by the tenants, occupants, or visitors of the building. To enhance the use of such areas, the paved areas shall include passive recreation amenities which include, without limitation, benches, tables, ornamental lighting, sculpture, landscape planters or movable planting containers, trees, tree grates, or water features, or active recreation amenities, which include, without limitation, areas for basketball, volleyball, or racquet sports.

(f) Special Open Space Requirements Applicable To Residential Uses: Useable open space for residential uses also includes:

(1) Individual balconies, decks, and patio areas that are not intended or designed to be enclosed, if the minimum size of such individual balcony, deck or patio is not less than thirty-six square feet and not less than forty-eight inches in any dimension or porches that meet the requirements of section 9-7-4, "Setback Encroachments For Front Porches," B.R.C. 1981. Such areas shall count for no more than twenty-five percent of the required useable open space;

(2) Pedestrian ways, plazas, or atria within a building that are designed for the specific use and enjoyment of the residents or tenants of that structure that included passive recreational amenities which may include, without limitation, benches, tables, ornamental lighting, sculpture, landscape planter or movable planting containers, trees, tree grates, or water features, but only if these areas are visually or physically connected to the outside. If a hallway is used as a pedestrian way or open space area within a building, it shall be at least twice as wide as the minimum width required by chapter 10-5, "Building Code," B.R.C. 1981. Such areas shall constitute no more than twenty-five percent of the required useable open space. The areas described in this paragraph or other common interior multiple use or recreational areas may constitute no more than seventy-five percent of the required useable open space, for housing for special populations such as the elderly that may have need for more of such areas, if approved through site review under section 9-2-14, "Site Review," B.R.C. 1981;

(3) An uncovered parking area and drive that serves only one detached dwelling unit on a lot or parcel;

(4) If specifically approved as part of a site review, landscaped areas of public or private rights-of-way that are not anticipated to be converted to public or private highways, streets,

or alleys within the next ten years. Such areas shall constitute no more than ten percent of the required useable open space;

(5) Wetlands shall constitute no more than fifty percent of the required useable open space.

(g) Special Requirements For Nonresidential Buildings: Useable open space for a building containing a business or industrial use may be indoors or outdoors but must be at ground level, accessible from public areas, and open to use by the public.

(1) Indoor usable open space shall not constitute more than fifty percent of the required amount of open space and may include, without limitation, malls, pedestrian ways, plazas, and other open areas within a building if the open space is oriented directly toward the major pedestrian entrance of the building. Malls, pedestrian ways, and plazas, shall include passive recreation amenities which include, without limitation, benches, tables, ornamental lighting, sculpture, landscape planters or movable planting containers, trees, tree grates, or water features. If a hallway is to be considered a pedestrian way or an open area within a building that is oriented directly toward the major pedestrian entrance of the building and used as indoor open space, it shall be at least two times the minimum width required by chapter 10-5, "Building Code," B.R.C. 1981, in order to permit the installation of indoor passive recreation amenities.

Ordinance No. 7535 (2007).

(2) In the BMS, MU, IMS, and BR-2 zoning districts, individual balconies, decks, porches, and patio areas that will not be enclosed count one hundred percent toward the private open space requirement, provided that such balcony, deck, porch, or patio is not less than seventy-two inches in any dimension nor less than sixty square feet in total area. In the BR-2 zoning district, the dimensions and locations of private open space may be varied if the private open space adequately meets the needs of the occupants of the dwelling units and is approved as part of a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981.

(h) Prohibitions: Portions of a lot on which a structure or unenclosed use are located shall not be counted as useable open space unless allowed in subsection (d), (e), (f), or (g) of this section. Portions of a lot that are unenclosed include those areas that are designed such that they cannot be enclosed and are generally open to the sky above, except for a balcony or deck. The following are specific examples of areas that may not be counted as useable open space:

Ordinance No. 7522 (2007).

(1) Paved areas intended for pedestrian use, which are located adjacent to alleys or driveways and are not physically separated from the alley or driveway by a barrier such as a fence, wall, bollard, or elevated planter or curb which prevent use of the area by any vehicle;

(2) A recessed window or doorway of less than twenty-four square feet in ground area and less than three feet in any horizontal dimension;

(3) Any landscaped area less than two feet in width unless located within an elevated planter that is less than eighteen inches in height;

(4) Public or private rights-of-way for highways, streets, or alleys;

(5) Roofs that do not meet the provisions of paragraph (f)(1) of this section;

Ordinance No. 7522 (2007).

(6) Parking areas and garages that do not meet the provisions of paragraph (f)(3) of this section;

(7) Land area with a slope in excess of fifteen percent unless approved as part of a site review;

(8) Balconies, decks and patio areas attached to a single-family detached dwelling unit which are:

(A) Attached at the same level or below the first floor above grade and where the deck floor exceeds six feet above grade; or

(B) Constructed over an enclosed building.

9-9-12 Landscaping And Screening Standards.

(a) Purpose: The purpose of the landscaping and screening requirements set forth in this chapter is to:

(1) Provide minimum requirements for the landscaping of lots and parcels, street frontages, streetscapes, and paved areas;

(2) Provide minimum requirements to ensure the proper installation, or cultivation, and maintenance of landscaping materials;

(3) Promote sustainable landscapes and improve the quality of the environment by enhancing air quality, reducing the amount and rate of storm water runoff, improving storm water runoff quality, the spread of noxious weeds, and increasing the capacity for groundwater recharge;

(4) Minimize the amount of water used for landscaping by promoting Xeriscape™ practices and improving irrigation efficiency;

(5) Enhance the appearance of both residential and non-residential areas, and reduce the visual impacts of large expanses of pavement and rock; and

(6) Minimize impacts between uses both on-site and off-site. Landscaping can improve the compatibility of adjacent land uses and screen undesirable views. The landscaping standards also enhance the streetscape by separating the pedestrian from motor vehicles, auto fumes, and dust, providing shade, attenuating noise, and filtering air, buffering wind, and reducing glare.

(b) Scope: This section and section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, apply to all nonresidential and multi-family residential developments unless expressly stated otherwise.

(1) The standards in this section and sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be met prior to a final inspection for any building permit for:

(A) New development;

(B) Redevelopment involving expansion of the total building floor area which exceeds twenty-five percent of the Boulder County Assessor's actual value of the existing structure for any use except a property with three or fewer attached dwelling units;

(C) Redevelopment involving the expansion of the total floor area for a property that has three or fewer attached dwelling units, shall meet the landscaping standards as follows:

(i) Redevelopment valued at more than twenty-five percent, but less than fifty percent of the Boulder County Assessor's actual value of the existing structure shall require compliance with the street and alley tree requirements and the trash and parking screening requirements;

(ii) Redevelopment valued at fifty percent or more, but less than seventy-five percent of the Boulder County Assessor's actual value of the existing structure shall require compliance with the street and alley tree requirements and the trash and parking screening requirements and the front yard landscape requirements; and

(iii) Redevelopment valued at seventy-five percent or more of the Boulder County Assessor's actual value of the existing structure shall require compliance with the landscape regulations.

(D) Redevelopment exceeding one hundred percent of the Boulder County Assessor's actual value of the existing structure and not involving expansion of the total building floor area; or

(E) The addition of a dwelling unit.

(2) When additional parking spaces are provided, or for a change of use where new off-street parking spaces are provided, the provisions of section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be applied as follows:

(A) When the number of additional parking spaces that will be provided exceeds twenty-five percent of the number of existing parking spaces on the site, all standards in section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be met for the entire parking lot (existing and new portions) prior to the final inspection for a change of use or concurrent with the addition of the parking spaces.

(B) When the number of additional parking spaces that will be provided is less than twenty five percent of the number of existing parking spaces on the site, the standards in section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be met for the new portions of the parking lot prior to the final inspection for a change of use or concurrent with the addition of the parking spaces.

(c) Modifications To The Landscape Standards: The city manager is authorized to modify the standards set forth in this section and sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, upon finding that:

(1) The strict application of these standards is not possible due to existing physical conditions;

(2) The modification is consistent with the purpose of the section; and

(3) The modification is the minimum modification that would afford relief and would be the least modification of the applicable provisions of this chapter.

The manager shall require that a person requesting a modification supply the information necessary to substantiate the reasons for the requested modification. The details of any action granting modifications will be recorded and entered in the files of the Planning Department.

Ordinance Nos. 7279 (2003); 7331 (2004).

(d) General Landscaping And Screening Requirements:

(1) Landscaping Plan: A landscaping plan designed in accordance with this section and sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be provided for all developments except detached dwelling units. The site plan shall include the following:

(A) A site plan with a north arrow showing the major details of the proposed landscaping and irrigation, prepared on a scale not less than one inch equals thirty feet providing sufficient detail to evaluate the features of the landscaping and irrigation required by this section and sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981;

(B) The location of property lines and adjacent streets, the zoning and use of adjacent properties, the existing and proposed locations of all buildings, sidewalks and curb cuts, bike paths and pedestrian walkways, drive aisles and curb islands, utilities and easements, and the existing location, size, and type of all trees one and one-half inch caliper or greater;

(C) The location of existing and proposed parking lots including the layout of parking spaces and interior and perimeter parking lot landscaped areas, and the dimensions and total area (in square feet) for each interior parking lot landscaped area;

(D) The location, design and materials of all other landscaped areas including, without limitation, planting strips along all streets, earth berms, retaining walls, fences, water features, benches, trash enclosures, lights, and paved areas. Where fencing is used for required screening, a scaled drawing of the fence elevation must be included;

(E) The locations of all proposed plant material, drawn at the size the materials will be within five years of initial planting;

(F) The locations of all proposed planting of all ground surfaces. Grass surfaces must be identified as sod or seed with the blend or mix specified;

(G) The botanical and common names and sizes of all plant material;

(H) Location and dimensions of site distance triangles at all intersections of streets and curb cuts;

(I) Location and type of irrigation and of plant groupings by water use zone; and

(J) A chart comparing the landscaping requirements of sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, to the proposed materials, including, without limitation, the following information: total lot size (in square feet), total parking lot size, including all drives and driveways (in square feet), total number of parking stalls required and the total provided, total interior parking lot landscaped area required and the total provided, total perimeter parking lot landscaping required and total provided, total number of street trees required and the total provided, and total quantity of plant material required and the total provided.

(2) Landscape And Screening Maintenance And Replacement: The property owner shall maintain the landscaping plan as originally approved, and provide for replacement of plant materials that have died or have otherwise been damaged or removed, and maintenance of all non-live landscaping materials including, but not limited to, fencing, paving, and retaining walls, for a period of five years from the issuance of a certificate of occupancy or certificate of completion.

(3) Open Space: Required useable open space shall meet the provisions of this section and sections 9-7-1, "Schedule Of Form And Bulk Standards," and 9-9-11, "Useable Open Space," B.R.C. 1981.

(4) Pedestrian Access: In all zones except A, P, RR, RE, RL and RM, paved pedestrian walkways, a minimum of three feet in width, shall be provided as follows:

(A) Between at least one building entrance and the sidewalk adjacent to the street;

(B) Between the parking lot and the entrance to any buildings larger than ten thousand square feet in size.

(5) Screening Of Trash Collection And Recycling Areas, Service Areas, And Loading Areas: Trash collection and recycling areas, service areas, and loading areas shall be screened on all sides so that no portion of such areas are visible from public streets and alleys and adjacent properties. Required screening may include, new and existing plantings, walls, fences, screen panels, doors, topographic changes, buildings, horizontal separation, or any combination thereof.

(6) Outdoor Service Yards And Storage Areas: Service yards and outdoor storage areas in commercial and industrial areas shall be screened from public areas, streets, alleys, and adjacent areas through the use of one or more of the following: walls, fencing, or plantings.

(7) Setbacks: All setbacks adjacent to a street shall be landscaped in accordance with the standards set forth in section 9-9-13, "Streetscape Design Standards," B.R.C. 1981, including, without limitation, that area between the property line and the edge of the pavement or curb of the adjacent street.

(8) Minimum Overall Site Landscaping: In all zones except A, P, RR, RE, RL and RM, one tree and five shrubs are planted for each one thousand five hundred square feet of lot area not covered by a building or required parking.

(9) Materials: All material required in a landscaped area shall be live plant material, except as approved by the city manager to provide attractive screening, plazas, or pedestrian access. Plant materials shall be planted in sufficient quantity to completely cover within five years of initial planting, all landscaped areas, including temporary mulched areas, and under trees.

(10) Mulches:

(A) Temporary mulches are required in all shrub, tree, and perennial planting beds until full plant coverage is achieved. Organic mulches include wood and bark chips, straw, grass clippings and seed hulls. Inorganic or inert mulches include weed-barrier fabrics, gravel and rock.

(B) Non-living materials such as bark or rocks shall not be used, except as temporary mulch until full plant coverage is achieved, or as permanent mulch under shrubs.

(C) Rocks larger than three inches in diameter shall not be used in the public right-of-way or adjacent to sidewalks, and shall be used only upon approval of the city manager as a decorative feature. Rock mulches shall not be used in landscaped areas on the south, west or southwest-facing sides of buildings or in interior parking lot landscaped areas except under the following conditions:

(i) All plants within the rock mulched area are from very low, low or moderate water use zones and spaced to fill the beds within three years of initial planting; or

(ii) Rock is used as a specific ornamental feature in a limited area or as a pedestrian path.

(11) Minimum Plant Sizes: All materials planted under the provisions of this title shall meet the following requirements:

(A) Deciduous trees are at least two-inch caliper measured six inches above the ground, except ornamental and flowering trees including, without limitation, the trees identified as "small maturing trees" on the approved street tree list in section 3.03-1, City of Boulder *Design And Construction Standards*, that are at least one and one-half inch caliper measured six inches above the ground;

(B) Evergreens are at least five feet tall; and

(C) Shrubs are five-gallon container size.

(12) Grading Standards For New Earth Berms: Berms adjacent to paved surfaces shall be graded to capture all irrigation runoff or to convey it to an appropriate water quality design feature as described in the *Urban Storm Drainage Criteria Manual*, Vol. 3 (Urban Drainage and Flood Control District, Denver, Colorado).

(13) Soil Preparation And Planting Specifications: Site preparation and all planting shall be completed, at a minimum, in accordance with the City of Boulder *Design And Construction Standards*. Site preparation in any development, including detached dwelling units, shall include tilling the soil to a minimum depth of six inches below the finished grade together with soil amendments, including, without limitation, compost, manure, or peat, that are appropriate to ensure the health and sustainability of the landscaping to be planted.

(14) Water Conservation: Landscaping shall be designed to conserve water through application of all xeriscape landscaping principles. Xeriscape™ landscaping principles do not include artificial turf or plants, mulched or gravel beds or areas without landscape plant material, bare ground, weed covered or infested surfaces, paving of areas not required for pedestrian access, plazas or parking lots, or any landscaping that does not comply with the standards of this section. Xeriscape™ landscaping principles include:

(A) Planning and design that ensures water-conserving techniques are coordinated and implemented in the landscape;

(B) Grouping plants with similar water and cultural requirements (such as sun and climate) together in the same water use zones and on the same irrigation zones;

(C) Limiting the use of high water use turf grass and plantings to high-use areas with high visibility or functional needs;

(D) Use of efficient irrigation systems;

(E) Use of mulches;

(F) Improving soils to allow better water absorption and proper drainage; and

(G) Continued maintenance including weeding, pruning, fertilizing, pest control and irrigation maintenance.

(15) Xeriscape™ Landscape Standards: The following Xeriscape™ landscape standards shall apply to all required landscaped areas:

(A) Plants from the same water use zone shall be grouped together on the same irrigation zones. Water use zones shall be consistent with the Waterwise Plant List as shown in the City of Boulder, *Landscape Requirements For Streetscape, Parking Lots, And All Other Developments* or based on other lists which meet the same criteria for water use and adaptability if approved by the city manager;

(B) The total amount of high water use zones on a property shall not exceed fifty percent of the total landscaped area. The total amount of high water use turf grass shall not exceed twenty-five percent of the total landscaped area. Turf grass areas designated for high use or a specific recreational use shall be excluded from the total landscaped area under this requirement. Trees in tree grates shall also be excluded from the total landscaped area under this requirement;

(C) The use of high-irrigation turf and plantings shall be limited to high-use areas with high visibility or functional needs;

(D) High water use turf grass shall not be used in landscaped areas with any one dimension less than ten feet in width unless drip, subsurface, or low-volume irrigation is used in that area;

(E) Very low and low water use zone plants and turf grass shall be used to the extent practicable;

(F) Plants or turf grass from a high water use zone shall not be planted on slopes or berms at a 4:1 slope or greater.

(16) Irrigation: The following standards shall apply to irrigation systems for required landscaped areas:

(A) All landscaped areas including, but not limited to, trees in tree pits, raised planters, planting in the public right-of-way, and all landscaping required in this chapter, shall be irrigated with a permanent, automatic irrigation system designed to provide efficient irrigation coverage with minimal overspray onto non-landscaped areas.

(B) The city manager may approve the use of temporary irrigation systems if all plant material is from the very low or low water use zones.

(C) Low-volume, drip or subsurface irrigation systems shall be used in the following conditions:

(i) In landscaped areas where any one dimension is less than six feet in width and surrounded by impervious surfaces;

(ii) In all non-turf grass areas.

(D) Trees shall be zoned separately from turf grass when located in a low or very low water use zone.

(E) A soil moisture sensing device or other irrigation management system shall be required for irrigation systems in turf areas.

(F) The landscape plan shall indicate the nature, location, and specifications of the irrigation system which shall be used. Separate irrigation circuits should be specified for different zones on the landscape plan. The landscape plan shall have sufficient detail to show that adequate irrigation will be provided to all required landscape areas and plant materials.

(G) The irrigation system shall be designed to correlate to the organization of plants into zones with similar watering requirements.

(H) Irrigation systems shall be designed to maximize efficient water use and minimize the waste of water.

(17) Noxious Weeds: All landscape plans must comply with the current state weed and nursery lists.

(18) Tree Protection: All existing trees six inches or more in caliper and located in any development, including detached dwelling units, in the required setback or on the property line shall be protected from construction impacts, unless the tree is a noxious weed. Trees over six inches in caliper shall be protected from construction impacts within the drip line of the tree in a manner that is consistent with the City of Boulder *Design And Construction Standards'* tree protection for construction site standards.

(19) Final Inspection: Labels that identify the botanical or common name of the plant material shall be on all trees at the time of final inspection.

Ordinance Nos. 5930 (1997); 7079 (2000); 7088 (2000); 7279 (2003); 7331 (2004).

9-9-13 **Streetscape Design Standards.**

Streetscape improvements shall be designed in accordance with the following standards:

(a) Scope: The standards set forth in this section apply to all land uses, including single-family residential land uses.

(b) Street Trees: A planting strip consisting of deciduous trees shall be planted along the full length of all public and private streets in all zoning districts. When possible, trees shall be planted in the public right-of-way. Large deciduous trees and detached sidewalks are desired wherever possible and shall be planted at a minimum, in accordance with subsection (d) of this section.

(c) Alley Trees: Except for existing single-family lots, along all alleys adjacent to or within a residential zone, trees shall be planted at an overall average of one tree per forty linear feet within ten feet of the pavement or edge of alley.

(d) Streetscape Requirements: Street trees must be selected from the approved street tree list set forth in the City of Boulder *Design And Construction Standards*, unless an equivalent tree selection is approved by the city manager. Table 9-9 of this section sets the minimum planting interval for street and alley trees. The specific spacing for each development is dependant upon tree type (for a list of tree species in each type, see Approved Street Tree List, in the City of Boulder *Design And Construction Standards*) and existing conditions as identified in this section or an equivalent approved by the city manager.

(see following page for continuation of Section 9-9-13)

TABLE 9-9: STREETSCAPE REQUIREMENTS

Existing Or Approved Condition			Required Planting	
Sidewalk Condition	Planting Strip Width	Utility Location	Tree Type	Minimum Tree Planting Interval
Detached	More than 8 feet	Buried	Large	30 feet – 40 feet
		Overhead	Small	15 feet – 20 feet
	More than 6 feet, up to and including 8 feet	Buried	Medium	25 feet – 30 feet
		Overhead	Small	15 feet – 20 feet
	4 feet – 6 feet: This planting strip width is less than desirable	Buried	Small	15 feet – 20 feet
		Overhead	Small	15 feet – 20 feet
Attached	Trees must be planted 4 feet – 5 feet from the sidewalk. Trees may be planted on private property if there is not adequate right-of-way.	Buried	Large	30 feet – 40 feet
		Overhead	Small	15 feet – 20 feet
Urban sidewalk of 12 feet or wider (BMS, BR-1, BR-2, and MU-3 zoning districts)	Trees must be planted in irrigated tree grates or tree pits unless approved by the city manager. For tree grate dimensions and tree pit volume, see *Design And Construction Standards*, Table 3.05-5.	Buried	Large	20 feet – 25 feet
		Overhead	Medium	15 feet – 20 feet

Ordinance No. 7522 (2007).

(e) Understory Planting: Except where planted in tree grates, all required street trees in the landscape strip shall be planted together with an irrigated understory planting that will cover the entire planting strip, except for walkways between the street and sidewalk, within five years of the initial planting.

(f) Special Area Streetscape Plans: In areas of the city where a streetscape plan has been adopted by city council, including, without limitation, downtown, University Hill, North Broadway, and the Boulder Valley Regional Center, landscaping improvements shall be completed in accordance with the adopted streetscape program.

(g) Water Conservation And Irrigation: All streetscape plantings shall comply with the Water Conservation and Irrigation standards as listed in paragraphs 9-9-12(d)(14), (d)(15), and (d)(16), B.R.C. 1981.

Ordinance Nos. 5986 (1998); 7079 (2000); 7088 (2000); 7182 (2002); 7279 (2003).

9-9-14 **Parking Lot Landscaping Standards.**

(a) Scope Required: This section shall apply to all surface parking lots with more than five parking spaces, regardless of whether the parking is required by section 9-7-1, "Schedule Of

Form And Bulk Standards," B.R.C. 1981. All parking lots shall be screened from the street and adjacent properties and contain interior lot landscaping in accordance with this section. Landscaping and screening standards set forth in this section are separate and in addition to the requirements of all other sections in this chapter unless expressly stated otherwise.

(b) Screening Parking Lots From The Street: A parking lot screen shall be provided for parking areas adjacent to rights-of-way, in accordance with the following standards:

(1) Minimum Height And Opacity: Parking lot screening may include landscape features such as planter boxes, walls, or hedges in combination with trees and plantings, but must provide a screen a minimum of forty-two inches in height along the full length of the parking lot adjacent to the street. Planted materials must provide a significant screen when fully grown that is at least forty-two inches in height as measured from the base of the sidewalk adjacent to the street, unless the parking lot is higher than the sidewalk, in which case it shall be measured from the base of the parking lot adjacent to the street. Fences shall be no taller than forty-eight inches in height.

(2) Minimum Width: The parking lot screen shall have a minimum width as follows:

(A) In all zones except the DT, BMS, IMS, and MU-3 zones, the minimum width of a parking screen shall be the same as the applicable minimum front or side yard setback requirement for the zone district in which the parking area is located, except that it must not be less than five feet in zone districts having smaller minimum front or side yard setback requirements.

(B) In the DT, BMS, IMS, and MU-3 zones, the parking lot screening requirement can be met by any one of the following:

(i) A planting area with a minimum of a six foot width between the sidewalk and the parking lot, planted with shrubs having a mature height no lower than forty-two inches in height;

(ii) A fence, hedge, or wall meeting the requirements of section 9-9-15, "Fences And Walls," B.R.C. 1981, and of a height no lower than forty-two inches and fences and walls shall be no taller than forty-eight inches as measured from the base of the parking lot adjacent to the street; and

(iii) Another method, if approved by the city manager, that forms a significant screen a minimum of forty-two inches in height and a maximum of forty-eight inches in height, for the full length of the parking lot adjacent to the street.

(c) Screening Parking Lots At Property Edges: A parking lot screen shall be provided for parking areas adjacent to property lines in accordance with the following standards:

(1) Screening Required: All parking areas shall be screened at property lines that are adjacent to residential use or zoning district or public park. Parking areas that abut a nonresidential use or zone, must be screened only when they contain no vehicular and pedestrian connection to the adjacent property.

(2) Minimum Screening Requirements: Parking lot screening required at property edges shall meet the following standards:

(A) A landscape strip at least six feet in width, planted with at least one tree per twenty-five linear feet, and an understory planting containing live plant material that will cover the area within five years of initial planting; and

(B) The parking lot screen shall be at least forty-two inches in height. One of the following methods of forming a screen along the full length of the property shall be used, except where breaks are needed to provide access for pedestrians, bicycles, autos, or required sight triangle:

(i) A fence or wall meeting the requirements of section 9-9-15, "Fences And Walls," B.R.C. 1981;

(ii) An earth berm meeting the provisions of paragraphs 9-9-12(d)(12) and (d)(15), B.R.C. 1981;

(iii) Shrubs planted at sufficient density to form a significant screen within five years of initial planting; or

(iv) Any combination of the above.

(d) Interior Parking Lot Landscaping: Interior parking lot landscaping (see figure 18 of this section) required by this subsection shall meet the following standards:

(1) Lots With Fewer Than Fifteen Spaces: No interior parking lot landscaping is required for parking lots with fifteen or fewer spaces, calculated using three hundred square feet (gross) per space.

(2) Lots With Sixteen To One Hundred Sixty Spaces: At least five percent of the parking lot area for parking lots with sixteen to one hundred sixty parking spaces shall contain interior parking lot landscaping.

(3) Lots With More Than One Hundred Sixty Spaces And No More Than One Double Loaded Row Of Parking: At least five percent of the parking lot area for parking lots with more than one hundred sixty parking spaces and no more than one double loaded row of parking shall contain interior parking lot landscaping. For the purposes of this section, a "double loaded row" means two rows of parking adjacent to one another and not separated by a drive lane.

(4) Lots With More Than One Hundred Sixty Spaces And More Than One Double Loaded Row Of Parking: At least ten percent of the parking lot area for parking lots with more than one hundred sixty parking spaces and more than one double loaded row of parking shall contain interior parking lot landscaping. No more than three double loaded rows of parking may be situated consecutively without providing a planting area, a minimum of eight feet in width along the center between rows for the full length of each parking row.

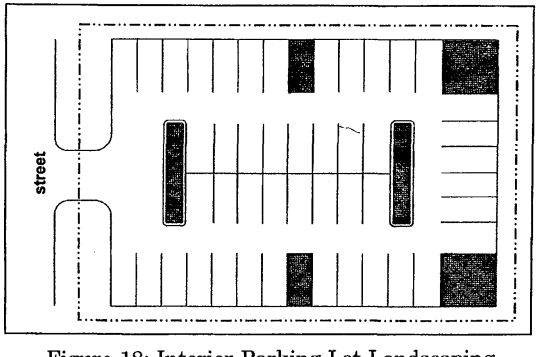

Figure 18: Interior Parking Lot Landscaping

Only the shaded areas qualify as interior landscaping. Each landscaping area must be a minimum of one hundred fifty square feet in size and have no dimensions less than eight feet.

(5) Parking Lots Containing One Hundred Twenty Percent Or More Of The Minimum Required Parking Spaces: In order to mitigate the impacts of excessive pavement to water quality and to reduce the visual impacts of large expanses of pavement, open, at-grade parking spaces in excess of one hundred twenty percent of the minimum required in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, a development shall provide additional parking lot landscaping over the amount required in other sections of this chapter as follows:

(A) For parking lots containing more than one hundred twenty percent and less than one hundred fifty percent of minimum required parking, interior parking lot landscaping shall be installed as required above, plus an additional five percent of the parking lot area as interior or perimeter parking lot landscaping. Perimeter parking lot landscaping shall not be located within a required front yard setback or a side yard adjacent to a street setback.

(B) For parking lots containing one hundred fifty percent or more than the minimum required parking, interior parking lot landscaping shall be installed as required above, plus an additional ten percent of the parking lot area as interior or perimeter parking lot landscaping. Perimeter parking lot landscaping shall not be located within a required front yard setback or a side yard adjacent to a street setback.

(C) The additional landscaping required by this paragraph may be used to meet the requirements for runoff reduction practices as described in the *Urban Storm Drainage Criteria Manual, Vol. 3* (Urban Drainage and Flood Control District, Denver, Colorado) and the overall site water quality capture volume if it also meets the requirements set forth in the City of Boulder *Design And Construction Standards*.

(6) Trees: At least one tree must be planted for every two hundred square feet of interior parking lot landscaped area. At least seventy-five percent of the required trees must be deciduous trees classified as either large or medium trees in the approved street tree list set forth in the City of Boulder *Design And Construction Standards*.

(7) Shrubs, Ground Cover: Shrubs and ground cover must be planted at sufficient density to completely cover the interior parking lot landscaped area within five years of initial planting.

(8) Minimum Dimensions: An interior parking lot landscaped area must be a minimum of one hundred fifty square feet in size and have no dimension less than eight feet. All trees shall be located at least three feet from the curb or planting edge.

Ordinance Nos. 7079 (2000); 7279 (2003).

9-9-15 Fences And Walls.

(a) Purpose: The purpose of this section is to regulate the installation of fences, hedges, and walls to provide safety and security as well as visual barriers, while minimizing the impacts that result from fence location and height. A fence, hedge, or wall, which includes retaining walls, columns, posts, piers, or similar structures, or any combination of such structures, is permitted if it meets the standards of this section.

(b) Requirements: A fence, hedge, or wall is permitted if it meets the following conditions:

(1) Building Code And Sight Distance: All fences and walls meet the requirements of chapter 10-5, "Building Code," B.R.C. 1981, and section 9-9-7, "Sight Triangles," B.R.C. 1981;

(2) Location On Property: All property lines are located in order to determine that no fence, hedge, or wall extends beyond or across a property line, unless an agreement with the abutting property owner is obtained; and

(3) Location Near Sidewalks: No fence or wall is placed nearer than eighteen inches to any public sidewalk.

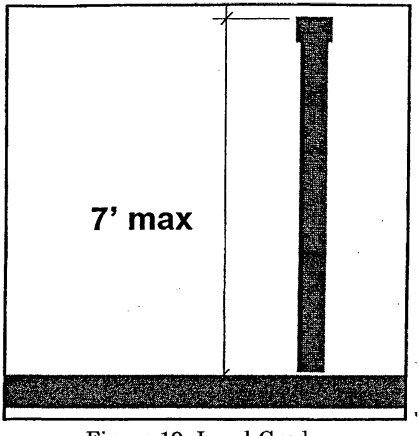

Figure 19: Level Grade

(c) Fence And Wall Height: No fence or wall shall exceed seven feet in height, except as otherwise permitted by this section. A fence or wall shall be measured as follows:

Ordinance No. 7522 (2007).

(1) Height Measurement - Generally: The height of a fence or wall shall be measured from the finished grade directly beneath a fence or upon which a wall is located. (See figure 19 of this section.)

(2) Fences On Retaining Walls: A fence located on or within three feet of a retaining wall, where both the fence and retaining wall are on the same property, shall not exceed a combined height of seven feet (see figure 20 of this section), except that:

(A) Fence And Retaining Wall On Property Line: The combined height of a retaining wall and fence or a fence, located on or within three feet of a property line, may exceed seven feet when the abutting property owners are in joint agreement. (See figure 21 of this section.) The fence shall not exceed an individual height of seven feet when measured from the highest elevation of grade within three feet of either side of the property line. (See figure 22 of this section.) In no event shall such a fence exceed twelve feet in height. (See figure 23 of this section.) A fence not exceeding forty-two inches in height may be placed on a retaining wall regardless of the combined fence and retaining wall height.

9-9-15

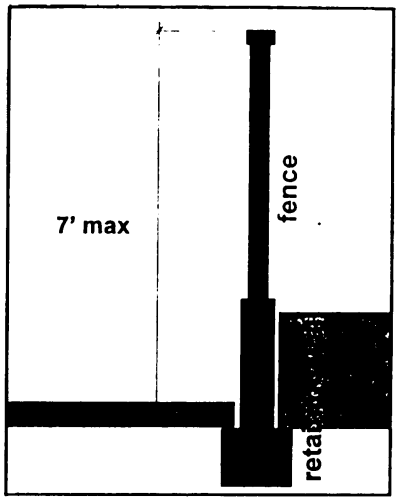

Figure 20: Fence on Retaining Wall

(3) Fences On Berms Or Mounds: A fence or wall located on a berm or mound shall include the height of the berm or mound directly beneath the fence and above natural grade in the overall height measurement.

(4) Temporary Fences: A temporary fence on a construction site may be as high as required to protect the property during the period of construction.

(5) Modifications Of Grade: No person shall modify the grade for the purpose of increasing the permitted height of a fence or wall. If there is evidence that a modification to the grade has occurred which results in lowering or increasing a fence or wall height, the city manager may consider any information to determine the unaltered grade. The manager will use this information to determine the appropriate maximum height of the fence or wall, which shall be the functionally equivalent height if such changes to the grade had not been made.

(6) Athletic Facilities: Fencing around athletic facilities, including, without limitation, tennis courts, may be ten feet in height so long as all portions above seven feet are constructed with at least fifty percent non-opaque materials.

(7) Noise Barriers Along Major Streets: Along any of the major roads shown in appendix A, "Major Streets," of this title, a fence or wall over seven feet in height may be approved by the city manager as part of a comprehensive noise barrier system.

(8) Modifications: The requirements of this section may be modified by the city manager subject to the provisions of subsection 9-9-7(d), or section 9-2-3, "Variances And Interpretations," B.R.C. 1981. Decisions by the city manager may be appealed to the BOZA.

(see following page for continuation of Section 9-9-15)

9-9-15

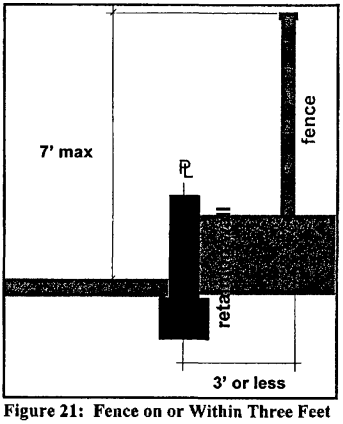

Figure 21: Fence on or Within Three Feet of Retaining Wall

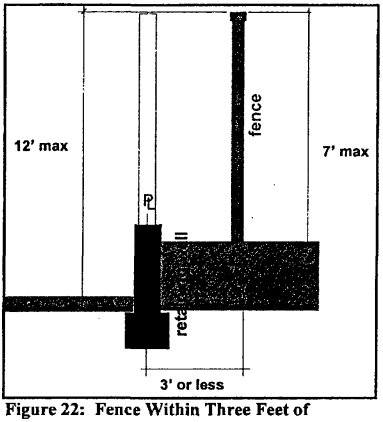

Figure 22: Fence Within Three Feet of Retaining Wall (Adjacent Owner Permission Required)

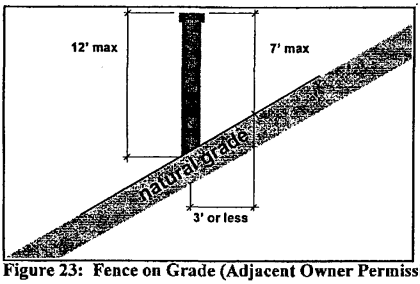

Figure 23: Fence on Grade (Adjacent Owner Permission Required)

(d) Other Fences:

(1) Electric Or Barbed Wire Fences: No barbed wire or other sharp, pointed, or electrically charged fence may be erected or maintained except as follows:

(A) Temporary Construction Fences: A temporary fence on a site to protect the property during the period of construction which has an active building permit may be topped with barbed wire where the barbed wire is not less than eight feet above the ground and does not extend more than two feet above the temporary fence;

(B) Fences To Contain Livestock: In the A district, a barbed wire or electrically charged fence may be permitted provided it is used as an internal fence, not on the periphery of the property, to contain livestock;

(C) Location Of Electric Fences: Electric fences may be permitted in the A district when used as an internal fence not on the periphery of the property to contain livestock, and in the A, RR, RE, and RL districts, as an internal fence not on the periphery of the property to protect crops and plantings. No person shall maintain an electric fence without a fence permit. All such electric fencing must meet the following requirements:

(i) Controllers are approved by Underwriters Laboratories and so designated on an attached label;

(ii) Electric fencing may not be located within five feet of the periphery of the property and must be located interior to a nonelectric fence which completely encloses the yard;

(iii) Electric fencing may not be located in a required yard abutting a street nor in a required vision triangle, as prescribed in section 9-9-7, "Sight Triangles," B.R.C. 1981; and

(iv) Electric fencing may not inhibit access by emergency equipment and operators thereof; and

(D) Location Of Barb Wire Fences: In the B, IM, IG, IS, and P districts, a fence or wall set back at least twelve feet from the property line may have barbed wire if it is not less than eight feet above the ground and does not extend more than two feet above the fence or wall, notwithstanding the requirements of subsection (b) of this section.

Ordinance Nos. 5623 (1994); 5930 (1997); 7357 (2004).

9-9-16 Lighting, Outdoor.

(a) Purpose: The purposes of the outdoor lighting standards are to:

(1) Provide adequate light for safety and security;

(2) Promote efficient and cost effective lighting and to conserve energy;

(3) Reduce light pollution, light trespass, glare, and offensive light sources;

(4) Provide an environmentally sensitive nighttime environment that includes the ability to view the stars against a dark sky so that people can see the Milky Way Galaxy from residential and other appropriate viewing areas;

(5) Prevent inappropriate, poorly designed or installed outdoor lighting;

(6) Encourage quality lighting design; light fixture shielding, establish maximum uniformity ratios and establish maximum light levels within and on property lines; and

(7) Establish an amortization program to remove or replace light fixtures that exceed the requirements permitted by this section.

(b) Legislative Findings Regarding The Amortization Provisions: The city council adopts the following findings regarding the amortization provisions of this section:

(1) On balance, that the burdens created to individual property owners by the amortization provisions of this section are greatly outweighed by the benefits that will be provided to all of the citizens in and visitors to the City of Boulder and areas that are in close proximity to the City of Boulder. The value of the fixtures required to be replaced by this section are minimal, and that on balance, the burden placed on the property owner is minimal, given the value of such fixtures against the benefits gained by such replacement, which is a substantial decrease of unnecessary light pollution.

(2) The amortization period, based upon the formula that is used by the United States Internal Revenue Service to depreciate fixtures attached to real property over a fifteen year

period, is reasonable and provides a rational basis for the amortization schedule set forth in this section.

(3) The adopted amortization periods, together with an opportunity for extensions beyond the time periods set in this section will allow the property owner to recoup or recover costs or otherwise reap the benefits of the useful life of such improvements in a manner that is consistent with the generally accepted methods of depreciating fixtures utilized by the United States Internal Revenue Service.

(c) Scope: This section shall apply to all exterior lighting including illumination from outdoor signs that impact the outdoor environment. No person shall install any light fixture unless such fixture meets the requirements of this section.

(1) Conformance At The Time Of Building Permit Application: Compliance with the requirements of this chapter shall be required for all new development. The following outdoor lighting improvements shall be installed prior to a final inspection for any building permit for any redevelopment which exceeds the following thresholds:

(A) When development or redevelopment, exceeds twenty-five percent of the Boulder County Assessor's actual value of the existing structure then all existing unshielded exterior light fixtures shall be retrofitted with shielding to prevent light trespass.

(B) When development or redevelopment exceeds fifty percent of the Boulder County Assessor's actual value of the existing structure then:

(i) All exterior lighting, except existing parking lot lighting, shall be brought into conformance with the requirements of this section; and

(ii) All existing parking lot light fixtures shall be retrofitted with shielding to prevent light trespass.

(C) When development or redevelopment exceeds seventy-five percent of the Boulder County Assessor's actual value of the existing structure then all exterior lighting fixtures shall be brought into full conformance with the requirements of this section.

(2) Replacement Of Fixtures: If an existing light fixture is removed, it shall only be replaced with a conforming light fixture.

(d) Design Standards: No person shall install or maintain any exterior lighting that fails to meet the requirements of this section:

(1) Maximum Light Levels At Property Line: The maximum light level at any point on a property line shall not exceed 0.1 footcandles within or adjacent to a residential zone or 0.2 footcandles in nonresidential zones except as follows:

(A) The light emitted by light fixtures mounted on a structure built within five feet of a public street right-of-way or sidewalk, shall not exceed the maximum allowable light levels for "pedestrian areas" specified in subsection (e) of this section for the underlying zoning district or use. The maximum allowable light level shall include any existing or proposed street or pedestrian lighting located within the right-of-way. In no case shall the maximum allowable light level within the right-of-way, excluding street lights, exceed 0.2 footcandles when measured at the curbline.

(B) In nonresidential zoning districts, unless a variance has been granted, light levels exceeding 0.2 footcandles at the property line may be approved by the city manager upon finding that the increased light levels will not adversely affect an adjacent property owner.

Evidence that the light will not adversely affect an adjacent property owner may include, without limitation, a statement from such property owner that it will not be adversely affected by the increased light levels. The maximum allowable light levels specified in subsection (e) of this section shall not be exceeded when measured on the property line.

(2) White Light Source Required: White light sources that include, without limitation, metal halide, fluorescent, or induction lamps, but excluding incandescent and halogen lamps, shall be required for any light fixture which exceeds two thousand four hundred lumens that is within a parking lot, vehicular circulation, or pedestrian use area.

(3) Use Of High Pressure Sodium Lamps: Full cutoff high pressure sodium lamps, not exceeding a maximum lumen rating of sixteen thousand lumens, may be used in outdoor storage areas and other similar use areas not accessible to the general public and the need for good color rendering capabilities for safety and security is not necessary.

(4) Architectural Lighting Of Building Facades: The lighting of a building facade for architectural, aesthetic, or decorative purposes is permitted subject to the following restrictions:

(A) Upward aimed building facade lighting shall not exceed nine hundred lumens. All upward aimed light shall be fully shielded, fully confined from projecting into the sky by eaves, roofs or overhangs, and mounted as flush to a wall as possible.

(B) Building facade lighting exceeding nine hundred lumens shall be fully shielded, aimed downward, and mounted as flush to a wall as possible.

(C) Building facade lighting shall be fully contained within the vertical surface of the wall being illuminated.

(D) Building facade lighting that is measurable at the ground level shall be included in the maximum allowable light levels.

(5) Unshielded Lighting:

(A) Unshielded lighting that emits more than nine hundred lumens but less than or equal to one thousand two hundred lumens is permitted provided that it is activated by a motion sensor and provided it is aimed and located in such a manner as to prevent glare and light trespass. The light shall only go on when activated and go off within five minutes of activation. Motion sensor activated lighting shall not be triggered by any movement or activity located off the property on which the light is located.

(B) All lamps and bulbs less than nine hundred lumens located in residential zones shall be within a fully shielded fixture, or must be within a light fixture where the bulb or lamp are obscured from view by a material that diffuses the light. (i.e., frosted or milk colored materials), except as otherwise permitted in this section. (See figure 25 of this section.)

(see following page for continuation of Section 9-9-16)

9-9-16

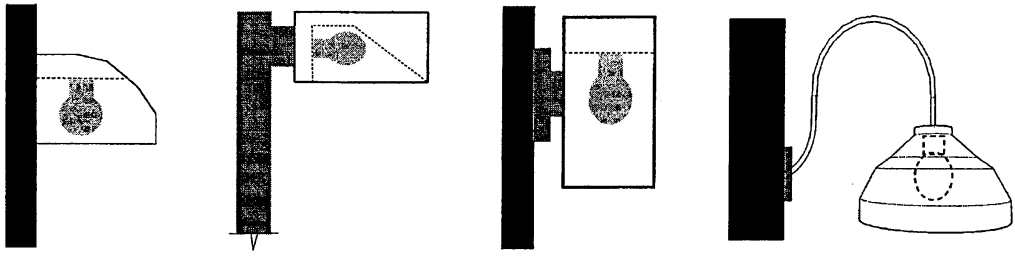

Figure 25: Fully Shielded Fixtures

Examples of fully-shielded light fixtures: Sconce, Pole, Canister, and Canopy. In each case the fixture has a solid housing with a flat lens or bottom and the bulb is fully within the housing.

(6) Signs: All exterior signs shall be required to meet the standards for this section. In addition, all exterior signs are also subject to the requirements set forth in section 9-9-21, "Signs," B.R.C. 1981.

(7) Standards For Lights Adjacent To Residential Zoning Districts, Residential Uses Or Public Right-Of-Ways: Any light fixture located within ten feet of a property line, of a residential zoning district, an existing residential use, or within ten feet of a public right-of-way, except as permitted in subparagraph (d)(1)(A) of this section shall be:

(A) Aimed away from the property line, residential zone, residential use, and/or right-of-way;

(B) Classified as an IESNA Type III or Type IV light fixture; and

(C) Shielded on the side closest to the property line, residential zone, residential use, or public right-of-way.

(8) Canopy Lighting: Lighting fixtures mounted under canopies used for vehicular shelter shall be aimed downward and installed such that the bottom of the light fixture or its lens, whichever is lower, is recessed or mounted flush with the bottom surface of the canopy. A full cutoff light fixture may project below the underside of a canopy. All light emitted by an under-canopy fixture shall be substantially confined to the ground surface directly beneath the perimeter of the canopy. No lighting, except that permitted by the sign ordinance, shall be permitted on the top or sides of a canopy.

(9) Flagpoles: A flagpole meeting the requirements of section 9-9-21, "Signs," B.R.C. 1981, may be illuminated by one upward aimed fully shielded spotlight light fixture which shall not exceed three thousand five hundred lumens. The light fixture shall be placed as close to the base of the flagpole as reasonably possible.

(10) Strings Of Lights: No person shall use a string of lights on property with nonresidential uses except as follows:

(A) Strings of lights may only be used if they are approved by the city manager as part of an outdoor lighting plan or landscape plan. The plan must comply with all of the standards of this subsection. The purpose of such lighting is intended to create pleasing pedestrian spaces, such as an outdoor dining or patio areas, utilizing low lighting levels.

(B) Strings of lights permitted under this subsection shall be displayed in compliance with the following standards:

(i) The string of lights contains only low wattage bulbs that are not greater than fifty lumens per bulb (equivalent to a seven watt C7 incandescent bulb);

(ii) The string of lights shall be located within a pedestrian way, plaza, patio, outdoor dining area, or the primary entry into a building;

(iii) The string of lights is not placed in any required landscape setback adjacent to a street;

(iv) The string of lights shall be displayed on a building, wall, fence, trees, and shrubs; and

(v) The string of lights shall not suspend horizontally between any buildings, walls, fences, trees, or shrubs (for the purposes of this paragraph, "horizontally" means any portion of the suspended string which dips less than forty-five degrees below the horizontal).

(11) Parking Lot Lights And Trees: Parking lot light fixtures and poles shall be located such that trees located within the parking lot do not obscure the operation of the light fixture.

(12) Full Cutoff Fixtures: Full cutoff fixtures shall be installed in a horizontal position as designed.

(e) Maximum Light Standards: No person shall operate any device which makes light in excess of the levels specified in this section. Light from any fixture shall not exceed any of the limits for the applicable zoning district or use classification in tables 9-10 and 9-11 of this section. In the event an applicant utilizes light levels at the highest level permitted for a specific use area, such lighting shall be substantially confined to that particular use area.

(see following page for continuation of Section 9-9-16)

9-9-16

TABLE 9-10: ZONING DISTRICT REQUIREMENTS

	Residential Zoning Districts (Not Including Public Uses)	Commercial, Mixed Use, Downtown, Business, And Industrial Zoning Districts	Public Zoning District And Public Uses In Residential Zones
Maximum allowable light levels (measured in footcandles)	5.0 at building entries	5.0 at building entries	5.0 at building entries
	3.0 in parking areas	5.0 in parking areas	5.0 in parking lots
	3.0 along pedestrian walkways	3.0 along pedestrian walkways	3.0 along pedestrian walkways
	2.0 in common open space areas	2.0 in outdoor storage areas (maximum uniformity ratio requirements are not applicable)	
Maximum uniformity ratio (maximum to minimum)	n/a	10:1 (except as noted above)	15:1
Maximum lumen rating for a full cutoff luminaire shielded from view of adjacent streets and properties	8,500 - parking areas of 6 or more spaces	8,500 - pedestrian areas 14,000 - parking and loading areas	14,000 - parking and loading areas
	4,000 - walkway lights and common areas	23,500 on 35 foot pole when permitted (parking and loading areas)	
	1,800 stairways and entryways	16,000 for high pressure sodium when permitted	
Maximum lumen rating for an IESNA cutoff or semi cutoff fixture	900	1,250	1,250
Maximum lumen rating for an unshielded light fixture	900: except no lamp or bulb, other than for seasonal displays and landscape ornamental lighting, shall be visible beyond the property line	900	900
Controls	Motion sensors required for all unshielded fixtures in excess of 900 lumens	Recommended after close of business	Recommended after close of business

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	Residential Zoning Districts (Not Including Public Uses)	Commercial, Mixed Use, Downtown, Business, And Industrial Zoning Districts	Public Zoning District And Public Uses In Residential Zones
Maximum allowable pole height (includes base, pole and luminaire)	20 feet in parking lots	25 feet in parking lots	20 feet in parking lots within or adjacent to residential zones, otherwise 25 foot maximum
	15 feet in all other areas	35 feet for contiguous parking lots of 5 or more acres in size	
		20 feet in all other areas	

TABLE 9-11: SPECIAL USE REQUIREMENTS

	Open Parking Structures And Parking Below A Building	Private Recreation Use	Public Recreation Use	Service Stations, Automobile Dealerships, Drive-Thru Windows
Maximum allowable light levels (measured in footcandles)	5.0 within open parking structure and parking below a building and pedestrian entries 5.0 for uncovered upper levels 5.0 for covered exterior pedestrian circulation areas that are a part of a parking structure or parking below a building	The lesser of 30 footcandles or the IESNA recommended standards for the specific sports venue 5.0 in parking lots 4.0 in pedestrian areas	The IESNA recommended standards for the specific sports venue 5.0 in parking lots 4.0 in pedestrian areas	5.0 in building entries and drive-up windows 20.0 under service station canopies 15.0 within vehicular display areas 5.0 in parking lots 3.0 along pedestrian walkways
Maximum uniformity ratio (maximum to minimum)	5:1 within parking structure 10:1 remainder of site	3:1 on sports field or court 10:1 remainder of site	3:1 on sports field or court 10:1 remainder of site	10:1

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	Open Parking Structures And Parking Below A Building	Private Recreation Use	Public Recreation Use	Service Stations, Automobile Dealerships, Drive-Thru Windows
Maximum lumen rating for a full cutoff light fixture shielded from view of adjacent streets and properties	14,000	23,500 for field or court area 8,500 for parking and pedestrian areas	107,000 for sports field 23,500 for courts 14,000 for parking areas 8,500 for pedestrian areas	14,000
Maximum lumen rating for an IESNA cutoff or semi cutoff light fixture	1,800	1,250	4,000	1,800
Maximum lumen rating for an unshielded light fixture	900	900	900	900
Sports shielding	n/a	Internal and external	Internal and external	n/a
Light fixture aiming angle	n/a	n/a	Not greater than 60 degrees from nadir	n/a
Controls	Automatic daylight adaptation controls required	Field or court lights shall be turned off within 30 minutes of the last event or 12:00 midnight, whichever is earlier	Field or court lights shall be turned off within 30 minutes after the last event	Service station canopies and vehicular display lights shall not exceed 5.0 footcandles within 1 hour of the close of business
Maximum allowable pole height (includes base, pole, and light fixture)	12 feet for uncovered upper level parking	20 feet in residential zones 25 feet in all other zones	20 feet in parking lots within or adjacent to residential zones, otherwise 25 feet 35 feet for sports lighting or as approved by the city manager per section 9-2-14, "Site Review," B.R.C. 1981	20 feet when adjacent to residential zones, otherwise 25 feet in parking lots 20 feet in all other areas

(f) Prohibitions: No person shall install any of the following types of outdoor lighting fixtures:

(1) Mercury vapor lamps;

(2) Low pressure sodium lamps, unless within six hundred feet of an existing astronomical observatory, which is owned or operated by a governmental entity;

(3) Blinking, flashing, moving, revolving, flickering, changing intensity or color, and chase lighting, except lighting for temporary seasonal displays, lighting for public safety or required for air traffic safety;

(4) Any light fixture that may be confused with or construed as a traffic control device;

(5) Any upward oriented lighting except as otherwise provided for in this section;

(6) Searchlights, beacons, and laser source light fixtures;

(7) Exposed linear lamps that include, without limitation, neon, Light Emitting Diode (L.E.D.), and fluorescent lighting, primarily intended as an architectural highlight to attract attention or used as a means of identification or advertisement except as permitted by section 9-9-21, "Signs," B.R.C. 1981; and

(8) Any lamp or bulb, except for seasonal displays and landscape ornamental lighting, which is visible beyond the property line on which it is located.

(g) Lighting Plans Required: A lighting plan shall be submitted with any building permit application in which outdoor lighting is proposed or required, except when all proposed lighting is provided by fixtures of nine hundred lumens or less, and except for a single detached dwelling unit on an individual lot. The lighting plan shall include:

(1) A site plan showing the location of all buildings and building heights, parking, and pedestrian areas on the lot or parcel;

(2) The location and description including mature height of existing and proposed trees and the location of light fixtures on adjacent properties or the street right-of-way within ten feet of the subject property;

(3) The location and height above grade of all proposed and existing light fixtures on the subject property;

(4) The type, initial lumen rating, color rendering index, and wattage of each lamp source;

(5) The general style of the light fixture such as cutoff, lantern, coach light, globe, and a copy of the manufacturer's catalog information sheet and IESNA photometric distribution type, including any shielding information such as house side shields, internal, and/or external shields;

(6) Control descriptions including type of controls (timer, motion sensor, time clock, etc.), the light fixtures to be controlled by each type, and control schedule when required;

(7) Aiming angles and diagrams for sports lighting fixtures; and

(8) A light calculation which shows the maximum light levels on a grid not to exceed ten feet by ten feet across the entire site and a minimum of ten feet beyond the lot or parcel property line. The grid shall also indicate maximum to minimum uniformities for each specific use

area such as parking and circulation areas, pedestrian areas, and other common public areas.

(h) Final Inspection And Certification: Prior to a building permit final inspection or the issuance of a certificate of occupancy, the applicant shall provide certification that the outdoor lighting as installed complies with the approved illumination plan and the requirements of this section unless waived or amended by the city manager in writing. The certification shall be submitted in a format prescribed by the city manager. The certification shall be completed by the architect, electrical engineer, electrical contractor, or lighting consultant responsible for the plans or the final installation.

(i) Exceptions: The standards of this section shall not apply to the following types of exterior lighting:

(1) Ornamental Lighting: Low voltage (twelve volts or less), low wattage ornamental landscape lighting fixtures, and solar operated light fixtures having self-contained rechargeable batteries, where any single light fixture does not exceed one hundred lumens.

(2) Strings Of Light: Strings of light, not exceeding a maximum of fifty lumens per lamp, (equivalent of a seven watt C7 incandescent light bulb) on properties located in all residential zoning districts or on properties that are used exclusively for residential uses shall be exempt from the requirements of this chapter.

Ordinance No. 7522 (2007).

(3) Aviation Lighting: Lighting used exclusively for aviation purposes. All heliport lighting, except lighting associated with emergency facilities, shall be turned off when the heliport is not in use.

(4) Right-Of-Way Lighting: Public lighting that is located within the right-of-way.

(5) Seasonal Lighting Displays: Lighting displays from November 15 through January 30 of the following year.

(j) Variances And Exemptions: The city manager is authorized to grant variances to this section in accordance with the following standards:

(1) Equivalent Material: The provisions of this section are not intended to prevent the use of any design, material or method of installation not specifically prohibited by this section provided any such alternate has been approved by the city manager. The city manager may approve any such alternate provided that the proposed design, material or method provides an approximate equivalent method of satisfying the standards of this section.

(2) Variance: The city manager may grant a variance from the provisions of this section if the city manager finds that one of the criteria of subparagraph (j)(2)(A), (j)(2)(B) or (j)(2)(C), and subparagraphs (j)(2)(D) and (j)(2)(E) of this section have been met:

(A) There are special circumstances or conditions applying to the land, buildings, or outdoor light fixtures for which the variance is sought, which circumstances or conditions are peculiar to such land, buildings or outdoor light fixtures and do not apply generally to the land, buildings or outdoor light fixtures in the neighborhood;

(B) For nonresidential uses, there are occupational safety lighting requirements for activities or processes that occur outdoors that are required by another governmental agency; or

(C) Upon a finding by the city manager that outdoor lighting in specific areas of the community, that otherwise meets the requirements of this section is not adequate and additional lighting is necessary to improve safety or security for the property or its occupants; and

(D) The granting of the variance will generally be consistent with the purpose of this section and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

(E) The variance is the minimum variance that provides the relief required.

(3) Temporary Lighting Exemption: The city manager may grant an exemption from the requirements of this section for temporary outdoor activities that include, without limitation, fairs, carnivals, sporting events, concerts, and promotional activities, if the city manager finds the following:

(A) The length of time that the temporary lighting is to be used is not longer than thirty days;

(B) The proposed lighting is designed in such a manner as to minimize light pollution, light trespass, and glare as much as feasible; and

(C) The proposed lighting will comply with the general purpose of this section.

(k) Amortization: All exterior lighting fixtures which do not conform to the following standards shall be brought into conformance no later than fifteen years from the date of adoption of this section.

(1) Extension Of Amortization Period: The city manager may extend the amortization period of this section. The city manager shall provide a compliance date for meeting the requirements of this section under a plan whereby the owner's actual investment in the improvements before the time that the use became nonstandard under this section can be amortized within a definite time period. The city manager shall consider the following factors in determining a reasonable amortization period:

(A) The owner's investment in improvements and other assets on the property before the time the improvements became nonstandard.

(B) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, and reconstruction expenses.

(C) Any return on investment since inception of the use, including net income and depreciation.

(D) The anticipated annual recovery of investment, including net income and depreciation.

(2) Compliance Requirement: If the city manager establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it meets the lighting standards of the Boulder Revised Code.

(3) Appeal: A property owner that requested the extension of an amortization period under this section that is aggrieved by any decision of the city manager denying such an extension may appeal to the BOZA by providing a notice to the city manager of the owner's intent to appeal within fourteen days after receiving notice of the city's decision. The hearing shall be held in conformance with the requirements of subsection 9-2-3(g), B.R.C. 1981.

(4) Exempt From Amortization Requirements: The following shall be exempt from the amortization provisions, but not the shielding requirements, of this section:

(A) Existing high pressure sodium and metal halide light fixtures which do not exceed the maximum allowable light levels of subsection (e) of this section by more than twenty percent;

(B) Existing high pressure sodium and metal halide light fixtures mounted on poles which exceed the maximum allowable pole heights of subsection (e) of this section, but do not exceed thirty-five feet in height, and do not exceed the maximum allowable light levels of subsection (e) of this section;

(C) Existing high pressure sodium and metal halide light fixtures which exceed the maximum lumen ratings of subsection (e) of this section, but comply with the maximum allowable light levels of subsection (e) of this section.

(5) Special Amortization Requirements: Notwithstanding the fifteen year amortization period set forth above, the following types of fixtures or bulbs shall be replaced sooner, as follows:

(A) Replacement Of Unshielded Mercury Vapor Light Fixtures: Existing unshielded mercury vapor light fixtures shall be removed or replaced with a light fixture that meets the requirement of this section by September 1, 2005.

(B) Replacement Of Bulbs: To the extent that compliance with this section can be achieved by replacement of a light bulb, the light bulb shall be replaced with one that meets the requirements of this section upon its failure or on September 1, 2004, whichever is earlier.

(C) Aiming Of Fixtures: To the extent that compliance with this section can be achieved by re-aiming a fixture, such fixture shall be re-aimed by September 1, 2004.

Ordinance Nos. 6017 (1998); 7297 (2003); 7484 (2006).

9-9-17 **Solar Access.**

(a) Purpose: Solar heating and cooling of buildings, solar heated hot water, and solar generated electricity can provide a significant contribution to the city's energy supply. It is the purpose of this section to regulate structures and vegetation on property, including city-owned and controlled property, to the extent necessary to ensure access to solar energy, by reasonably regulating the interests of neighboring property holders within the city.

(b) Applicability Of Section:

(1) Private Property: All private property is subject to this section.

(2) Development Approval: No proposed development permit may be approved for any structure that would violate the basic solar access provided by this section unless the object or structure is exempt or an exception is granted by the city manager or the BOZA for such purpose.

(3) Government Property: Governmental organizations not under the jurisdiction of the city may elect to enjoy the benefits of solar access under this section if they also consent in a written agreement with the city to be bound by its restrictions.

(4) City Property: Property owned or possessed by the city is subject to, and enjoys the benefits of this section. The city may submit applications, make objections, and may take actions that are afforded to any other person subject to the provisions of this section.

(c) Solar Access Areas Established: Three solar access areas are hereby established: SA Area I, SA Area II, and SA Area III. The purpose of dividing the city into solar access areas is to provide maximum solar access protection for each area of the city consistent with planned densities, topography, and lot configurations and orientations.

(1) Solar Access Area I (RR-1, RR-2, RE, RL-1, And MH): SA Area I is designed to protect solar access principally for south yards, south walls, and rooftops in areas where, because of planned density, topography, or lot configurations or orientations, the preponderance of lots therein currently enjoy such access and where solar access of this nature would not unduly restrict permissible development. SA Area I includes all property in RR-1, RR-2, RE, RL-1, and MH zoning districts.

(2) Solar Access Area II (RL-2, RM, MU-1, MU-3, RMX, RH, And I): SA Area II is designed to protect solar access principally for rooftops in areas where, because of planned density, topography, or lot configuration or orientation, the preponderance of lots therein currently enjoy such access and where solar access of this nature would not unduly restrict permissible development. SA Area II includes all property in RL-2, RM, MU-1, MU-3, RMX, RH, and I zoning districts.

(3) Solar Access Area III - Permits - Other Zoning Districts: SA Area III includes areas where, because of planned densities, topography, or lot configurations or orientations, uniform solar access protection for south yards and walls or for rooftops may unduly restrict permissible development. Solar access protection in SA Area III is provided through permits. SA Area III initially includes property in all zoning districts other than those set forth in paragraph (c)(1) or (c)(2) of this section.

(d) Basic Solar Access Protection:

(1) Solar Fence: A solar fence is hereby hypothesized for each lot located in SA Area I and SA Area II. Each solar fence completely encloses the lot in question, and its foundation is contiguous with the lot lines. Such fence is vertical, opaque, and lacks any thickness.

(A) No person shall erect an object or structure on any other lot that would shade a protected lot's building envelope in SA Area I to a greater degree than the lot would be shaded by a solar fence twelve feet in height, between two hours before and two hours after local solar noon on a clear winter solstice day.

(B) No person shall erect an object or structure on any other lot that would shade a protected lot's building envelope in SA Area II to a greater degree than the lot would be shaded by a solar fence twenty-five feet in height, between two hours before and two hours after local solar noon on a clear winter solstice day.

(C) Solar fences are not hypothesized for lots located in SA Area III. Solar access protection in SA Area III is available under this section only through permits, as hereinafter provided.

(2) Height: Unless prohibited by another section of this title, nothing in this section prevents a structure in SA Area III from being erected up to a height of thirty-five feet if located within the allowed building envelope. However, unless an exception is granted pursuant to subsection (f) of this section, no such structure may exceed thirty-five feet in height if any such excess height would cause the structure to violate, or to increase the

degree of violation of, the basic solar access protection provided for any lot in SA Area I or SA Area II.

(A) Nothing in this section shall be deemed to prevent the principal building on a lot in SA Area I or II from being erected within the building envelope up to the height of the solar fence in the area in which the structure is located.

(B) Each application for a development permit for a building of a height greater than allowed by this subsection shall:

(i) Include a graphic representation showing the shadows that would be cast by the proposed structure between two hours before and two hours after local solar noon on a clear winter solstice day;

(ii) The solar fences on all lots that the shadows would touch;

(iii) All possible obstructions of solar access protected by permit; and

(iv) Provide additional information as may be required by the city manager.

(3) Insubstantial Breaches And Existing Structures: Insubstantial breaches of the basic solar access protection or of the protection provided by a solar access permit are exempt from the application of this section. A structure in existence on the date of establishment of an applicable solar access area, or structures and vegetation in existence on the date of issuance of an applicable solar access permit, are exempt from the application of this section. For purposes of this section, structures are deemed to be in existence on the date of issuance of a development permit authorizing its construction.

(4) Temporary Solar Obstructions: Unavoidable temporary obstructions of protected solar access necessitated by construction activities or other necessary and lawful purposes are exempt to the extent that they do not exceed ten days in any three month period and thirty days in any year.

(5) Solar Analysis: When a solar analysis is required for any review process, it shall be prepared in compliance with the methods described in materials provided by the city manager.

(e) Amendment Of Solar Access Areas:

(1) Purpose: The planning board may amend solar access areas on its own motion or on petition of any person with a property interest in the subject area. A petitioner shall submit a list to the planning board of the names and addresses of all owners of property within and adjacent to the subject area and within one hundred feet to the north and sixty feet to the east and west of the subject area.

(2) Public Hearing And Notice Required: Before amending a solar access area, the planning board shall conduct a public hearing on the proposal. The board shall provide notice for the hearing pursuant to the requirements of section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(3) Review Criteria: A solar access area may be amended only after the planning board determines that one or more of the following conditions applies to the subject area:

(A) The subject area was established as a particular solar access area in error, and as currently established it is inconsistent with the purposes of the solar access areas;

(B) Permissible land uses and densities in the subject area are changing or should change to such a degree that it is in the public interest to amend the solar access area for the area; or

(C) Experience with application of this ordinance has demonstrated that:

(i) The level of solar access protection available in the subject area can be increased without significant interference with surrounding property; or

(ii) Application of the ordinance has unreasonable interference with use and enjoyment of real property in the subject area.

(4) Impact Of Changes: When any area is amended from SA Area I to another solar access area or from SA Area II to SA Area III, any solar access beneficiary whose solar access is affected by such change may apply for a permit to provide solar access protection to any solar energy system installed and in use on the date the change becomes effective.

(f) Exceptions:

(1) Purpose: Any person desiring to erect an object or structure or increase or add to any object or structure, in such a manner as to interfere with the basic solar access protection, may apply for an exception.

(2) Application Requirements: An applicant for an exception shall pay the application fee prescribed by subsection 4-20-33(b), B.R.C. 1981, and apply on a form furnished by the city manager that includes, without limitation:

(A) The applicant's name and address, the owner's name and address, and a legal description of the lot for which an exception is sought;

(B) Survey plats or other accurate drawings showing lot lines, structures, solar systems, dimensions and topography as necessary to establish the reduction of basic solar access protection expected on each lot that would be affected by the exception, together with a graphic representation of the shadows that would be cast by the proposed structure during the period from two hours before to two hours after local solar noon on a clear winter solstice day. The requirements of this subparagraph may be modified by the city manager, depending upon the nature of the exception sought;

(C) A list of all lots that may be affected by the exception, including the names and addresses of all owners of such lots;

(D) A statement and supporting information describing the reasons that less intrusive alternatives, if any, to the action that would be allowed by the exception cannot or should not be implemented; and

(E) A statement certifying that the proposed structure would not obstruct solar access protected by permit.

(3) Public Notice: The city manager shall provide public notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(4) City Manager Action: The city manager may grant an exception of this section following the public notification period if:

(A) The applicant presents the manager with an affidavit of each owner of each affected lot declaring that such owner is familiar with the application and the effect the exception

would have on the owner's lot, and that the owner has no objection to the granting of the exception, and

(B) The manager determines that the application complies with the requirements in paragraph (f)(2) of this section, and

(C) The manager finds that each of the requirements of paragraph (f)(6) of this section has been met.

(5) Appeal Of City Manager's Decision: The city manager's decision may be appealed to the BOZA pursuant to the procedures of section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981. Public notification of the hearing shall be provided pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981. The sign posted shall remain posted until the conclusion of the hearing.

(6) Review Criteria: In order to grant an exception, the approving authority must find that each of the following requirements has been met:

(A) Because of basic solar access protection requirements and the land use regulations:

(i) Reasonable use cannot otherwise be made of the lot for which the exception is requested;

(ii) The part of the adjoining lot or lots that the proposed structure would shade is inherently unsuitable as a site for a solar energy system; or

(iii) Any shading would not significantly reduce the solar potential of the protected lot; and

(iv) Such situations have not been created by the applicant;

(B) Except for actions under subparagraphs (f)(6)(D), (f)(6)(E), and (f)(6)(F) of this section, the exception would be the minimal action that would afford relief in an economically feasible manner;

(C) The exception would cause the least interference possible with basic solar access protection for other lots;

(D) If the proposed structure is located in a historic district designated by the city council according to section 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981, and if it conformed with the requirements of this section, its roof design would be incompatible with the character of the development in the historic district;

(E) If part of a proposed roof which is to be reconstructed or added to would be incompatible with the design of the remaining parts of the existing roof so as to detract materially from the character of the structure, provided that the roof otherwise conformed with the requirements of this section;

(F) If the proposed interference with basic solar access protection would be due to a solar energy system to be installed, such system could not be feasibly located elsewhere on the applicant's lot;

(G) If an existing solar system would be shaded as a result of the exception, the beneficiary of that system would nevertheless still be able to make reasonable use of it for its intended purpose;

(H) The exception would not cause more than an insubstantial breach of solar access protected by permit as defined in paragraph (d)(3) of this section; and

(I) All other requirements for the issuance of an exception have been met. The applicant bears the burden of proof with respect to all issues of fact.

(7) Conditions Of Approval: The approving authority may grant exceptions subject to such terms and conditions as the authority finds just and equitable to assist persons whose protected solar access is diminished by the exception. Such terms and conditions may include a requirement that the applicant for an exception take actions to remove obstructions or otherwise increase solar access for any person whose protected solar access is adversely affected by granting the exception.

(8) Planning Board: Notwithstanding any other provisions of this subsection, if the applicant has a development application submitted for review that is to be heard by the planning board and that would require an exception, the planning board shall act in place of the BOZA, with authority to grant exceptions concurrent with other actions on the application, pursuant to the procedures and criteria of this section.

(g) Solar Siting:

(1) Siting Requirements: For purposes of insuring the potential for utilization of solar energy in the city, all planned unit developments and subdivisions shall be designed and constructed in compliance with the following solar siting requirements:

(A) All residential units in Solar Access Areas I, II, and III have a roof surface that meets all of the following criteria:

(i) Is oriented within thirty degrees of a true east-west direction;

(ii) Is flat or not sloped towards true north;

(iii) Is physically and structurally capable of supporting at least seventy-five square feet of un-shaded solar collectors for each individual dwelling unit in the building; and

(iv) Has unimpeded solar access under either the provisions of this section or through easements, covenants, or other private agreements among affected landowners that the city manager finds are adequate to protect continued solar access for such roof surface;

(B) Each residential unit in Solar Access Area I has an exterior wall surface that meets all of the following criteria:

(i) Is oriented within thirty degrees of a true east-west direction;

(ii) Is located on the southernmost side of the unit; and

(iii) Is immediately adjacent to a heated space;

(C) Each nonresidential building with an anticipated hot water demand of one thousand or more gallons a day has a roof surface that meets all of the following criteria:

(i) Is flat or oriented within thirty degrees of a true east-west direction;

(ii) Is physically and structurally capable of supporting a solar collector or collectors capable of providing at least one-half of the anticipated hot water needs of the building; and

(iii) Has unimpeded solar access under either the provisions of this section or through easements, covenants, or other private agreements among affected landowners that the city manager finds are adequate to protect continued solar access for such roof surface;

(2) Waivers: Upon request of any applicant for a building permit or a subdivision or planned unit development approval, the approving authority may waive such of the requirements of this paragraph as it deems appropriate if it finds that any of the following criteria are met:

(A) Any structure or structures subject to the requirements of this paragraph are designed and intended to be unheated;

(B) Topographic features, land slope, shading by objects, structures, or vegetation outside the control of the applicant, or the nature of surrounding development or circulation patterns when combined with the requirements of this paragraph:

(i) Makes use of solar energy not feasible in some or all of the structures to be erected;

(ii) Will result in a substantial decrease in the density of land use in the subdivision or planned unit development;

(iii) Will result in an increase in transportation or other energy use that substantially outweighs the potential for increased solar energy use created by adherence to these requirements; or

(iv) Will be inconsistent with the floodplain management requirements of section 9-3-2, "Floodplains," B.R.C. 1981;

(C) Substantial planning, design, or other preliminary expenditures have been incurred by the applicant prior to July 1, 1982, and adherence to the standards of this paragraph would work an undue hardship on the applicant; or

(D) The applicant's proposal incorporates the following additional energy resource and conservation option points in excess of the requirements of subsection 10-5.5-2(y), "Resource Conservation - Green Points," B.R.C. 1981:

Ordinance No. 7535 (2007).

(i) 2 points - to qualify for a waiver of the requirement of subparagraph (g)(1)(A) of this section;

(ii) 3 points - to qualify for a waiver of the requirement of subparagraph (g)(1)(B) of this section; and

(iii) The city manager finds that adequate protection for any solar energy systems to be installed is provided either under the provisions of this section, or through covenants, easements, or other agreements among affected landowners.

(h) Solar Access Permits:

(1) Purpose Of Solar Access Permit: In order to promote opportunities for the use of solar energy and where basic solar access protection established by this section is inadequate to protect potential solar energy users, or to insure maximum utilization of solar energy resources consistent with reasonable use of surrounding property, persons may obtain permits under this section. Beneficial use is the limit and measure of any right conferred by permit and no permit shall restrict use of other property beyond the extent reasonable to insure efficient and economical beneficial use of solar energy by the permittee. Further, no permit shall restrict the reasonable use and enjoyment of adjacent properties.

(2) Eligibility Standards: Any owner or possessor of property who has installed a solar energy system or who intends to install such a system within a year from the date of application may apply for a permit if:

(A) The lot for which a permit is requested is included in SA Area III;

(B) The system that has been or will be installed is capable of applying to beneficial use substantial amounts of solar energy outside the hours of the day during which basic protection is provided for under this section;

(C) A solar energy system is in existence on the lot or is planned to be built within a year and the lot is changed from SA Area I to another solar access area or is changed from SA Area II to SA AREA III, resulting in a diminution or elimination of protection previously afforded the user or potential user of the solar energy system;

(D) A new structure is built on a lot in SA Area I or SA Area II after the effective date of this section whose locations renders the basic solar access protection inadequate, and the structure could not reasonably have been constructed at a location where it would have substantially benefited from the basic solar access protection provided by this section; or

(E) The applicant demonstrates that there are substantial technical, legal, or economic factors that render it infeasible to collect a reasonable amount of solar energy by utilizing the basic solar access protection available under this section without a permit. Such factors include, without limitation, structural characteristics of the applicant's building that limit possibilities for economical retrofit of a solar energy system or shading by objects, structures, or vegetation that are beyond the applicant's control and are exempt from the requirements of this section.

(3) Application Requirements: An applicant for a permit shall pay the fee prescribed by subsection 4-20-33(a), B.R.C. 1981, and complete an application in writing on a form furnished by the city manager that includes, without limitation:

(A) The applicant's name and address, the owner's name and address, and a legal description of the lot where the solar energy system is located or will be located;

(B) A statement by the applicant that the solar energy system is already installed or that the applicant intends to install such a system on the lot within one year of the issuance of the permit;

(C) A description of the existing or proposed size and location of the system, its orientation with respect to south, and its elevation and orientation from the horizontal;

(D) A statement describing the beneficial use to which solar energy is or will be applied and certifying the energy capacity of the system in BTUs or BTU equivalents and its reasonable life expectancy;

(E) A statement and accurate drawings describing the access protection desired beyond the basic solar access protection provided by this section, specifying the hours of the day, seasons of the year, and locations on the applicant's lot for which protection is desired;

(F) A description of all existing vegetation, objects, and structures wherever located that will or may in the future shade the solar energy system, together with a map or drawing showing their location to the extent possible;

(G) Information showing that the applicant has done everything reasonable in designing and locating the system so as to minimize the impact it will have on use and development on nearby land;

(H) Survey plats or other accurate drawings showing lot lines, dimensions, and topography of the lot on which the solar energy system is or will be located and all surrounding properties that are intended to be subject to the permit; and

(I) A list of all lots that may be affected by the permit, including the names and addresses of all owners of such lots.

(4) Public Notice: The city manager shall provide public notification pursuant to the requirements of section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(5) Permit Issuance: The city manager shall issue a solar access permit and may impose additional conditions or restrictions as the manager deems appropriate if the application complies with the requirements of paragraph (h)(7) of this section.

(6) Appeal Of City Manager's Decision: The city manager's decision may be appealed to the BOZA pursuant to the procedures of section 9-4-4, "Appeals, Call-Ups And Public Hearings," B.R.C. 1981. Public notification of the hearing shall be provided pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

(7) Permit Requirements: In order to issue a permit, the approving authority must find that each of the following requirements has been met:

(A) The applicant meets at least one of the eligibility standards of paragraph (h)(2) of this section;

Ordinance No. 7522 (2007).

(B) The applicant has done everything reasonable in designing and locating the proposed solar energy system to minimize the impact it will have on use and development of nearby land. However, the fact that an alternate design or site may be more expensive does not necessarily establish that the applicant's failure to select that alternate design or site is reasonable. In making this finding, the board or the city manager may consider whether the additional cost of alternative, less intrusive sites or solar energy systems, if any, would exceed the difference between the adverse effects, if any, imposed on other lots by the proposed site and solar energy system and the adverse effects, if any, that would be imposed on other lots by alternative sites or solar energy systems;

(C) Issuance of the permit is consistent with reasonable use and enjoyment of nearby land, excluding landscaping considerations. Issuance of the permit will be presumed not to be consistent with reasonable use and enjoyment of nearby land if issuance would prevent any affected property owner from erecting, consistent with legal requirements, a structure of a size, character, and usefulness reasonably typical of those in existence on similar lots subject to the same zoning requirements located within one-fifth mile of the lot in question. However, nothing in this subsection prohibits issuance of a permit only because it would impose requirements on a neighboring lot owner that are more restrictive than the height or setback requirements that would otherwise apply, if reasonable use and enjoyment of such lot is preserved; and

(D) Issuance of the permit is consistent with reasonable landscaping of nearby land. In determining consistency, the board shall consider the need for any additional landscaping in the future, including any energy conservation value that such landscaping may have.

(8) Conditions Of Approval: The board may grant permits subject to such terms and conditions as it finds just and equitable.

(9) Records: The city manager shall maintain complete records of all permits that have been issued and shall make them readily available for public inspection.

(10) Expiration Of Permit: A solar access permit expires if:

(A) A functioning system is not installed within a year after the issuance of the permit;

(B) The solar energy system protected by the permit has not functioned to fulfill its intended purpose for a continuous period of two or more years; or

(C) The term established under paragraph (h)(11) of this section expires.

(11) Term Of Solar Energy System: The city manager or the BOZA shall specify the term of each solar access permit, which shall be for the reasonable life expectancy of the particular solar energy system, as determined by the manager or the board. At the expiration of a permit, it may be renewed in the same manner as new permits are issued.

(12) Renewal Of Permit: If no functioning solar energy system is installed within a year of the issuance of the permit, the city manager may grant a renewal of up to one additional year to the holder of the expired permit if the permittee demonstrates that the permittee has exercised due diligence in attempting to install the system.

(13) Enforcement: A solar access permit is enforceable by the beneficiary, if and only if the beneficiary has properly recorded the permit in the real property records of the Boulder County Clerk and Recorder with respect to each affected lot in such a manner that it could be detected through customary title search.

(A) On sale, lease, or transfer of the lot on which the protected solar system is located, the right to enforce its terms passes to the beneficial user of the system.

(B) No property owner shall be requested to remedy vegetative shading unless a protected solar system is installed and functioning.

(14) Impacts Of Vegetation On An Issued Permit: Upon application of a beneficiary to the BOZA, vegetative shading may be remedied to the extent necessary to comply with the terms specified in a solar access permit. However, no vegetation in the ground and growing at the time the permit application is filed may be ordered removed or trimmed. After notice to at least the beneficiary and the vegetation owner, the board shall hold a hearing and, based on evidence submitted by any interested party, may issue any necessary order and specify the time in which actions thereunder must be performed. Absent unusual circumstances, the cost of remedying shading from vegetation not in the ground and growing at the time the permit application is filed shall be borne by the vegetation owner. If an owner or possessor of real property who receives an order to remedy vegetative shading fails to comply within the specified time, the city manager may order the condition remedied and charge the actual cost thereof to the person to whom the order is directed, who shall pay the bill. If any person fails or refuses to pay when due any charge imposed under this subsection, the manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(i) Authority To Issue Regulations: The city manager and the BOZA are each authorized to adopt rules and regulations necessary in order to interpret or implement the provisions of this section that each administers.

Ordinance No. 7484 (2006).

9-9-18 **Trash Storage And Recycling Areas.**

The following standards shall apply to the construction of trash storage and recycling areas for attached dwellings and all business and industrial buildings or uses:

(a) Covered Area: Trash storage and recycling area shall be accommodated within the structure, or adequate common area shall be included on-site and indicated on a site plan.

(b) Hard Surface Required, Screening And Landscaping: All outdoor trash recycling storage and containers shall be placed on a hard surface, including, without limitation, concrete, and shall be screened in accordance with section 9-9-12, "Landscaping And Screening Standards," B.R.C. 1981.

(c) Maintenance And Service: Trash storage and recycling area shall include adequate space for the maintenance and servicing of containers for recyclable materials that are provided by local disposal and recycling companies.

(d) Adequate Space For Trash And Recyclables: The amount of space provided for the collection and storage of recyclable materials shall be at least as large as the amount of space provided for the collection and storage of trash materials.

(e) Convenience And Accessibility: The recycling area shall be at least as accessible and convenient for tenants and collection vehicles as the trash collection and storage area.

(f) Minimum Clearance: A minimum height clearance of six feet eight inches shall be required if the space is provided in a covered enclosure.

Ordinance No. 7331 (2004).

9-9-19 **Swimming Pools, Spas, And Hot Tubs.**

A swimming pool, spa, or hot tub may be permitted in any district as an accessory use, subject to the following additional requirements:

(a) Location: Such use may not be located in any required front yard or side yard abutting a street;

(b) Fences Or Walls Required: All pools, spas, and hot tubs shall be fenced as required by chapter 10-5, "Building Code," B.R.C. 1981.

(c) Gates Or Doors: All gates or doors opening through such enclosures must be equipped with self-closing and self-latching hardware keeping the gate or door securely closed at all times when not in use.

9-9-20 **Addressing.**

(a) Building Address Required: Buildings shall be numbered according to a city addressing system. The city manager will issue an address when issuing the building permit.

(b) Building Numbers: Building numbers shall be constructed of durable material distinctly legible, of contrasting color, at least three inches high, and prominently displayed on the

building or on a wall or other suitable structure so as to be readily visible from the street of address. All buildings under construction shall comply with this section as soon as any structure above the foundation is erected. Numbers more than twenty-four inches high shall be subject to all of the provisions of section 9-9-21, "Signs," B.R.C. 1981, to the extent of such excess.

(c) Installation And Maintenance Of Assigned Address: No person shall use an unauthorized address or fail to install or maintain the assigned address in compliance with the requirements of this section.

(d) Proposed Street Names: Proposed street names shall be subject to approval by the city manager. Street names shall conform to the city street name plan on file at the planning department.

9-9-21 Signs.

(a) Application And Legislative Intent:

(1) Application Of Section: This section applies only to signs erected on private property by the owner or lessee in possession of that property, or by persons acting with the permission or at the request of the owner or lessee. It applies only to signs which are visible beyond the boundaries of the property upon which they are located. There are two exceptions to this rule which are most conveniently included in this section: signs erected on private property as part of a sign program which was a condition of approval of development under this title; and signs on private vehicles located on public property. This section does not apply to a sign carried by a person, whether on public or private property. This section does not apply to signs, other than those on vehicles, on public property[1].

(2) Intent: The purpose of this section is to protect the health, safety, and welfare of the residents of the city by regulating the design, construction, and installation of private signs in the city. The city council recognizes that signs are necessary means of visual communication for the public convenience and that businesses and individuals have the right to identify themselves and convey messages by using signs that are accessory and incidental to the use on the premises where the signs are located. In this section the council intends to provide a reasonable balance between the right of a business or an individual to identify itself and to convey its message and the right of the public to be protected against the visual discord that results from the unrestricted proliferation of signs, especially off-premises billboards. The ability to convey messages by signs is important to the proper and efficient functioning of society. However, the natural desire to speak more "loudly" through signs which are more numerous, larger, higher, and closer to the street than the signs used by one's neighbors and competitors requires a set of rules applicable to all similarly situated. With a level playing field the community as a whole benefits and no individual is disadvantaged in communicating. The council also intends by this section to ensure that signs are compatible with adjacent land uses and with the total visual environment of the community and that the value of nearby property and the economic health of the community as a whole are protected from visual blight. Another purpose of this section is to protect the public from hazardous conditions by prohibiting signs that: are structurally unsafe, particularly in light of the unique wind hazards in the city, obscure or distract the vision of motorists, or compete

[1]Signs located on private or public property without the permission of the owner can be a form of trespass and are governed by provisions found in title 5, "General Offenses," B.R.C. 1981. Certain provisions concerning signs as they might affect public traffic control devices are found at section 7-2-26, "Display Of Unauthorized Sign, Signal, Or Marking Prohibited," B.R.C. 1981. Other provisions which might allow a private party to place a sign on public property are found in chapters 4-11, "Mall Permits And Leases," 4-18, "Street, Sidewalk, And Public Property Use Permits," and 8-6, "Public Right-Of-Way And Easement Encroachments, Revocable Permits, Leases, And Vacations," B.R.C. 1981, and elsewhere in this code. The structural requirements for signs located on private property and not regulated by this section are found in the city's building codes in title 10, "Structures," B.R.C. 1981, although the city manager may take guidance from the structural requirements for signs found in this section.

or conflict with necessary traffic signs and warning signals. In adopting this section, the council recognizes that the size of signs that provide adequate identification in pedestrian-oriented areas differs from that necessary in vehicular-oriented areas where traffic is heavy, travel speeds are greater, and required setbacks are greater.

(A) The city council recognizes that since the sign code was originally enacted in 1971, most nonconforming signs have been eliminated through attrition and through the amortization provision of chapter 48 of the Revised Code of the City of Boulder, Colorado 1965. But nonconforming signs may enter the city as it annexes developed land, and code changes may make conforming signs nonconforming. The council recognizes that permitting the continuation of such nonconforming signs provides an unfair competitive advantage over persons whose signs conform to the section requirements and intends that signs that do not conform with this section be eliminated as expeditiously as practicable to protect the public safety and welfare and the visual environment.

(B) The city council recognizes the right of residents of the city to fully exercise their right to free speech by the use of signs containing noncommercial messages that are subject to minimum regulations regarding size, number, structural safety and visual setbacks.

(C) The city council finds that certain types of signs are not appropriate for regulation by permit under this section because they:

(i) Would not create a structural safety or traffic safety hazard;

(ii) Would promote public safety or the dissemination of public information;

(iii) Would not give rise to aesthetic or traffic concerns;

(iv) In the case of art, are deemed a privilege of individual creative expression;

(v) In the case of other noncommercial signs, are accessory to the exercise of first amendment rights;

(vi) With respect to real estate signs, the council finds that a small "for sale" or "for rent" sign is an important means of advertising real estate and does not create a traffic hazard. In fact, appropriate real estate signs prevent traffic hazards by easing the task of the motorist looking for the property. In addition, the council finds that a substantial portion of such rentals occur as a result of prospective tenants examining areas of interest to them looking for signs indicating that space is for rent, and that approximately fifty-four percent of the dwelling units in the city are rental units;

(vii) With respect to permitted construction warning signs, the council finds that such signs are essential to warn persons entering the property of dangers created by the construction and that their prompt and unfettered use constitutes a compelling governmental interest and requires a different form of regulation;

(viii) With respect to permitted garage sale signs, the council finds that sporadic "garage sale" signs for garage sales permitted under this title do not constitute a commercial use of residential property and do not compromise the residential values served by the restrictions on home occupations, and that other means of advertising such sales are unacceptably burdensome. The need for such sales in the city, and the attendant signs on the premises where the occupant lives and is holding the sale, is particularly high because of the large college student population (approximately one-fourth of the city's population), and the high proportion of persons living in rental housing as opposed to owner occupied housing (approximately fifty-four percent of the dwelling units in Boulder are rental units), and who have from time to time a pressing need to unburden

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themselves from possessions they have determined they cannot reasonably take with them to their new place of abode;

(ix) With respect to permitted lost animal signs, the council finds that notices in newspapers or other means of communicating this information are inadequate, and that notice of the animal's loss near the site of the loss is necessary to increase the likelihood and timeliness of the animal's return to its owner, and promotes the government's interest in avoiding euthanasia and the other costs attendant upon stray animals;

(x) With respect to permitted private traffic signs, the council finds that such signs serve a compelling governmental interest in the safe movement of traffic in private parking lots and drives and serve a function which cannot effectively be served in any other manner;

(xi) With respect to signs required by law, the council finds that the law requiring the sign is sufficient regulation of the sign, and that it is inappropriate for the government to require a sign to be posted but count it against allowable private signage, and that such signs by definition serve a compelling governmental interest in a site-specific manner which cannot otherwise be served as effectively;

(xii) With respect to small permitted residential wind signs, the council finds that the safety valve for personal expression provided by such signs serves a compelling governmental interest and is within the penumbra of the First Amendment;

(xiii) With respect to permitted utility warning signs, the council finds that the dispersed nature of utility lines throughout all the community does not lend itself to the property by property regulation otherwise used in this code, and that warning of the location of utilities and of their hazards so that persons will not be injured thereby, so that fire, police, and other public emergency services may be conducted expeditiously and safely, and so that the essential public functions served by such utilities will not be impaired constitutes a compelling governmental interest and requires a different form of regulation;

(xiv) With respect to permitted vehicular signs, the council finds that regulation of bumper stickers and other forms of personal expression is inappropriate in a free and highly mobile society and that such signs are ordinarily small, whereas regulation of commercial signs on motor vehicles, which the council finds are often large, is appropriate for those who have chosen to engage in commerce within the city and serves a substantial governmental interest in aesthetics and traffic safety;

(xv) With respect to permitted window signs, the council finds that such signs present no structural hazards and provide a method by which messages may be displayed on short notice by the property owner or tenant as that person perceives the need to communicate without need for any government role in the protection of the broader public interest, and that within the limitations given have not and will not cause aesthetic blight or traffic hazards of the sort unacceptable to the community; and

(xvi) Because of the extraordinary importance, amounting to a compelling societal and governmental interest, of election campaigning for public office and of voting on initiatives and referenda, and because political speech has its fullest and most urgent application during a political campaign from the time a candidate is nominated for electoral office until the day after the election, and from the time an initiative or referendum is placed on the ballot until the day after the election, the limit of one noncommercial residential sign within the residential noncommercial sign setback should not apply to signs urging the election or defeat of such candidates, or the passage or defeat of such measures, and the applicable provisions of this sign code reflect this

determination. Without in any way limiting the applicability of the general severability provisions of section 1-1-4, "Severability Of Parts Of Code," B.R.C. 1981, but mindful of the possibility that a reviewing court might disregard such an otherwise clear expression of legislative intent because of its generality, the city council intends that this exception for signs during campaigns be considered severable from the remainder of the sign code should it for some reason be found wanting under the state or federal constitutions, just as it intends all other provisions of this sign code to be severable.

(D) Council finds that commercial signs towed over the city by aircraft are a distraction to motorists, pedestrians, and other users of the public streets and ways, and impair traffic safety, and constitute unfair competition for earthbound advertisers who comply with the city's sign code when made by multiple passes over the city, and therefore are detrimental to the health, safety, and welfare of the people of the city, and urges the Federal Aviation Administration to place suitable restrictions upon any certificate of waiver to prohibit towing such signs over the city.

Ordinance Nos. 5223 (1989); 5255 (1989); 5640 (1994).

(b) Prohibitions And Prohibited Signs:

(1) Conformity With Sign Code Required: No person shall display, construct, erect, alter, use, or maintain any sign in the city except in conformance with the provisions of this section. No person shall display, alter, use, maintain, or enlarge any legal, nonconforming sign except in conformity with the provisions of this section. No person shall perform or order the performance of any act contrary to the provisions of this section or fail to perform any act required by the provisions of this section.

(2) Sign Permit Required: Except as provided in subsection (c) of this section, no person shall display, construct, erect, alter, or relocate any sign without first applying to the city manager and obtaining a permit under this section.

(3) Specific Signs Prohibited[1]: No person shall erect, install, post, display, or maintain any of the following signs:

(A) Animal: A sign that involves the use of a live animal.

(B) Flashing: A sign with lights or illuminations that flash, move, rotate, scintillate, blink, flicker, vary in intensity, vary in color, or use intermittent electrical pulsations.

(C) Height: A sign twenty-five feet or more above the ground level.

(D) High Window: A window sign exceeding four square feet in area twelve feet or more above the ground level.

(E) Illuminated: An illuminated sign with any of the following characteristics:

(i) A beam or ray of light used to illuminate the sign shines directly from the sign onto the surrounding area.

(ii) Direct or reflected light from any light source associated with the sign creates a traffic hazard or distraction to operators of vehicles or pedestrians on the public right-of-way.

(iii) The sign is directly illuminated and is in a residential or an agricultural zoning district.

[1]Searchlights and beacons are also prohibited by section 9-9-16, "Lighting, Outdoor," B.R.C. 1981.

(iv) If a sign is indirectly or internally illuminated and is in a residential or an agricultural zone, the illumination may not continue between the hours of 11:00 p.m. and 7:00 a.m., unless the illumination is required for safety purposes.

(v) No illuminated sign visible from and located within three hundred feet of any property in a residential zoning district may be illuminated between the hours of 11:00 p.m. or one-half hour after the use to which it is appurtenant is closed, whichever is later, and 7:00 a.m.; but this time limit does not apply to any light primarily used for the protection of the premises or for safety purposes.

(F) Illusion: A sign with optical illusion of movement by means of a design giving the illusion of motion or changing of copy, including, without limitation, a sign that presents a pattern capable of reversible perspective.

(G) Moving: A sign with visible moving, revolving, or rotating parts or visible mechanical movement of any description or other apparent visible movement achieved by electrical, electronic, or mechanical means, except for gauges and dials that may be animated to the extent necessary to display correct measurement. Electronic signs which change the message not more than once per minute are considered copy changes and not prohibited moving signs. Vertical rotating cylindrical signs, in which the text or graphic is on the surface of the cylinder, and nothing beyond the radius of cylinder surface rotates, whose rotating part does not exceed twelve inches in diameter and thirty inches in height, are not considered prohibited moving signs.

(H) Non-Appurtenant Or Off-Premises: An off-premises commercial sign not appurtenant and clearly incidental to the principal use of the property where located.

(I) Obstructing: A sign or sign structure that obstructs or interferes in any way with ingress to or egress from or use of any standpipe, fire escape, required door, required window, or other required exit way; or any sign that obstructs any window to such an extent that light or ventilation is reduced to a point below that required by any provision of this code or other ordinance of the city.

(J) Projected Image: A sign that incorporates a projected image.

(K) Roof: A roof sign, except as specifically permitted by subsection (d)(11) of this section.

(L) Sound: A sign or building that emits any sound, except for a work of art located in a zoning district other than an agricultural or a residential district, which may emit noncommercial human voice or music recordings which do not exceed fifty dBA, measured at the nearest property line, between 8:00 a.m. and 6:00 p.m.

(M) String Of Lights: A string of light bulbs used in connection with commercial premises for commercial purposes and attached to or suspended from a structure. This prohibition does not apply to a string of lights in a window for which a permit has been issued under subparagraph (d)(14)(I) of this section, concerning wall signs.

(N) Traffic Vision Obstruction: A freestanding sign or sign structure between a height of two and one-half feet and ten feet above the street elevation, other than a pole twelve inches or less in cross-sectional area, within the corner triangular areas described in section 9-9-7, "Sight Triangles," B.R.C. 1981.

(O) Unsafe: A sign or structure that constitutes a hazard to safety or health including, without limitation, any sign that is structurally inadequate by reason of inadequate design, construction, repair, or maintenance, is capable of causing electrical shock to persons likely

to come into contact with it, or has less than three feet horizontal or eight feet vertical clearance from overhead electric conductors that are energized in excess of seven hundred fifty volts.

(P) Vehicular: A sign displayed on a motor vehicle if:

(i) The vehicle is not in operable condition;

(ii) The sign is roof-mounted and has more than two faces or any face exceeds four square feet in area;

(iii) More than two signs are mounted on the roof of the vehicle;

(iv) The sign, if not roof-mounted, is not painted on or securely affixed on all edges to the surface of the side of the body of the vehicle;

(v) The principal use of the vehicle at the time of the display is for display of the sign;

(vi) It is a commercial sign which does not identify the owner of the vehicle or a good or service which may be purchased from the owner;

(vii) It is a commercial sign and the vehicle is not being operated in the normal course of business;

(viii) It is a commercial sign and the vehicle is not parked or stored in the normal course of business in an area appropriate to the use of the vehicle for delivery or another commercial purpose; or

(ix) It is a commercial sign and the vehicle, if parked on private property, is not parked within the setback requirements of this section, unless no other reasonable provision can be made for such parking.

(x) It is a specific defense to a charge of violation of subparagraph (b)(3)(P)(vi) of this section that the vehicle was licensed by the Colorado Public Utilities Commission for the commercial transportation of passengers, or was engaged in such transportation but was exempt from such licensure.

(Q) Wind: A wind sign, except as permitted for flags in subparagraph (c)(1)(B) of this section, or in a residential or agricultural zone as permitted in subparagraph (c)(1)(I) of this section.

Ordinance Nos. 5255 (1989); 5562 (1993); 5640 (1994); 7365 (2004).

(c) Signs Exempt From Permits:

(1) Specific Signs Exempted: The following signs are permitted in all zoning districts and are exempt from the permit requirements of this section, but shall in all other respects comply with the requirements of this code except as expressly excepted below:

(A) Construction Warning: A sign not exceeding sixteen square feet erected by a licensed construction contractor on property on which it is working to warn of danger or hazardous conditions. Such sign is also exempt from the setback, limitation on number of freestanding signs, and total sign area regulations of this section.

(B) Flags: Up to three different flags per property, subject to the following restrictions:

(i) The total area of all flags shall not exceed seventy square feet;

(ii) The area of each such flag shall be exempt from the sign area limitations of paragraph (d)(2) of this section, but shall not exceed forty square feet, with no one dimension of any flag greater than eight feet;

(iii) The flag pole or other structure on which such a flag is displayed shall be treated as part of any building to which it is attached for all height computations and not as an appurtenance or a part of the sign;

(iv) No freestanding flagpole shall exceed twenty feet in height outside of the principal building setbacks or thirty-five feet in height within the principal building setbacks; and

(v) No flag bearing an explicit commercial message shall constitute an exempt flag.

(C) Garage Sale: One garage sale sign per property in an agricultural or residential district placed on private property owned or leased by the person holding the garage sale, for a period not to exceed ten consecutive days and not more than twice in a calendar year. The sign must be within the total signage permitted for the parcel.

(D) Lost Animal: One lost animal sign per property placed on private property with the permission of the owner for a period not to exceed ten consecutive days, in an agricultural or residential district and within the total signage permitted for such parcel.

(E) Noncommercial: A work of art that in no way identifies or advertises a product, service, or business or impedes traffic safety, a political sign, or any other noncommercial sign[1].

(F) Private Traffic: A private traffic directional sign guiding or directing vehicular or pedestrian traffic onto or off of a property or within a property that does not exceed three square feet per face in area and six feet in height, does not contain any advertising or trade name identification, and is not illuminated, internally illuminated, or indirectly illuminated. But a private traffic control sign that conforms to the standards of the state traffic control manual defined in subsection 7-1-1(a), B.R.C. 1981, may exceed three square feet per face in area but shall not exceed seven square feet per face or eight feet in height. Such sign also is exempt from the setback, limitation on number of freestanding signs, and total sign area regulations of this section[2].

(G) Real Estate: One temporary, non-illuminated real estate sign per property or per dwelling unit street frontage, set back at least eighteen inches from the nearest public sidewalk, that does not exceed six square feet per face in area and a total of twelve square feet in area and four feet in height in the RR, RE, RL, RM, RMX, RH, and MH zones or sixteen square feet per face and a total of thirty-two square feet in area and seven feet in height in any other zone, but only if the sign remains in place no more than seven days after sale or rental of the subject property. The area of such a sign shall not be deducted from the allowable sign area or number of freestanding signs for the building or business unit. If the property owner or tenant is not using this real estate sign allowance, such person in possession of the property may place a noncommercial sign conforming with these limitations in lieu of such a real estate sign.

[1]Such signs may, however, be further regulated by paragraphs (d)(8) and (d)(9) of this section.
[2]See section 7-2-5, "Overlapping Prohibitions," B.R.C. 1981, and subparagraph (b)(3)(N) of this section for prohibitions related to private traffic devices.

(H) Sign Required By Law: A sign required or specifically authorized for a public purpose by any federal, state, or city law of any type, including, without limitation, the number, area, height above grade, location or illumination authorized by the law under which such sign is required or authorized. But no such sign may be placed in the public right-of-way unless specifically authorized or required by law. Except for a warning sign or barricade of a temporary nature, any such sign shall be securely affixed to the ground, a building, or another structure. So much of such a sign as is required by law also is exempt from all other provisions of this section.

(I) Residential Wind Sign: A wind sign in a residential or an agricultural zone, within the limitations set forth in subsection (d) of this section, notwithstanding the prohibition of subparagraph (b)(3)(Q) of this section.

(J) Utility Warning: A sign not exceeding sixteen square feet erected by a public utility within a utility easement on property on which it is working to warn of danger or hazardous conditions or to indicate the presence of underground cables, gas lines, and similar devices. Such a sign also is exempt from the setback, limitation on number of freestanding signs, and total sign area regulations of this section.

(K) Vehicular: A sign displayed on a motor vehicle if not prohibited by this section.

(L) Window: A non-illuminated window sign of no more than four square feet in area and placed no more than twenty-five feet above finished grade, if the total area of such signs fills less than twenty-five percent of the area of the architecturally distinct window, and such signs do not exceed twenty-five percent of the total allowable sign area for the building or business unit. The area of a window sign not exempt from permit requirements under this subparagraph is calculated as a part of and limited by the total allowable sign area for the premises[1].

(2) Copy Change And Maintenance: No permit is required for copy changes or maintenance on a conforming sign if no structural changes are made. This exception does not apply to copy changes in signs covered by a private sign program as specified in subsection (k) of this section.

Ordinance Nos. 5377 (1991); 5930 (1997).

(d) Size Limitations And Other Rules For Certain Signs:

(1) Awning: An awning sign that extends more than fifteen inches beyond a wall of a building shall comply with the following conditions:

(A) The total area of such awning sign may not exceed the lesser of one hundred fifty square feet or one square foot of sign area for every linear foot of awning length. Awning length is that portion of the awning that is parallel to the building wall on which it is located.

(B) No awning sign may project above, below, or beyond the face of the architectural projection on which it is located, except for an awning sign that meets the following standards:

(i) An awning sign may project horizontally beyond the face of a marquee or canopy no more than twelve inches, measured from the bottom of the sign, if necessary to accommodate the letter thickness and required electrical equipment;

[1]See subparagraph (b)(3)(D) of this section for prohibited window signs.

(ii) An awning sign composed entirely of individual opaque alphanumeric characters twelve inches or less in height may project above the point at which they are attached to the marquee or canopy by no more than the height of the character plus two inches;

(iii) The canopy or marquee to which the awning sign is attached must be located over an entry to the building; and

(iv) The awning sign shall be substantially parallel with the building wall to which the canopy or marquee is attached.

(C) Awning signs that extend fifteen inches or less from a wall of a building shall be considered to be wall signs, subject to the requirements of paragraph (d)(14) of this section.

(D) Permission to construct, install, and maintain an awning sign over the public right-of-way must be obtained from the city manager pursuant to section 4-18-3, "Sidewalk Banner Or Awning Permit Required," B.R.C. 1981, prior to the issuance of the sign permit.

(E) For purposes of determining projection, clearance, height, and materials, an awning sign shall be considered a part of and shall meet the requirements for a marquee, canopy, or awning, as specified in the city building code, chapter 10-5, "Building Code," B.R.C. 1981.

(F) If an awning sign is located on a marquee, canopy, or awning and is internally illuminated through translucent material, the entire illuminated area of the awning or awning sign shall be included in the calculation of the area of the sign.

(2) Banner: A banner is permitted for any permitted use in a business or industrial zoning district if the person wishing to display such sign applies therefore and obtains a permit, but such sign may be displayed for a maximum period of thirty consecutive days at the same location, one time during the first year of such use by the occupant. The area of the single sign permitted under this exception shall not exceed fifty square feet in total area and shall not exceed twenty feet in height, including, without limitation, the appurtenance on which the banner is displayed. Such a sign shall be firmly attached on at least all four corners.

(3) Downtown Pedestrian District:

(A) An application for a permit for a sign to be located in the downtown pedestrian district, as shown on the map in appendix E, "Downtown Pedestrian District," of this title, and which otherwise complies with all applicable provisions of this section and is not exempted under subparagraph (d)(3)(B) of this section shall be presented by the city manager to the downtown management commission for comment. The downtown management commission shall return the application within ten working days to the manager with its comments. The manager shall forward the comments to the applicant, who may resubmit the application to the manager in its original form or an amended based upon the downtown management commission's comments. If the downtown management commission fails to give its comments to the manager by the ten-working-day deadline, or if the applicant resubmits the original application unaltered after considering the downtown management commission's comments, the manager shall issue the permit. If the application is resubmitted with amendments, the manager shall issue the permit if the amended application still complies with all other applicable provisions of this section.

(B) Sign permit applications which meet the following criteria are exempt from the downtown management commission comment procedure of subparagraph (d)(3)(A) of this section:

(i) The top of the sign is located no higher than the windowsill level of the second story of the building;

(ii) The sign is not internally illuminated;

(iii) If the sign is indirectly illuminated the light source must not be visible to pedestrians on public property, and all mounting hardware and electrical ducting must be concealed or integrated into the sign design;

(iv) If the sign is illuminated by neon, it does not exceed four square feet in area;

(v) The sign is not painted directly on the wall of a structure;

(vi) The sign uses a commercially available typeface;

(vii) The sign is rectangular or circular;

(viii) The sign is composed of colors from a palette approved by regulation by the downtown management commission; and

(ix) If a freestanding sign, it does not exceed seven feet in height or twenty square feet in area per sign face.

(4) Construction: A sign identifying the type, duration, and responsible party of construction of a property in any zoning district is permitted only if it is:

(A) Limited to a freestanding, wall, or window sign or signs not exceeding thirty-two square feet in total area and sixteen square feet per face and seven feet in height, with no riders or attachments in nonresidential zones, and twelve square feet in total area and six square feet per face and four feet in height in residential zones. Such signs are exempt from the sign area regulations of this section;

(B) Displayed only on the property to which the sign pertains, and no more than one such sign per street upon which the property has frontage; and

(C) Displayed only for the duration of construction for which a building permit has been obtained until issuance of a certificate of occupancy.

(D) A construction sign may be erected only if an exempt real estate sign is not displayed on the same property.

(5) Fence-Wall: A sign displayed upon a fence, or upon a wall that is not an integral part of a building or that is used as a fence, shall be erected or mounted in a plane parallel to the fence or wall and shall not extend above the top of the fence or wall or project more than fifteen inches from the face of the fence or wall. Such sign is subject to all requirements of this section applicable to freestanding signs, including, without limitation, maximum area per sign, maximum sign height, minimum setback, and number of permitted signs.

(6) Freestanding:

(A) A freestanding sign in any zoning district shall be set back the following distances, and no point on any such sign may extend beyond the required setback line:

(i) Except in BMS, DT, and MU-1 districts, a sign up to and including seven feet in height shall be set back ten feet from any property line adjacent to a street. In the BMS, DT, and MU-1 districts, no setback is required for such a sign, but no sign may be located within eighteen inches of a public sidewalk or obstruct the view of motor vehicle operators entering or leaving any parking area, service drive, private driveway, street, alley, or other thoroughfare.

(ii) A sign over seven feet in height shall be set back at least twenty-five feet from any property line adjacent to a street in all zones.

(iii) No sign in a business or industrial district may be located less than twenty-five feet from any adjacent residential zoning district line.

(B) In addition to any other permitted signs on the property, no more than one freestanding sign may be maintained for each street frontage of the property.

(C) If a property has more than one street frontage, the freestanding sign permitted for each frontage must be located adjacent to that frontage, and the minimum permissible horizontal distance between freestanding signs on the same property is seventy-five feet.

(D) Except as otherwise provided in subparagraph (d)(6)(K) of this section, the maximum permissible total area of any freestanding sign is one hundred square feet; and the maximum permissible area of any one face of any freestanding sign is fifty square feet. For buildings with a linear frontage of less than or equal to one hundred feet, the maximum permissible sign area of all freestanding signs on a property is one and one-half square feet of sign area for every linear foot of building frontage up to a maximum of one hundred square feet per sign and fifty square feet per face. For a building with a linear frontage greater than one hundred feet, the allowable sign area for freestanding signs shall be deducted from the total allowable sign area for all signs for the building.

(E) Unless otherwise specified in subsection (e) of this section, the maximum permissible height of freestanding signs is the lesser of: twenty-five feet or one and one-fourth times the height of the principal building on the property where the sign is located.

(F) The horizontal distance between freestanding signs on adjacent properties must be not less than the height of the taller sign.

(G) The area of the support structure of a freestanding sign is counted in the total area of the sign to the extent that the support structure exceeds the minimum required for the support of the sign. But if the sign is less than seven feet in height, a plain pedestal for a freestanding sign shall not be counted in the total area of the sign.

(H) A flag on flagpole shall not be subject to this paragraph, but shall be regulated as set forth in subparagraph (c)(1)(B) of this section.

(I) Supports for a freestanding sign shall be designed in accordance with the requirements of this code and shall not be placed upon any public right-of-way or public easement, except pursuant to the terms of a lease to the adjacent property owner.

(J) Where a freestanding sign is located in a vehicular parking or circulation area, a base or barrier of concrete or steel, not less than thirty inches high, shall be provided to protect the base of the sign from damage by vehicles.

(K) The maximum total sign area for freestanding signs may be increased by one-third when such signs are located adjacent to the following major streets or specified portions thereof:

(i) Arapahoe Avenue - from 28th Street to the east city limits;

(ii) Baseline Road - from Broadway to Foothills Parkway;

(iii) 28th Street - from Arapahoe Avenue to Iris Avenue;

(iv) 30th Street - from Arapahoe Avenue to the Diagonal Highway;

(v) 63rd Street - from the north city limits to the south city limits; and

(vi) Lookout Road - from the west city limits to the east city limits.

But the increased sign area permitted in this subparagraph does not include any increase in sign height.

(L) All freestanding signs located within two hundred fifty feet of the nearest right-of-way line of Foothills Parkway (Colorado State Highway 157) or Pearl Parkway east of Foothills Parkway and visible from such parkway shall be further limited to a maximum height of twelve feet.

(7) Historic District Or Building: In addition to satisfying the provisions of this section, signs installed or maintained on a historic building or in a historic district must comply with the provisions of chapter 9-11, "Historic Preservation," B.R.C. 1981.

(8) Noncommercial Nonresidential: A noncommercial sign, including, without limitation, a work of art or a political sign in all nonresidential zoning districts that does not impede traffic safety is exempt from the total sign area and setback limitations of this section, except the following:

(A) Noncommercial freestanding, projecting, suspended, and awning signs are subject to the total sign area and setback limitations of this section.

(B) Prior to placing a noncommercial wall sign of more than nine square feet in area on an exterior wall, the building owner shall give thirty calendar days' notice to the city manager by delivery or by first class mail, effective on mailing, including the building address and a colored representation of the sign. The city manager may comment on the sign but shall have no power to prevent it from being placed on the building wall.

(C) Noncommercial signs on temporary construction barriers not located in the public right-of-way shall be deemed not to be wall or freestanding signs subject to regulation under this section during that period of time for which a building permit for the property which necessitated the barrier is valid.

(9) Noncommercial Residential: A noncommercial sign, including, without limitation, a work of art or a political sign, in all residential zoning districts, that does not impede traffic safety is exempt from the total sign area and setback limitations and wind sign prohibitions of this section, subject to:

(A) Noncommercial signs shall be set back at least eighteen inches from any public sidewalk adjacent to a street or from the curb or outer edge of the roadway if there is no such sidewalk.

(B) Noncommercial signs within twenty-five feet of any public sidewalk adjacent to a street, or thirty feet of the curb or outer edge of the roadway if there is no such sidewalk, shall not exceed seven feet in height or thirty-two square feet in total area, with no face larger than sixteen square feet, and there shall be only one such sign. However, during a political campaign from the time a candidate is nominated for electoral office or nominated or certified for a primary election, or a recall election date is set, until the day after the election, and from the time an initiative or referendum or other measure to be voted upon by the electors is placed on the ballot until the day after the election, this limit of one noncommercial residential sign in the setback shall not apply to signs urging the nomination, election, or defeat of such candidates or recall of such officials, or the passage or defeat of

such measures. These election signs in the setback in excess of the one otherwise permitted may not exceed twelve square feet in total area per sign, with no face larger than six square feet.

(C) There are no setback, number, or area limitations in residential zoning districts for noncommercial signs which are set back farther than twenty-five feet from the property line. If a side of a residential building is closer than thirty feet to the public sidewalk, or thirty-five feet to the curb or outer edge of the roadway if there is no such sidewalk, then that area within five feet of such building side shall be excluded from the restrictions of subparagraph (d)(9)(B) of this section, if applicable.

(D) Reference in this paragraph to sidewalks, curbs, and roadway edges does not authorize placement of signs off premises on public property or in the public right-of-way.

(10) Projecting[1]: A projecting sign shall comply with the following conditions:

(A) Signs projecting over public property may not project more than thirty-six inches from a wall of a building, and the maximum permissible total area for such a sign is the lesser of:

(i) One square foot of sign area for each linear foot of frontage of the building upon which such sign is displayed; or

(ii) Eighteen square feet per sign, with no face of the sign exceeding nine square feet.

(B) Signs projecting over private property may not project more than six feet from a wall of a building nor beyond the minimum required building setback line and may not exceed twenty-four square feet in total area, and no face of a sign shall exceed twelve square feet.

(C) Projecting signs must have a minimum clearance above the sidewalk of eight feet and may not extend twelve feet or more above the sidewalk nor above the roof line.

(D) Any end panel on a projecting sign is considered a face of the sign and included in the area of that sign if the end panel is twelve inches or more in width.

(E) No more than one projecting sign may be maintained per tenant space frontage at the ground level of a building. The minimum horizontal distance between projecting signs on a building shall be twenty-five feet.

(11) Roof: A sign may be erected upon or against the side of a roof having an angle of forty-five degrees or more from the horizontal, but must be architecturally integrated with the building and roof by a dormer or similar feature. Such a sign is a wall sign and must comply with the provisions of paragraph (d)(14) of this section concerning wall signs, and must not project more than a total of fifteen inches horizontally, measured at the bottom of the sign, from the side of the roof upon which it is displayed.

(12) Subdivision: In addition to other such signs that may be allowed, signs identifying a subdivision of a property in any zoning district may be issued a sign permit if they comply with the following:

(A) A freestanding, wall, or window subdivision sign not exceeding thirty-two square feet in total area and sixteen square feet per face, not exceeding seven feet in height, and set back at least ten feet from any public right-of-way, with no riders or attachments;

[1]A lease or license granting permission to construct, install, and maintain a sign projecting over the public right-of-way or other public property must be obtained from the city manager prior to the issuance of the sign permit.

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(B) Displayed only on the subdivision to which the sign pertains, no more than one such sign per street frontage, and with a minimum distance between such signs in a single subdivision or property of one thousand feet;

(C) Displayed on or after the date of filing of the subdivision plan and removed within two years from the date of issuance of the first building permit in the subdivision or within thirty days from the time that seventy-five percent of the properties or dwellings in the subdivision or filing thereof have been sold, whichever is sooner.

(13) Suspended: A suspended sign may not exceed ten square feet in total area or five square feet per face; may not project beyond the outside limits of the architectural projection to which it is attached; and shall have a minimum clearance above the sidewalk of eight feet. The minimum permissible horizontal distance between suspended signs is fifteen feet.

(14) Wall: A wall sign shall comply with the following conditions:

(A) The total area of all wall signs on a face of a building may not exceed fifteen percent of the area of that portion of the building face between ground level and the roof line or a line twenty-five feet above grade level, whichever is less.

(B) The total area of all wall signs on an architecturally distinct wall, where two or more such walls form a face of a building, shall not exceed twenty-five percent of such wall.

(C) No part of a wall sign may be located more than twenty-five feet above grade level.

(D) No wall sign may be attached to or displayed against any parapet wall that does not extend around the entire perimeter of the roof enclosed by the parapet. No sign on such a parapet wall may extend more than twenty-four inches above the roof elevation immediately behind the sign, unless approved as part of a site review under section 9-2-14, "Site Review," B.R.C. 1981.

(E) No wall sign may extend above the roof line of a building except as permitted on a parapet wall. No wall sign may be displayed on the wall of a mechanical room or penthouse or other such enclosed space which is not habitable by the occupants of the building.

(F) The length of a wall sign shall not exceed seventy percent of the length of the wall or the width of the leased space of the wall on which it is located, whichever is less.

(G) The lettering height for wall signs located within two hundred fifty feet of the right-of-way of Foothills Parkway (Colorado State Highway 157) or Pearl Parkway east of Foothills Parkway, and visible from such parkway, shall not exceed twenty-four inches.

(H) The lettering height for wall signs located within the B.V.R.C. and the BMS, MU-3, DT, and BT-2 zoning districts shall not exceed twenty-four inches for single lines of copy and a total of thirty-two inches for multiple lines of copy, and any graphic symbol may not exceed thirty inches in height.

(I) A string of lights which extends on or around the perimeter of a window is subject to the following conditions: the linear length of a string of lights counts as fifty percent of the allowable square footage for wall signs. The maximum linear length of all strings of lights in windows cannot exceed ninety feet.

Ordinance Nos. 5223 (1989); 5930 (1997); 7332 (2004).

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(e) Limitations On Area, Number, And Height Of Signs By Use Module:

(1) Use Modules: The use modules set forth in section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, apply to this section, and the boundaries of such districts are determined by reference to the zoning map of the city and to interpretation of such map under section 9-5-3, "Zoning Map," B.R.C. 1981.

(2) Maximum Sign Area Permitted: The maximum sign area permitted per property, maximum area per sign face, maximum number of signs, and maximum height of freestanding signs in the use modules in the city are as in table 9-12 of this section, except as modified by other provisions of this section.

(see following page for continuation of Section 9-9-21)

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TABLE 9-12: LIMITATIONS ON AREA, NUMBER, AND HEIGHT OF SIGNS BY USE MODULE

Maximum Sign Area Permitted Per Property	Maximum Area Per Sign Face	Maximum Number Signs Permitted	Maximum Height Of Freestanding Signs
Residential and Agricultural Districts (RR, RE, RL, RM, RMX, RH, and A)			
For detached dwelling uses: 4 square feet	2 square feet	1 per use	7 feet
For attached dwelling uses: 32 square feet	16 square feet	1 per street frontage	7 feet
For other uses permitted by zoning chapter 9-6, "Use Standards," B.R.C. 1981: 32 square feet	16 square feet	1 per street frontage	7 feet
For other uses permitted by special review and for lawful nonconforming uses: the lesser of 50 square feet or the maximum sign area for the use in the zoning district in which the use is permitted by chapter 9-6, "Use Standards," B.R.C. 1981	16 square feet	The lesser of 1 per street frontage or 2 per use	7 feet
Public District (P)			
The greater of: 15 square feet or $^1/_2$ square foot of sign area for each foot of street frontage	50 square feet for freestanding signs. See subsection (d) of this section for limits on other signs	1 per street frontage for freestanding signs. 1 per ground level tenant for projecting signs. No limit on other signs	7 feet
Downtown, Mixed Use, and Business - Transitional Districts (BMS, BT, MU, DT)			
Any use that is permitted in a residential zone shall be regulated as in the residential zoning districts			
For any use not permitted in residential zones, other than MU-3, in addition to freestanding signs, as permitted in paragraph (d)(6) of this section, 1.25 square feet of sign area for each linear foot of total building frontage for the first 200 feet of frontage, plus 0.5 square feet of sign area for each foot of frontage thereafter	See subsection (d) of this section for area restrictions	1 per street frontage for freestanding signs. 1 per ground level tenant for projecting signs. No limit on other signs	See paragraph (d)(6) of this section for height restrictions

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Maximum Sign Area Permitted Per Property	Maximum Area Per Sign Face	Maximum Number Signs Permitted	Maximum Height Of Freestanding Signs
Business - Community, Business - Commercial Services, Business - Regional, and Industrial Districts not in the B.V.R.C. (BC, BCS, BR, IS, IG, IM, and IMS)			
For any use permitted in residential zones, as regulated in residential zoning districts	See subsection (d) of this section for area restrictions		Varies with setback; see paragraph (d)(6) of this section
In addition to freestanding signs, as permitted in paragraph (d)(6) of this section, 2 square feet sign area for each linear foot of total building frontage for the first 200 feet of frontage, plus 0.5 square foot sign area for each linear foot of frontage, except as provided in subparagraph (d)(6)(D) of this section	See subsection (d) of this section for area restrictions		See paragraph (d)(6) of this section for height restrictions
Boulder Valley Regional Center and Regional Business Districts Properties zoned BR-1 and properties located within the Boulder Valley Regional Center unless zoned BT-1 or BT-2			
For any use not permitted in residential zones, in addition to freestanding signs, as permitted in paragraph (d)(6) of this section, 1.5 square feet of sign area for each linear foot of total building frontage for the first 200 feet of each frontage, plus $^1/_2$ square foot sign area for each additional linear foot of each frontage	See subsection (d) of this section for area restrictions	1 per street frontage for free-standing signs. 1 per ground level tenant for projecting signs. No limit on other signs	See paragraph (d)(6) of this section for height restrictions

Ordinance Nos. 5562 (1993); 5930 (1997).

(f) Computation Of Signs And Sign Area:

(1) Regular Shape: In computing the area of a sign, this section shall be administered using standard mathematical formulas for regular geometric shapes, including, without limitation, triangles, parallelograms, circles, ellipses, or combinations thereof.

(2) Irregular Shape: In the case of an irregularly shaped sign or a sign with letters or symbols directly affixed to or painted on the wall of a building, the area of the sign is the entire area within a single continuous rectilinear perimeter of not more than eight straight lines enclosing the extreme limits of any writing, representation, emblem, or any figure of similar character, together with any material or color forming an integral part or background of the display if used to differentiate such sign from the backdrop or structure against which it is placed, but if a freestanding sign structure is not a fence which functions as such, the sign area shall be the area of the entire structure.

(3) Sign Structures: In computing the area of a sign, the portion of the sign structure to be included is that which is visible and viewed in the same plane as the sign face and which is made a part of the background of the display.

(4) More Than One Element: The total surface area of signs composed of more than one sign element includes the vertical and horizontal spacing between each element of the sign.

(5) Three-Dimensional: For three-dimensional figure signs, the sign area is the total area, projected on a vertical plane, of each side of the sign that is visible beyond the boundaries of the property upon which the figure is located. For purposes of this paragraph, a figure is considered to have a side for each ninety degrees or part thereof of visibility from a public right-of-way.

(6) Attachments: Any temporary or permanent rider or attachment to a sign or sign structure is included as part of the total sign area for the sign to which it is attached.

(7) Two Faces: A sign is computed as having two display faces if the angle between two faces is equal to or less than sixty degrees. If a sign has two or more display faces, the area of all faces and all noncontiguous surfaces is included in determining the sign area.

(8) Number Of Signs: For the purpose of determining the number of signs that may be subject to the provisions of this section, a sign shall be considered to be a single display surface or display device containing elements clearly organized, related, and composed to form a unit. Where elements are displayed in a random manner without an organized relationship of elements or where there is reasonable doubt about the relationship of elements, each element shall be considered to be a single sign.

(9) One Use Of Building Frontage: Building frontage used as the basis of determining permitted sign area for one use may not be used again as the basis for determining the permitted sign area for another use, but nothing in this paragraph shall be construed to prohibit the additional use from erecting a sign that would otherwise be authorized by the provisions of this section.

(10) More Than One Frontage: For the purpose of determining the total allowable sign area for buildings with more than one frontage, the following criteria apply:

(A) If a building has more than one frontage, the maximum sign area for the building is based on the total horizontal length of not more than two contiguous frontages; and

(B) Signs may be located on any side of the building, but the total sign area on any one side of the building may not exceed the area permitted on the basis of that frontage considered independently of other frontages.

(g) Permits And Applications:

(1) The owner or tenant of property on which a sign is to be located or an authorized agent thereof or a sign contractor licensed by the city shall apply for a sign permit in writing on a form furnished by the city manager, shall sign the application, and shall pay the fee prescribed in section 4-20-21, "Sign Contractor License Fees And Sign Permit Fees," B.R.C. 1981. There is no fee for signs placed by a homeowner on residential property, for banners, or for exempt signs.

(2) The owner of a multi-tenant or multiple use property or an agent of the owner shall apply for all sign permits for the property or shall develop a plan for apportioning permitted sign area among tenants and file such plan with the city manager, in which case each tenant may apply for a sign permit in conformity with the plan.

(3) The applicant shall submit the following information as part of the application:

(A) The name, address, and telephone number of the owner or persons entitled to possession of the sign and of the sign contractor or installer;

(B) The street address or location of the proposed sign;

(C) Complete information required on application forms provided by the city manager, including a site plan and elevation drawings of the proposed sign, copy of the proposed sign, and other data pertinent to the application;

(D) Plans indicating the scope and structural detail of the work to be done, including details of all connections, guy lines, supports, footings, and materials to be used;

(E) Complete application for an electrical permit for all electric signs if the person building the sign is to make the electrical connection; and

(F) Statement of the sign's valuation.

(4) Within five working days of the date of the application, the city manager will either approve or deny the application or refer it back to the applicant for further information.

(5) No person issued a sign permit under this section shall change, modify, alter, or otherwise deviate from the terms or conditions of the approved application or permit without first requesting and obtaining approval to do so from the city manager.

(6) If the sign conforms to all other applicable requirements of this section, no permit is required for maintenance of the sign.

(h) Expiration Of Permit:

(1) If a person to whom a permit is granted under this section has not commenced work on the sign within sixty days from the date on which the permit was issued or if substantial building operations under such permit are suspended for a period of 60 consecutive days, the permit automatically expires, but the city manager may grant an extension of the time limits provided in this paragraph for construction delays that are not the result of willful acts or neglect by the permittee, upon a written request for such an extension received by the manager before expiration of the permit.

(2) The city manager shall not refund any permit fees paid under this section if any permit is revoked pursuant to subsection (t) of this section, or expires under this subsection.

(i) Inspections:

(1) In enforcing the provisions of this section, the city manager may enter any building, structure, or premises in the city at reasonable times to perform any duty imposed by this section.

(2) The city manager may require footing inspections on the day of excavation for a freestanding sign.

(3) The city manager may require inspection of an electrical sign before its erection within forty-eight hours after being notified that the sign is ready for inspection.

(4) A permit holder or agent thereof shall notify the city manager when a sign is complete and ready for final inspection, which shall be no more than sixty days after work is commenced.

(j) Licensed Sign Contractor Required To Install Signs: No person other than a sign contractor licensed under chapter 4-21, "Sign Contractor License," B.R.C. 1981, shall install any sign for which a permit is required under this section, except:

(1) A homeowner may install a sign on the premises of such person's residence, for which a permit is otherwise required, if the homeowner obtains a permit and complies with all requirements of this section other than that of licensed sign contractor installation.

(2) Banner signs for which permits are required.

(3) Window signs for which permits are required.

(k) Signs In Approved Site Review Developments:

(1) A sign located in an approved site review development shall conform to all requirements of this section, including those of the district in which the property is located, except for those subsections dealing with sign setbacks from property lines and spacing between projecting and freestanding signs if alternative setbacks and spacing are specifically shown on a site plan approved under section 9-2-14, "Site Review," B.R.C. 1981, or approved as part of a sign program for the site review project. In no case may the total square footage for signage permitted under this section be increased through a site review or sign program.

(2) Sign lettering and graphic symbol height as specified in subparagraph (d)(14)(H) of this section concerning wall signs may also be varied in accordance with paragraph (k)(1) of this section.

(3) If a condition of site review development approval requires a uniform sign program, the following additional conditions shall apply:

(A) The owner or developer of the site review development shall submit a uniform sign program to the city manager for approval prior to the issuance of any sign permits within the planned unit development. Such program shall include, as a minimum:

(i) Type of sign permitted (wall sign, projecting sign, awning sign, window sign, etc.).

(ii) Type of construction (individual letters, cabinet, internal or indirect illumination, etc.).

(iii) Color.

(iv) Size of sign (maximum height of letters, maximum length of sign, and maximum size).

(v) Location of sign.

(B) The aggregate area of all signs and the size of any freestanding sign shall not exceed that permitted in subsection (e) of this section.

(C) The owner or developer of the site review development shall notify all potential tenants or property owners of the sign program at the time of sale or lease of the property.

(D) The property owner or developer or an authorized representative shall review all signs for compliance with the sign program prior to a tenant applying for a sign permit and shall countersign the application signifying such compliance.

(E) The sign program may not be altered without written permission of the city manager. In addition, no changes may be made without the written permission of a majority of tenants whose existing signs are in compliance with the previously established sign program.

(4) The city manager shall apply the following standards in approving or denying a sign program or request to alter a sign program:

(A) All signs shall be in compliance with law;

(B) The program shall ensure a reasonable degree of sign uniformity and coordination within the program area and will enhance the visual quality of the area;

(C) The program shall be simple, clear, and to the point;

(D) The program shall limit the number of signs allowed for each tenant of the area;

(E) Signs shall be compatible with the area in color, shape, and materials;

(F) A color plan for signs is required;

(G) Signs are simple and clearly legible; and

(H) Freestanding signs are integrated in appearance with their surroundings.

(5) The city manager may write uniform sign program guidelines to serve as an example of a sign program which meets the requirements of this subsection.

Ordinance No. 5562 (1993).

(l) Structural Design Requirements:

(1) Signs and sign structures shall be designed and constructed as specified in this subsection to resist wind and seismic forces. All bracing systems shall be designed and constructed to transfer lateral forces to the foundations. For signs on buildings, the dead and lateral loads shall be transmitted through the structural frame of the building to the ground so as not to overstress any of the elements thereof. The overturning moment produced from lateral forces may not exceed two-thirds of the dead load resisting moment. The structural frame of the building or the anchoring of the sign shall be adequate to resist uplift due to overturn-

ing. The weight of earth superimposed over footings may be used in determining the dead load resisting moment, if it is carefully placed and thoroughly compacted.

(2) Signs and sign structures shall be designed and constructed in compliance with the city building code, chapter 10-5, "Building Code," B.R.C. 1981, including all requirements to resist seismic forces.

(3) Wind loads and seismic loads need not be combined in the design of signs or sign structures. Signs shall be designed to withstand the loading that produces the larger stresses. Vertical design loads, other than roof live loads, shall be assumed to be acting simultaneously with the wind or seismic loads.

(4) The design of structural members shall conform to the requirements of the city building code, chapter 10-5, "Building Code," B.R.C. 1981. Vertical and horizontal loads exerted on the soil shall not produce stresses exceeding those specified in the city building code.

(5) The working stresses of wire rope and its fastenings shall not exceed twenty-five percent of the ultimate strength of the rope or fastening. Working stresses for wind loads combined with dead loads may be increased as specified in the city building code, chapter 10-5, "Building Code," B.R.C. 1981.

(m) Construction Standards:

(1) Signs and sign structures shall be securely built, constructed, and erected in conformity with the requirements of this subsection.

(2) Supports for signs or sign structures shall not be placed on property not owned or leased by the sign owner.

(3) Materials of construction for signs and sign structures shall be of the quality and grade specified for buildings in the city building code, chapter 10-5, "Building Code," B.R.C. 1981. Plastic materials shall be those specified in the building code that have a flame spread rating of 0-25 or less and a smoke density no greater than that obtained from the burning of untreated wood under similar conditions when tested in accordance with the building code standards in the way intended for use. The products of combustion shall be no more toxic than the burning of untreated wood under similar conditions.

Ordinance No. 7522 (2007).

(4) All sign structures, except for construction signs, those signs specifically excepted in subparagraphs (c)(1)(A), (c)(1)(E), (c)(1)(G), (c)(1)(H), (c)(1)(J), and (c)(1)(L) of this section, window signs, and signs located inside buildings, shall have structural members of heavy timber or incombustible material. Wall signs, projecting signs, and awning signs shall be constructed of incombustible material, except as provided in paragraph (m)(5) of this section or as specifically approved by the city manager. No combustible materials other than approved plastic shall be used in the construction of electric signs.

(5) Nonstructural elements of a sign may be of wood, metal, approved plastic, or any combination thereof.

(6) Members supporting unbraced signs shall be so proportioned that the bearing loads imposed on the soil either vertically or horizontally do not exceed safe values. Braced ground signs shall be anchored to resist specified wind or seismic loads acting in any direction. Anchors and supports shall be designed for safe bearing loads on the soil for effective resistance to pull-out amounting to a force of twenty-five percent greater than the required resistance to a depth of not less than three feet. Anchors and supports shall be guarded and

protected when near driveways, parking lots, or similar locations where they could be damaged by moving vehicles.

(7) Signs attached to masonry, concrete, or steel shall be safely and securely fastened thereto by means of metal anchors, bolts, or approved expansion screws of sufficient size and anchorage to support safely the loads applied.

(8) No anchor or support of any sign, except flat wall signs, shall be connected to or supported by an unbraced parapet wall.

(9) Display surfaces in all types of signs shall be of metal or other approved materials.

(10) Signs intended for temporary placement of less than six months and which have no electrical or other special features:

(A) If less than six square feet per face and under four feet in height, may be constructed of any sturdy material and shall be anchored securely to the ground or a building, fence, or other structure and may be supported by any suitable support which will withstand the wind loading.

(B) A freestanding sign more than six square feet in area or four feet or more in height shall have at least two supports pounded at least two feet into the ground.

(C) Construction warning signs placed over concrete or asphalt or other materials into which posts may not conveniently be driven may instead be held in place by weights sufficient to withstand the wind.

(11) The city manager may approve the use of any material if an applicant submits sufficient technical data to substantiate such proposed use and if the manager determines that such material is satisfactory for the use intended.

(12) Where any freestanding sign has a clearance of less than eight feet from the ground, there shall be provided a barrier or other adequate protection to prevent hazard to pedestrians and motorists.

(n) Electric Signs:

(1) An electric sign shall be constructed of incombustible material. An electric sign shall be rain tight, but service holes fitted with waterproof covers may be provided to each compartment of such sign. All electric signs installed or erected in the city shall bear the label of Underwriters Laboratories, Inc., on the exterior of the sign.

(2) No electric sign shall be erected or maintained that does not comply with the city electrical code, chapter 10-6, "Electrical Code," B.R.C. 1981.

(3) No electric equipment or electrical apparatus of any kind that causes interference with radio or television reception shall be used in the operation of an illuminated sign. Whenever interference is caused by a sign that is unfiltered, improperly filtered, or otherwise defective, or by any other electrical device or apparatus connected to the sign, the city manager may order the sign disconnected until it is repaired.

(o) Sign Maintenance: No person shall fail to maintain a sign on such person's premises, including signs exempt from the permit requirements by subsection (c) of this section, in good structural condition at all times. All signs, including all metal parts and supports thereof that are not galvanized or of rust-resistant metals, shall be kept neatly painted. The city manager is authorized to inspect and may order the painting, repair, alteration, or removal of a sign that constitutes a hazard to safety, health, or public welfare because of

inadequate maintenance, dilapidation, or obsolescence, under the procedures prescribed by subsection (t) of this section.

(p) Continuation Of Legal Nonconforming Signs: A legal nonconforming sign that is not required to be discontinued under the provisions of subsection (q) of this section, may be continued and shall be maintained in good condition as required by subsection (o) of this section, but it shall not be:

(1) Structurally changed to another nonconforming sign, to a degree that would require a sign permit;

(2) Structurally altered in order to prolong the life of the sign, except to meet safety requirements;

(3) Altered so as to increase the degree of nonconformity of the sign;

(4) Expanded;

(5) Re-established after its discontinuance for ninety days;

(6) Continued in use after cessation or change of the business or activity to which the sign pertains;

(7) Re-established after damage or destruction if the estimated cost of reconstruction exceeds fifty percent of the appraised replacement cost as determined by the city manager; or

(8) If the landmarks board finds that a sign which otherwise would violate this section was, before January 6, 1972, an integral part of a building, since designated as a landmark, or in a historic district since designated, pursuant to chapter 9-11, "Historic Preservation," B.R.C. 1981, and is a substantial aspect of the pre-1972 historic character of such building, then such a sign is exempt from the provisions of paragraphs (p)(2), (p)(6), and (p)(7) of this section, and the period of discontinuance for such a sign in paragraph (p)(5) of this section shall be one year.

(q) Discontinuance Of Prohibited Legal Nonconforming Signs:

(1) Except as provided in paragraph (q)(2) or (q)(3) of this section, a legal nonconforming sign prohibited by subsection (b) of this section shall be removed or brought into conformity with the provisions of this section within sixty days from the date on which the sign became nonconforming.

(2) A legal nonconforming sign described in subparagraph (b)(3)(C), (b)(3)(D), (b)(3)(H), or (b)(3)(K) of this section is subject to the amortization provisions of subsection (r) of this section, unless excepted by paragraph (q)(3) of this section.

(3) Existing legal signs in the city which became nonconforming solely because of a change in this sign code enacted by Ordinance No. 5186 (1989) or Ordinance No. 6017 (1998) are subject to all the requirements of subsection (p) of this section, but are not subject to the sixty-day discontinuance provisions of paragraph (q)(1) of this section or the amortization provisions of subsection (r) of this section. Such amortization provisions are also inapplicable to lawfully permitted nonconforming advertising devices, as those terms are defined and applied in the Outdoor Advertising Act, 43-1-401 et seq., C.R.S.[1] The city manager is authorized, subject to appropriation, to remove such devices by eminent domain proceedings.

Ordinance No. 5377 (1991).

[1]Root Outdoor Advertising, Inc. v. City of Fort Collins, 759 P.2d 59 (Colo. App. 1988).

(r) Amortization Provisions: Except for signs described in paragraph (q)(1) or (q)(3) of this section, or a temporary sign, a legal nonconforming sign shall be brought into conformity or removed under the following schedule:

(1) A sign that exceeds the maximum area or height limitations of this section by twenty percent or less will be treated as a conforming sign and need not be removed or altered, but if such sign is replaced or renovated it shall conform to all requirements of this section.

(2) A sign having an original cost of $100.00 or less shall be brought into conformity with the provisions of this section or removed within sixty days after the date on which the sign became nonconforming under this section.

(3) A sign having an original cost exceeding $100.00 that is nonconforming only in the respect that it does not meet the requirements of this section concerning height, setback, distance between signs on the same or adjacent properties, or limitations on window signs, shall be brought into conformity with the requirements of this section or removed or a contract for timely completion of such work shall be executed within one hundred eighty days after the date upon which the sign became nonconforming under this section.

(4) A sign having an original cost exceeding $100.00 that is nonconforming as to permitted sign area or any other provision of this section that would require the complete removal or total replacement of the sign may be maintained for the longer of the following periods:

(A) Three years from the date upon which the sign became nonconforming under the provisions of this section by annexation or code amendment; or

(B) A period of three to seven years from the installation date or most recent renovation date that preceded the date on which the sign became nonconforming. But if the date of renovation is chosen as the starting date of the amortization period, such period of amortization shall be calculated according to the cost of the renovation and not according to the original cost of the sign. The amortization periods in table 9-13 of this section apply according to the original cost of the sign, including installation costs, or of the renovation:

TABLE 9-13: AMORTIZATION SCHEDULE

Sign Code Or Renovation Cost	Permitted Years From Installation Or Renovation Date
$ 101 through $ 1,000	3 years
1,001 through 3,000	4 years
3,001 through 10,000	5 years
Over $10,000	7 years

(5) To be eligible for an amortization period longer than three years pursuant to subparagraph (r)(4)(B) of this section, the owner of a sign shall, within one year from the date on which the sign became nonconforming, file with the city manager a statement setting forth the cost of such nonconforming sign, the date of erection or the cost and date of most recent renovation, and a written agreement to remove or bring the nonconforming sign into conformity with all provisions of this section at or before the expiration of the amortization period applicable to the sign.

(s) Appeals And Variances:

(1) Any aggrieved person who contests an interpretation of this section which causes denial of a permit, or who believes a violation alleged in a notice of violation issued pursuant to paragraph (t)(2) or (t)(3) of this section, to be factually or legally incorrect, may appeal the denial or notice of violation to the BOZA or board of building appeals in a manner provided by either such board under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, or may, in the case of a denial, request that a variance be granted. An appeal from a denial and a request for a variance may be filed in the alternative.

(A) An appeal from an interpretation which causes denial of a permit or from a notice alleging a violation of subsections (l), (m), (n), and (o) of this section shall be filed with the BOZA.

(B) An appeal from any other interpretation alleging any other violation of this section shall be filed with the BOZA.

(C) An appellant shall file the appeal, request for variance, or both in the alternative with the BOZA within fifteen days from the date of notice of the denial or the date of service of the notice of violation. The appellant may request more time to file. If the appellant makes such request before the end of the time period and shows good cause therefore, the city manager may extend for a reasonable period the time to file with either board.

(2) No person may appeal to or request a variance from the BOZA if the person has displayed, constructed, erected, altered, or relocated a sign without a sign permit required by paragraph (b)(2) of this section. The boards have no jurisdiction to hear an appeal nor authority to grant any variance from the permit requirements of this section. But the BOZA has jurisdiction to hear an appeal of a notice of violation alleging violation of the permit requirements if the appeal is from the manager's interpretation that a permit is required, and the appellant's position is that the device is not a sign or that it is exempt from the permit requirements under subsection (c) of this section.

(3) An applicant for an appeal or a variance under this subsection shall pay the fee prescribed by subsection 4-20-47(b), B.R.C. 1981.

(4) Setbacks, spacing of freestanding and projecting signs, and sign noise limitations are the only requirements which the BOZA may vary. If an applicant requests that the BOZA grant such a variance, the board shall not grant a variance unless it finds that each of the following conditions exists:

(A) There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are peculiar to the particular business or enterprise to which the applicant desires to draw attention and do not apply generally to all businesses or enterprises in the area; or

(B) For variances from the noise limitations of subparagraph (b)(3)(L) of this section, the proposed variance is temporary in duration (not to exceed thirty days) and consists of a temporary exhibition of auditory art; and

(C) The variance would be consistent with the purposes of this section and would not adversely affect the neighborhood in which the business or enterprise or exhibition to which the applicant desires to draw attention is located; and

(D) The variance is the minimum one necessary to permit the applicant reasonably to draw attention to its business, enterprise, or exhibition.

(5) If an applicant requests that the board of building appeals approve alternate materials or methods of construction or modifications from the requirements of subsections (l), (m), (n), and (o) of this section, the board may approve the same under the standards and procedures provided in the city building code, chapter 10-5, "Building Code," B.R.C. 1981.

(6) Except as provided in paragraph (s)(7) of this section, the BOZA has no jurisdiction to hear a request for nor authority to grant a variance that would increase the maximum permitted sign area on a single property or building, or from the prohibitions of paragraph (b)(3) of this section. But the BOZA has jurisdiction to hear an appeal of a permit denial or of a notice of violation alleging that a sign would exceed the maximum permitted sign area or is prohibited if the appellant's position is that the sign does not exceed such area or is not prohibited by such paragraph.

(7) The BOZA or board of building appeals may make any variance or alternate material or method approval or modification it grants subject to any reasonable conditions that it deems necessary or desirable to make the device that is permitted by the variance compatible with the purposes of this section.

(8) The city manager's denial or notice of violation becomes a final order of the BOZA or board of building appeals if:

(A) The applicant fails to appeal the manager's denial or order to the board within the prescribed time limit;

(B) The applicant fails to appeal the order of the board to a court of competent jurisdiction within the prescribed time limit; or

(C) A court of competent jurisdiction enters a final order and judgment upon an appeal filed from a decision of the board under this section.

Ordinance No. 5377 (1991).

(t) Enforcement:

(1) The city manager may enforce the provisions of this section in any one or more of the following ways:

(A) By issuing a criminal summons and complaint, followed by prosecution in municipal court.

(B) If the city manager desires to use self-help to remove a sign for which a permit has been issued, by issuing a notice of violation, revoking a permit, removing a sign, and collecting the cost of removal pursuant to paragraph (t)(2) of this section.

(C) If the city manager desires to use self-help to remove or correct a sign for which no permit has been issued, by issuing a notice of violation, correcting the violation, and collecting the cost of correction pursuant to paragraph (t)(3) of this section.

(D) By removing any sign posted in violation of subsection 5-4-15(a), B.R.C. 1981, concerning posting signs on government property. Such signs are a public nuisance. After such removal the manager may also file a civil complaint in municipal court against the person who posted the sign or the beneficiary of the sign or both. The court shall award the

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city as damages the costs of removal of the sign and restoration of the surface upon which it was posted. This judgment shall be enforceable as any civil judgment.

(E) By filing a civil complaint for declaratory or injunctive relief in District Court.

These remedies are cumulative and not exclusive, and use of one does not foreclose use of any other also.

(2) If the city manager finds that any sign for which a permit has been issued does not comply with the permit or approved permit application or violates any provision of this section or any other ordinance of the city, the manager may send a notice of violation to the owner of the sign by first class mail to the address on the sign permit application. The notice shall state the violation, and any required corrections, and that if the corrections are not made within thirty days or an appeal filed within fifteen days pursuant to subsection (s) of this section, the permit shall be revoked, and the manager may then proceed as specified in paragraphs (t)(4) and (t)(5) of this section.

(3) The city manager may issue a notice of violation ordering the sign owner or possessor or property owner to alter or remove a sign which is in violation of this section and for which no permit has been issued within thirty days from the date of the notice. Notice under this paragraph is sufficient if it is mailed first class to the address of the last known owner of the real property on which the sign is located as shown on the records of the Boulder County Assessor. The notice shall state the violation, order removal of the sign or state any reasonable corrections which would bring the sign into compliance with this section, and that if removal or correction is not accomplished within thirty days or an appeal filed within fifteen days pursuant to subsection (s) of this section, the manager may proceed as specified in paragraphs (t)(4) and (t)(5) of this section. If the violation is of paragraph (b)(2) or (b)(3) of this section, the manager may require removal of the illegal sign within one day from the date of actual notice or five days from the date of mailing of mailed notice.

(4) If the property owner or sign owner or possessor fails to complete alteration or removal as required by the notice given as prescribed by paragraph (t)(2) or (t)(3) of this section, or to appeal pursuant to subsection (s) of this section, or loses such appeal and it becomes a final order pursuant to paragraph (s)(8) of this section, the city manager may cause such sign to be altered or removed at the expense of the owner or possessor of the property or sign and charge the costs thereof to such person.

(5) If any property owner fails or refuses to pay when due any charge imposed under this subsection, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(6) The penalty for violation of any provision of this section is a fine of not more than $2,000.00 per violation. In addition, upon conviction of any person for violation of this section, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court issued under this subsection is a violation of this subsection, and is punishable by a fine of not more than $4,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

Ordinance Nos. 5377 (1991); 5639 (1994).

(u) Rules And Regulations: The city manager is authorized to adopt reasonable procedural rules and interpretive regulations consistent with the provisions of this section to aid in its implementation and enforcement.

(v) Compliance With State Law Required: In addition to compliance with this section, all signs to which the provisions of the Outdoor Advertising Act, 43-1-401 et seq., C.R.S., and its supplemental regulations apply shall comply with such Act and regulations[1]. Signs which do not so comply shall be deemed illegal nonconforming signs under this section.

Ordinance Nos. 4879 (1984); 5186 (1989).

(w) Substitution Clause: It is the intention of the city council that this sign code not favor commercial over noncommercial messages. However, all sign codes are complex, and sometimes when provisions which do not appear to be related are read together, unintended results may occur. If any provision of this code is judicially construed to allow a commercial message but not a noncommercial message, then the property owner may substitute any noncommercial message under the same limitations as to physical characteristics and location of the sign as would apply to a commercial message on such sign.

Ordinance No. 7484 (2006).

[1]In general, the State Outdoor Advertising Act applies to signs located within six hundred sixty feet of a state highway and visible from such highway. State permits as well as city permits are required for certain of such signs and the city must condemn and pay compensation for such signs if they are legal nonconforming signs which the city seeks removed. Colorado Department of Highways, Division of Highways Roadside Advertising regulations are found at 2 Colorado Code of Regulations 601-3.

TITLE 9 LAND USE CODE

Chapter 10 Nonconformance Standards[1]

Section:

9-10-1 Purpose And Scope.

Adoption of land use controls and changes in zoning have created nonconforming uses, nonstandard buildings, and nonstandard lots. The purpose of this chapter is to allow these nonconforming uses and nonstandard buildings to be changed and upgraded without requiring their elimination, if the change would not substantially adversely affect the surrounding area and if the change would not increase the degree of nonconformity of the use. Additionally, this chapter sets standards that allow the development of nonstandard lots.

9-10-2 Continuation Or Restoration Of Nonconforming Uses, Nonstandard Buildings, And Nonstandard Lots.

Nonconforming uses and nonstandard buildings and lots in existence on the effective date of the ordinance which first made them nonconforming may continue to exist subject to the following:

(a) One-Year Expiration For Nonconforming Uses: A nonconforming use, except for a use that is nonconforming only because it fails to meet the required off street parking standards in sections 9-9-6, "Parking Standards," and 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, that has been discontinued for at least one year shall not be resumed or replaced by another nonconforming use as allowed under subsection 9-2-15(f), B.R.C. 1981, unless an extension of time is requested in writing prior to the expiration of the one-year period. The approving authority will grant such a request for an extension upon finding that an undue hardship would result if such extension were not granted.

(b) Damage By Fire, Flood, Wind, Or Other Calamity Or Act Of God And Unsafe Buildings: A nonstandard building, a building that contains a nonconforming use, or a building on a nonstandard lot, that has been damaged by fire, flood, wind, or other calamity or act of God may be restored to its original condition, or any building declared unsafe under the building code, or any other applicable safety or health code, may be restored to a safe condition provided that such work is consistent with the requirements of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981, started within twelve months of such event, and completed within twenty-four months of the date on which the restoration commenced.

[1]Adopted by Ordinance No. 7476.

(c) Replacement Of Nonstandard Architectural Building Features: Those nonstandard architectural features of a building that otherwise violate the setback standards set forth in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, except for architectural features that encroach into public rights-of-way or easements or cross property boundaries, may be replaced if:

(1) Reconstruction is commenced within twelve months of removal and completed within twenty-four months of the date on which the restoration is commenced;

(2) The exterior materials and architectural style of the replacement match that of the original feature; and

(3) The replacement does not result in the creation of additional building coverage or floor area.

For the purposes of this subsection, "architectural feature" means eaves, unenclosed porches, bay windows, awnings, and entry vestibules.

(d) Drive-Thru Facilities: A drive-thru facility that was established prior to July 31, 1986, on a property not abutting Canyon Boulevard in the DT zoning districts, and has not expired pursuant to subsection (a) of this section, shall be considered a nonconforming use, and may:

(1) Be renovated or remodeled, by improvements the cumulative total of which increases the structure's fair market value by no more than twenty-five percent of the Boulder County Assessor's actual value of the structure, without meeting the criteria for drive-thru uses in subsection 9-6-9(c), B.R.C. 1981;

(2) Be renovated or remodeled by improvements the cumulative total of which increases the facility's structure's fair market value by more than twenty-five percent of the Boulder County Assessor's actual value of the structure; or be relocated on site if the development meets the criteria for drive-thru uses in subsection 9-6-9(c), B.R.C. 1981; or

(3) Be relocated off site or expanded on site, subject to the conditional use requirements for drive-thru uses. For the purposes of this paragraph, "expanded" means creation of an additional drive-thru bay, lane, or teller window.

Ordinance Nos. 5930 (1997); 6046 (1999); 7522 (2007).

9-10-3 **Changes To Nonstandard Buildings And Lots And Nonconforming Uses.**

Changes to nonstandard buildings, nonstandard lots, and nonconforming uses shall comply with the following requirements:

(a) Nonstandard Buildings:

(1) Criteria: The city manager will grant a request for a building modification for a nonstandard building if such building modification meets the following requirements:

(A) The proposed building modification complies with all of the applicable requirements of chapters 9-6, "Use Standards," 9-7, "Form And Bulk Standards," 9-8, "Intensity Standards," 9-9, "Development Standards," B.R.C. 1981, and sections 9-6-2 through 9-6-9, B.R.C. 1981, dealing with specific use standards and criteria; and

(B) The building coverage of the nonstandard building, as modified, is no greater than the building coverage allowed in the underlying zoning district.

(2) Maintaining A Nonstandard Setback: If a foundation and the exterior walls above it that encroaches into a required setback are removed and replaced, such foundation and wall shall be reconstructed in compliance with chapter 9-7, "Form And Bulk Standards," B.R.C. 1981. As part of any activity requiring a building permit, in order to maintain a nonstandard setback, at a minimum, the applicant shall:

(A) Retain the exterior wall and the existing foundation that it rests upon. The exterior wall shall, at a minimum, retain studs, and retain either the inner or exterior sheathing of the exterior wall. Interior sheathing includes, without limitation, plaster, dry wall, or paneling; or

(B) Retain the exterior wall studs and the fully framed and sheathed roof above for that portion of the building within the required setback.

(3) Variance Required: A request for a building modification to a nonstandard building that is not in conformance with the provisions of chapter 9-7, "Form And Bulk Standards," B.R.C. 1981, may be granted only if a variance is granted pursuant to section 9-2-3, "Variances And Interpretations," B.R.C. 1981.

(4) No Nonstandard Changes To Standard Buildings: If a nonstandard building has been modified so as to be in conformance with the provisions of title 9, "Land Use Regulation," B.R.C. 1981, any future modifications to the building shall be in conformance with the provisions of this title.

(5) No Addition Over Fifty-Five Feet: Nothing in this section shall be construed to permit the expansion of the height of a building, any part of which exceeds the maximum height imposed by section 9-7-5, "Building Height," B.R.C. 1981. The provisions of section 9-7-5, "Building Height," B.R.C. 1981, and section 9-2-14, "Site Review," B.R.C. 1981, supersede the provisions of this section.

(b) Nonstandard Lots Or Parcels:

(1) Development Requirements: Vacant lots in all residential districts except RR-1 and RR-2 which are smaller than the lot sizes indicated in section 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981, but larger than one-half of the required zoning district minimum lot size, may be developed with a single-family detached dwelling unit if the building meets the setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981. In RR-1 and RR-2 districts, lots which are smaller than the minimum lot size but larger than one-fourth of the minimum lot size may be developed if the building meets the setback requirements. In all other zoning districts, vacant lots which are below one-half of the required minimum lot size for the zoning district shall not be eligible for construction of principal buildings.

Ordinance No. 7535 (2007).

(2) Maximum Height: The maximum height for a principal building on a nonstandard lot in a residential district except RR-1 and RR-2 will range from twenty-five feet for a building on a lot which is at or below one-half the minimum lot size of the zoning district up to thirty-five feet for a building on a lot which meets or exceeds the minimum lot size. In RR-1 and RR-2 districts, the maximum height for a principal building on a nonstandard lot shall range from twenty-five feet for a building on a lot which is at or below one-fourth the minimum lot size up to thirty-five feet for a building on a lot which meets or exceeds the minimum lot size. Such lots shall be allowed to have a maximum building height in proportion to the lot area. In the event that an existing house exceeds the height limitations of this paragraph, the applicant shall be permitted to complete a site review to increase the height of the building up to the permitted height in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981. The permitted heights for the RMX-1, RL-1, RE, RR-1 and RR-2 zoning

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districts shall be computed as set forth in table 10-1 of this section and as indicated in appendix C, "Height Restrictions For Nonstandard Lots," of this title.

TABLE 10-1 MAXIMUM HEIGHT FORMULAS

Zoning District	Minimum Lot Size (Square Feet)	Formula
RMX-1	6,000	Height = (lot size - 3,000) x .003333 + 25
RL-1	7,000	Height = (lot size - 3,500) x .002857 + 25
RE	15,000	Height = (lot size - 7,500) x .001333 + 25
RR-1; RR-2	30,000	Height = (lot size - 7,500) x .000444 + 25

(3) Merger Of Contiguous Lots: A nonstandard lot or parcel and a contiguous lot cease to be considered separate nonstandard lots if they are held under one ownership under the provisions of subsection 9-9-2(c), B.R.C. 1981.

(4) Alteration, Repairs Or Expansions Of Building On Nonstandard Lots: The city manager will grant a request for a building modification of a building on a nonstandard lot if the building modification meets the following standards:

(A) The building modification meets the setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, for the district in which it is located;

(B) The existing or proposed building coverage does not exceed the area within the setbacks of the underlying zoning district; and

(C) The building modification will not result in the expansion of a nonconforming use beyond that amount that is permitted by this chapter.

(5) Variance Required For Nonstandard Lots: A request for a building modification that increases building coverage for a building on a nonstandard lot that is less than one-half the minimum lot size required by the underlying zoning district, or less than one-fourth the minimum required lot size in RR-1 or RR-2 districts, shall only be granted pursuant to a variance under section 9-2-3, "Variances And Interpretations," B.R.C. 1981.

(c) Nonconforming Uses:

(1) Nonconforming Changes To Conforming Use Prohibited: No conforming use may be changed to a nonconforming use, notwithstanding the fact that some of the features of the lot or building are nonstandard, or the parking is nonconforming.

(2) Standards For Changes To Nonconforming Uses: The city manager will grant a request for a change of use, which is the replacement of one nonconforming use with another, if the modified or new use does not constitute an expansion of a nonconforming use. Any other change of use that constitutes expansion of a nonconforming use must be reviewed under procedures of section 9-2-15, "Use Review," B.R.C. 1981.

(3) Nonconforming Only As To Parking: The city manager will grant a request to change a use that is nonconforming only because of an inadequate amount of parking to any conforming use allowed in the underlying zoning district upon a finding that the new use will have an equivalent or less parking requirement than the use being replaced.

Ordinance Nos. 5623 (1994); 5971 (1998); 7079 (2000); 7102 (2000); 7153 (2001).

TITLE 9 LAND USE CODE

Chapter 11 Historic Preservation[1]

Section:

[1]Adopted by Ordinance No. 7476. Amended by Ordinance No. 7475.

9-11-1 **Purpose And Legislative Intent.**

(a) The purpose of this chapter is to promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past. It is also the purpose of this chapter to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.

(b) The city council does not intend by this chapter to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.

(c) The city council intends that in reviewing applications for alterations to and new construction on landmarks or structures in a historic district, the landmarks board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled, and creative approaches to renovation.

Ordinance Nos. 7475 (2006); 7522 (2007).

9-11-2 **City Council May Designate Or Amend Landmarks And Historic Districts.**

(a) Pursuant to the procedures in this chapter the city council may by ordinance:

(1) Designate as a landmark an individual building or other feature or an integrated group of structures or features on a single lot or site having a special character and historical, architectural, or aesthetic interest or value and designate a landmark site for each landmark;

(2) Designate as a historic district a contiguous area containing a number of sites, buildings, structures or features having a special character and historical, architectural, or aesthetic interest or value and constituting a distinct section of the city;

(3) Designate as a discontiguous historic district a collection of sites, buildings, structures, or features which are contained in two or more geographically separate areas, having a special character and historical, architectural, or aesthetic interest or value that are united together by historical, architectural, or aesthetic characteristics; and

(4) Amend designations to add or remove features or property to or from the site or district.

(b) Upon designation, the property included in any such designation is subject to all the requirements of this code and other ordinances of the city.

Ordinance Nos. 7183 (2002); 7475 (2006).

9-11-3 Initiation Of Designation For Individual Landmarks And Historic Districts.

(a) Initiation Application: The decision by either the landmarks board or city council to initiate the designation of an individual landmark or historic district is legislative in nature. Designations or amendments to an individual landmark or historic district may be initiated by:

(1) Resolution of the city council or the landmarks board;

(2) The application of all owners of the properties proposed for designation or their authorized agents;

(3) The application of a group of property owners, with the consent of a minimum of twenty-five percent of the properties which constitute building sites within the proposed historic district; or

(4) Application of any historic preservation organization.

(b) Initiation Hearing Required: An application that is made by a historic preservation organization or fewer than all of the property owners pursuant to paragraph (a)(3) or (a)(4) of this section, shall be forwarded to the landmarks board for consideration at a public hearing within forty-five days of the application date.

(c) Initiation Hearing Public Notice: When the landmarks board or city council is to consider the initiation of, or an amendment to, a designation, the city manager shall provide or cause the following notice to be provided:

(1) Mailing: A written notice descriptive of the initiation being considered and the date of the public hearing shall be sent by first class mail at least ten days before the date of the initiation hearing to all owners of property for which the initiation is being considered.

(2) Publication: A notice shall be published in a newspaper of general circulation in the city at least ten days prior to the hearing and shall indicate the time, date, and place of the hearing and a brief explanation of the initiation being considered and its location.

(3) Effect: The purpose of the notice provided in this subsection is to reasonably inform included property owners of a consideration of initiating designation, but no minor omission or defect in the notice or mailing shall be deemed to impair the validity of the proceedings to consider the designation application. If at or prior to the public hearing an omission or defect

in the mailed notice is brought to the attention of the landmarks board or city council, it shall determine whether the omission or defect impairs or has impaired a property owner's ability to participate in the public hearing, upon which finding it shall continue the hearing for at least ten days. Any omission or defect in the mailed notice that is not brought to the board's or council's attention or that the board or council finds did not impair a property owner's ability to participate in the hearing shall not affect the validity of the initiation consideration proceedings.

(d) Criteria For Review: In determining whether to initiate the designation of an application that is made by a historic preservation organization or less than all of the property owners pursuant to paragraph (a)(3) or (a)(4) of this section, the council or the landmarks board may consider, without limitation, whether:

(1) There is probable cause to believe that the building or district may be eligible for designation as an individual landmark or historic district consistent with the purposes and standards in sections 9-11-1, "Legislative Intent," 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," and 9-16-1, "General Definitions," B.R.C. 1981;

(2) There are currently resources available that would allow the city manager to complete all of the community outreach and historic analysis necessary for the application;

(3) There is community and neighborhood support for the proposed designation;

(4) The buildings or features may need the protections provided through designation;

(5) The potential boundaries for the proposed district are appropriate;

(6) In balance, the proposed designation is consistent with the goals and policies of the Boulder Valley Comprehensive Plan; or

(7) The proposed designation would generally be in the public interest.

(e) Initiation Resolution: If council or landmarks board determines to proceed with initiation of a district or individual landmark, either shall initiate by resolution so long as all other application requirements have been met.

Ordinance Nos. 7213 (2002); 7475 (2006).

9-11-4 **Public Process For Historic Districts.**

(a) Public Process Required Prior To Landmarks Board Designation Public Hearing For Historic Districts: Once an application is certified as complete or a resolution to initiate has been adopted, the following process shall be completed prior to the public hearing before the landmarks board pursuant to section 9-11-5, "Landmarks Board Designation Public Hearing," B.R.C. 1981.

(1) Public Meeting: The city manager shall host a minimum of one meeting of the owners of properties within the proposed district to explain the responsibilities and benefits of designation. Notification of the meeting shall be sent by first class mail to the applicant and all owners of properties within the proposed district stating the date, time and location of the meeting no less than ten days prior to the meeting. Prior to this meeting, the city manager shall make materials available to affected property owners including, without limitation, information on the history of the area proposed for designation, the history of individual properties proposed for designation, and information on the responsibilities and benefits of designation.

(2) Design Guidelines: The city manager shall determine whether the development of design guidelines to interpret the criteria in section 9-11-18, "Standards For Landmark Alteration Certificate Applications," B.R.C. 1981, are needed in order to address unique or special conditions in the proposed historic district. If the development of district specific design guidelines are determined to be needed:

(A) The city manager shall propose draft design guidelines for the review and comment of the landmarks board, the city council, and the public, including the affected property owners.

(B) The draft design guidelines shall be presented at a minimum of one public meeting with the owners of properties within the proposed district to gather public comment. This meeting shall occur prior to mailing a questionnaire as required in paragraph (a)(3) of this section and prior to the landmarks board designation public hearing as set forth in section 9-11-5, "Landmarks Board Designation Public Hearing," B.R.C. 1981. Notification of the meeting shall be sent by first class mail to the applicant and all owners of properties within the proposed district stating the date, time, and location of the meeting no less than ten days prior to the meeting.

(C) The guidelines shall be presented at the landmarks board designation public hearing.

(D) If the city council adopts the ordinance designating the district, the design guidelines shall be adopted pursuant to section 9-11-24, "Landmarks Board And City Manager Authorized To Adopt Rules," B.R.C. 1981.

(E) Subsequent to a designation and if deemed appropriate, the city manager subsequent to a designation may propose new or amended design guidelines pursuant to subparagraphs (a)(2)(A) and (a)(2)(B) of this section.

(3) Questionnaire: Following the completion of the steps described in paragraph (a)(1) and subparagraphs (a)(2)(A) and (a)(2)(B) of this section, the city manager shall send a questionnaire to each property owner of record within the proposed historic district by first class mail. If district specific design guidelines have been drafted, a copy shall be included with the questionnaire.

(A) For purposes of measuring property owner opinion, one questionnaire shall be provided to each building site in the proposed district at least twenty-eight days prior to the landmarks board designation public hearing.

(B) The questionnaire shall be printed on planning department letterhead, and to ensure no duplicate responses are received, shall require the respondent to state his or her name, mailing address, and property address within the district if different from his or her mailing address. This information shall be separated from each response upon receipt by the planning department in order to allow responses to remain anonymous. The questionnaire shall ask the property owner to indicate no opinion, support, or objection to the designation, and allow room for general comments on the proposed district and any draft district specific design guidelines. The owner shall have a minimum twenty-one days from the postmarked date to respond. Only responses received by 5:00 p.m. seven days prior to the landmarks board designation public hearing shall be included in the official results, however all written public comment received shall be included in the public record.

(C) No minor omission or defect in the mailing shall be deemed to impair the validity of the proceedings to consider the designation application. If at or prior to the public hearing an omission or defect in the mailed questionnaire is brought to the attention of the landmarks board or city council, it shall determine whether the omission or defect impairs or has

impaired a property owner's ability to indicate an opinion, upon which finding it shall continue the hearing for at least ten days. Any omission or defect in the mailed questionnaire that is not brought to the board's or council's attention or that the board or council finds did not impair a property owner's ability to indicate an opinion shall not affect the validity of the designation proceedings.

(D) A copy of all responses received prior to the questionnaire deadline shall be included in the landmarks board and city council record as part of any public hearing to consider the application, however, the results of the questionnaires shall not be determinative in setting a district.

(b) Omission Or Defect In The Public Process: Any omission or defect in the public process described in this section that is not brought to the attention of the landmarks board or city council or that the board or council find did not impair a property owner's ability to participate in the hearing, shall not affect the validity of the designation proceedings.

9-11-5 **Landmarks Board Designation Public Hearing.**

(a) Hearing Required: After completion of the steps required in sections 9-11-3, "Initiation Of Designation For Individual Landmarks And Historic Districts" and 9-11-4, "Public Process For Historic Districts," B.R.C. 1981, the city manager shall promptly refer to the landmarks board any application or resolution for designation or amendment of a landmark or historic district. The landmarks board shall hold a public hearing on the proposal, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, no fewer than sixty days or more than one hundred twenty days after the application is certified as complete by staff or the initiating resolution is adopted. For individual landmark designation applications, the time requirements of this subsection may be waived if mutually agreed upon by the board, the applicant, and the owner, if other than the applicant.

(b) Notice Of Hearing: The city manager shall provide the following notice:

(1) Publication: Notice of the time, date, place, and subject matter of the hearing in a newspaper of general circulation in the city at least ten days before the date of the hearing.

(2) Mail And Posting: At least ten days before the hearing date, the manager shall also:

(A) Post the property in the application indicating that landmark or historic district designation or amendment has been requested. Historic district designation applications shall include a minimum of one posting per block face within the proposed boundaries; and

(B) Mail written notice of the hearing to the record owners of the property included in the proposed designation or amendment.

(3) Effect: The purpose of the notice provided in this subsection is to reasonably inform property owners within the proposed district of a designation application, but no minor omission or defect in the notice or mailing shall be deemed to impair the validity of the proceedings to consider the designation application. If at or prior to the public hearing, an omission or defect in the mailed notice is brought to the attention of the landmarks board, it shall determine whether the omission or defect impairs or has impaired a property owner's ability to participate in the public hearing, upon which finding it shall continue the hearing on the designation for at least ten days. Any omission or defect in the mailed notice that is not brought to the landmarks board's attention or that the board finds did not impair a property owner's ability to participate in the hearing shall not affect the validity of the designation proceedings.

(c) Criteria For Review: The landmarks board shall determine whether the proposed designation conforms with the purposes and standards in sections 9-11-1, "Legislative Intent," and 9-11-2, "City Council May Designate Landmarks And Historic Districts," B.R.C. 1981. Within forty-five days after the hearing date first set, the board shall adopt specific written findings and conclusions approving, modifying and approving, or disapproving the proposal. Within thirty days of its action, the board shall notify the city council of any decision disapproving a designation or shall refer a proposal that it has approved to the council for its further action. The time requirements of this subsection may be waived if mutually agreed upon by the board, the applicant, and the owner, if other than the applicant.

(d) Final Decision: A decision of the landmarks board disapproving a proposed designation or amendment is final unless called up by the city council or appealed pursuant to section 9-11-7, "Appeal Or Call-Up Of Disapproved Proposals," B.R.C. 1981.

(e) Planning Board Review: Within forty-five days of the landmarks board's decision to recommend approval on a proposal to establish a historic district, the planning board shall review the proposal and report to the city council on its land use implications.

9-11-6 Council Ordinance Designating Landmark Or Historic District.

(a) City Council Hearing, Notice: Within one hundred days after the date of any decision of the landmarks board recommending approval of a proposed designation, amendment, or revocation of a landmark or historic district, the city council shall hold a public hearing on the proposal under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The city manager shall publish notice of the time, date, place, and subject matter of the hearing in a newspaper of general circulation in the city at least ten days before the hearing.

(b) Findings: Within forty-five days after the hearing date prescribed by subsection (a) of this section, unless otherwise mutually agreed upon by the city council, the applicant, and the owner, if other than the applicant, the city council shall adopt specific written findings and conclusions. The findings and conclusions will address whether the designation meets the purposes and standards in subsection 9-11-1(a) and section 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981, in balance with the goals and policies of the Boulder Valley Comprehensive Plan. The city council shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation.

(c) Ordinance Designating Landmark Or District: In each ordinance designating a landmark or historic district, the city council shall include a description of characteristics of the landmark or district justifying its designation, a description of the particular features that should be preserved, and the location and boundaries of the landmark site or district. The council may also indicate alterations that would have a significant impact upon or be potentially detrimental to the landmark site or the district.

(d) Notice Of Designation: When the city council has designated a landmark or historic district, the city manager shall promptly notify the owners of the property included therein and a copy of the designating ordinance may be recorded in the office of the Boulder County Clerk and Recorder.

Ordinance Nos. 5626 (1994); 7080 (2000).

9-11-7 Appeal Or Call-Up Of Disapproved Proposals.

(a) Owner Appeals: The owners of property proposed to be designated as a landmark or all the owners of at least twenty-five percent of the separate parcels of property proposed to be designated as a historic district may appeal to the city council a decision of the landmarks board disapproving a proposal by filing a notice of appeal with the council within twenty-one days of the decision of the landmarks board.

(b) City Council Call-Up: The city council may call up for review any disapproval decision of the landmarks board within forty-five days of the board's decision.

(c) Hearing Required: Within seventy-five days of the date of any decision of the landmarks board disapproving a proposed designation of a landmark or historic district that has been appealed to or called up by the city council, the council shall hold a public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The city manager shall publish notice of the time, date, place, and subject matter of the hearing in a newspaper of general circulation in the city at least ten days before the hearing and shall mail such notice at least ten days before the hearing to the record owners of all the property included in the proposed designation, except an applicant.

(d) Findings: Within forty-five days after the hearing date prescribed by subsection (c) of this section, unless otherwise mutually agreed upon by the city council and the owner, the council shall adopt specific written findings and conclusions which addresses whether the designation meets the purposes and standards prescribed by subsection 9-11-6(b), B.R.C. 1981, and shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation. Such ordinance shall comply with subsection 9-11-6(c), B.R.C. 1981, and notice shall be given pursuant to subsection 9-11-6(d), B.R.C. 1981.

9-11-8 Limitation On Resubmission And Reconsideration Of Proposed Designation.

Whenever the landmarks board or city council disapproves a proposed designation, no person shall submit an application that is the same or substantially the same for at least one year from the effective date of the final action on the original proposal.

9-11-9 Amendment Of Designation.

(a) Designations of a landmark or historic district may be amended to add or remove features or property to the site or district under the procedures prescribed by section 9-11-3, "Initiation Of Designation For Individual Landmarks And Historic Districts," 9-11-4, "Public Process For Historic Districts," 9-11-5, "Landmarks Board Designation Public Hearing," 9-11-6, "Council Ordinance Designating Landmark Or Historic District," 9-11-7, "Appeal Or Call-Up Of Disapproved Proposals," and 9-11-8, "Limitation On Resubmission And Reconsideration Of Proposed Designation," B.R.C. 1981, for initial designations.

(b) Whenever a designation has been amended, the city manager shall promptly notify the owners of the property included therein and a copy may be recorded with the Boulder County Clerk and Recorder.

9-11-10 Revocation Of Designation.

(a) If a building or designated feature on a designated landmark site or located within a historic district was lawfully relocated or demolished the owner may apply to the landmarks board for a revocation of the designation.

(b) The board may revoke a landmark or historic designation if, after following the procedures prescribed by section 9-11-5, "Landmarks Board Designation Public Hearing," B.R.C. 1981, it determines that the property or historic district no longer meets the purposes and standards of sections 9-11-1, "Legislative Intent," and 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981. If the request is to revoke the designation of a portion of an individual landmark or a historic district, the board shall also determine that the revocation will not adversely impact the integrity of the remainder of the property or the district and that the remainder will still meet the purposes and standards prescribed by subsection 9-11-6(b) and sections 9-11-1, "Legislative Intent," and 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981.

(c) Revocation of a designation shall occur under the procedures prescribed by sections 9-11-3, "Initiation Of Designation For Individual Landmarks And Historic Districts," 9-11-4, "Public Process For Historic Districts," 9-11-5, "Landmarks Board Designation Public Hearing," 9-11-6, "Council Ordinance Designating Landmark Or Historic District," 9-11-7, "Appeal Or Call-Up Of Disapproved Proposals," and 9-11-8, "Limitation On Resubmission And Reconsideration Of Proposed Designation," B.R.C. 1981, for initial designations.

(d) Whenever a revocation is final, the city manager shall promptly notify the owners of the property and a copy may be recorded with the Boulder County Clerk and Recorder.

9-11-11 Construction On Proposed Landmark Sites Or In Proposed Districts.

(a) No permit shall be issued to construct, alter, remove, or demolish any structure or other feature on a proposed landmark site or in a proposed historic district after an application has been filed by an owner or after the landmarks board or city council has approved a resolution initiating the designation of such landmark site or area under section 9-11-3, "Initiation Of Designation For Individual Landmarks And Historic Districts," B.R.C. 1981. No such permit application filed after such date shall be approved by the city manager while proceedings are pending on such designation unless the applicant obtains an alteration certificate pursuant to sections 9-11-13, "Landmark Alteration Certificate Application," 9-11-14, "Staff Review Of Application For Landmark Alteration Certificate," 9-11-15, "Landmark Alteration Certificate Hearing," 9-11-16, "Call-Up By City Council," 9-11-17, "Issuance Of Landmark Alteration Certificate," and 9-11-18, "Standards For Landmark Alteration Certificate Applications," B.R.C. 1981. If three hundred and sixty-five days have elapsed from the date of the initiation of the designation and final city council action has not been completed, the manager shall approve the permit application.

(b) No permit shall be issued for demolition or relocation of any building over fifty years old, unless the conditions of section 9-11-23, "Review Of Permits For Demolition, On-Site Relocation, And Off-Site Relocation Of Buildings Not Designated," B.R.C. 1981, have been satisfied.

(c) Nothing in this chapter shall be deemed to apply to the construction or alteration of a structure or other feature on a landmark site or in a historic district if a permit for such work was issued before the initiation action on the designation of the landmark site or historic district. Such permit must be valid and current, and the construction commenced as required by the city building code, chapter 10-5, "Building Code," B.R.C. 1981, and diligently prosecuted to completion hereunder.

Ordinance Nos. 5627 (1994); 5730 (1995); 7172 (2001).

9-11-12 **Landmark Alteration Certificate Required.**

(a) No person shall carry out or permit to be carried out on a designated landmark site, on a designated feature, or in a designated historic district any of the following without first obtaining a landmark alteration certificate:

(1) New construction, alteration, relocation, or demolition of any building;

(2) New construction, alteration, relocation, or demolition of any designated feature;

(3) New construction, alteration, relocation or demolition of any fence or other landscape features, including, without limitation, any deck, patio, wall, berm, garden structure, water feature, exterior lighting, curb cut, driveway, replacement of sod with a hard surface, or any landscaping that has the potential for damaging buildings or designated features; and

(4) Any activity requiring a building permit pursuant to this code, except for building permits required for interior work on a building.

(b) In addition to the requirements set forth in subsection (a) of this section, applicants must also obtain all necessary permits for the proposed work under this chapter as well as any other permits required by this code or other ordinance of the city.

(c) The planning department shall maintain a current record of all designated landmark sites and historic districts and pending designations. If the building division receives an application for a permit to carry out any new construction, alteration, relocation, or demolition of a building or other designated feature on a landmark site or in a historic district or in an area for which designation proceedings are pending, the building division shall promptly forward such permit application to the planning department.

(d) The city manager shall review any permit application the manager receives to determine whether a landmark alteration certificate for the work proposed in the permit application has been issued and whether the permit application conforms to the certificate. If a certificate has been issued on the permit application and the proposed work conforms thereto, the manager shall refer the permit application to the building division, which shall process it without further reference to this chapter. If no certificate has been issued, or if in the sole judgment of the manager the permit application does not conform to the certificate, the manager shall disapprove the permit application and shall not issue it until a certificate has been issued and the permit application conforms thereto.

Ordinance No. 7225 (2002).

9-11-13 **Landmark Alteration Certificate Application.**

An owner of property designated as a landmark, or located in a historic district, or located in a proposed landmark or proposed historic district, may apply to the city manager for a landmark alteration certificate on forms prescribed by the city manager. Such forms shall include all information that the manager and the landmarks board determine is necessary to consider the application, including, without limitation, plans and specifications showing the proposed exterior appearance, with color, texture, materials, and architectural design and detail, and the names and address of the abutting property owners.

Ordinance No. 5730 (1995).

9-11-14 Staff Review Of Application For Landmark Alteration Certificate.

(a) The city manager and two designated members of the landmarks board shall review all applications for landmark alteration certificates for alterations to buildings or designated features and determine within fourteen days after a complete application is filed whether or not the proposed work would have a significant impact upon or be potentially detrimental to a landmark site or historic district.

(1) If they determine that there would be no significant impact or potential detriment, the manager shall issue a certificate to the applicant and shall notify the city council and the applicant of such issuance.

(2) The above notwithstanding, the manager may review without the two landmarks board designees any application that seeks only approval of certain common types of alterations that have been identified by the board through a regulation as being very familiar to the manager; and, if the manager determines that there would be no significant impact or potential detriment from the alteration, then the manager shall issue a certificate to the applicant and shall notify the city council and the applicant of such issuance.

(3) If either the manager or one of the landmarks board designees determines that the proposed work would create a significant impact or potential detriment, they shall refer the application to the landmarks board for a public hearing and shall promptly notify the applicant of the referral.

(b) The landmarks board shall hold a public hearing on all applications for landmark alteration certificates for new construction, relocation, or demolition of a designated landmark building or designated feature or a designated building or feature within a historic district, except that an application for construction of a one-story above grade accessory building or structure with a total floor area of three hundred forty square feet or less may be approved by the manager and two landmarks board designees without a public hearing.

Ordinance Nos. 6045 (1999); 7183 (2002).

9-11-15 Landmark Alteration Certificate Hearing.

(a) The landmarks board shall hold a public hearing on an application for a landmark alteration certificate, as prescribed by section 9-11-14, "Staff Review Of Application For Landmark Alteration Certificate," B.R.C. 1981, within forty-five days after an application is certified as complete by the city manager, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearing," B.R.C. 1981.

(b) The city manager shall publish notice of the time, place, and subject matter of such hearing in a newspaper of general circulation in the city at least ten days before the hearing. At least ten days before the hearing date, the manager shall also:

(1) Post the property in the application to indicate that a landmark alteration certificate has been requested for alteration, new construction, relocation, or demolition; and

(2) Mail written notice to the record owners of all property that is the subject of the application and, if the subject property is in a historic district, to abutting property owners and to those neighborhood representatives or associations on file with the planning department.

(c) The landmarks board shall determine whether the application meets the standards in section 9-11-18, "Standards For Landmark Alteration Certificate Applications," B.R.C. 1981. Within

forty-five days after the hearing date first set, unless otherwise mutually agreed upon by the board and applicant, the board shall adopt written findings and conclusions. The board shall either approve or disapprove the application in whole or in part or suspend action on the application for a period not to exceed one hundred eighty days. If the board decides to suspend action on an application, it may not thereafter disapprove the application. The board shall notify the city council in a timely manner of its decision or suspension of action on an application for a landmark alteration certificate.

(d) If the landmarks board suspends action on an application, the board may take any action that it deems necessary and consistent with this chapter to preserve the structure, including, without limitation, consulting with civic groups, public agencies, and interested citizens; recommending acquisition of the property by private or public bodies or agencies; and exploring the possibility of relocating the structure.

(e) A decision of the landmarks board approving, disapproving, or suspending action on an application for a landmark alteration certificate is final unless called up by the city council as provided in section 9-11-16, "Call-Up By City Council," B.R.C. 1981.

Ordinance Nos. 5009 (1986); 5377 (1991); 6045 (1999).

9-11-16 **Call-Up By City Council.**

(a) The city council may call up for review any decision of the landmarks board approving, or suspending action on a landmark alteration certificate application by serving written notice on the board within fourteen days of the board's decision and notifying the applicant of the call-up. It may call up for review any decision of the landmarks board disapproving a landmark alteration certificate within thirty days of the board's decision and notifying the applicant of the call-up. If the city manager finds in writing within the original call-up period that the council did not receive notice of a decision of the board in time to enable it to call up the decision for review, then the manager may extend the call-up period until the council's next regular meeting.

(b) Within forty-five days after the date of a decision by the landmarks board called up by the city council, the council shall hold a public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice of the time, date, place, and subject matter of the hearing in a newspaper of general circulation in the city at least ten days before the hearing.

(c) Within thirty days after the hearing date first set, unless otherwise mutually agreed upon by the city council and the applicant, the council shall adopt written findings and conclusions approving or disapproving the application. In cases of a call-up of a landmarks board decision suspending action on an application, the council may reduce the suspension or extend it up to one hundred eighty days from the date of the council decision. In cases of a call-up of a landmarks board approval of an application following the board's suspension of action, the council may approve or disapprove the application.

Ordinance No. 6045 (1999).

9-11-17 **Issuance Of Landmark Alteration Certificate.**

(a) Issuance Of Alteration Certificate: The city manager shall issue a landmark alteration certificate if:

(1) An application has been approved by the landmarks board or the city council; or

(2) The board or the council on appeal has suspended action on the application and the suspension period has expired.

(b) Expiration, Initial Approval And Extensions For Alteration Certificates: A landmarks alteration certificate shall remain valid, in accordance with the following:

(1) Expiration Period: An approved alteration certificate will be valid for purposes of applying for a building permit for a period not to exceed one hundred eighty days from the date of issuance of the alteration certificate. An alteration certificate shall expire if a building permit has not been applied for one hundred eighty days from the date such alteration certificate is approved. If an alteration certificate expires, a new alteration certificate shall be first obtained before an applicant may apply for a building permit.

(2) Initial Approval Period: The approving authority under sections 9-11-14, "Staff Review Of Application For Landmark Alteration Certificate," 9-11-15, "Landmark Alteration Certificate Hearing," and 9-11-16, "Call-Up By City Council," B.R.C. 1981, may extend the initial approval period for a length of time greater than one hundred eighty days upon a showing of good cause as to why additional time is necessary to apply for building permits.

(3) Extensions: Any person holding an unexpired alteration certificate may apply for an extension of the time within which to apply for a building permit under that alteration certificate when such person is unable to commence work within the time required by this section. The city manager may extend the time for action by the applicant for a period not exceeding one hundred eighty days on written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No alteration certificate shall be extended more than once.

(c) Denial - Subsequent Application: If the landmarks board or city council disapproves an application for a landmark alteration certificate, no person may submit a subsequent application that is substantially similar to the original application for the same construction, alteration, relocation, or demolition within one year from the date of the final action upon the earlier application.

Ordinance No. 7080 (2000).

9-11-18 **Standards For Landmark Alteration Certificate Applications.**

(a) The landmarks board and the city council shall not approve an application for a landmark alteration certificate unless each such agency finds that the proposed work is consistent with the purposes of this chapter.

(b) Neither the landmarks board nor the city council shall approve a landmark alteration certificate unless it meets the following conditions:

(1) The proposed work preserves, enhances, or restores and does not damage or destroy the exterior architectural features of the landmark or the subject property within a historic district;

(2) The proposed work does not adversely affect the special character or special historical, architectural, or aesthetic interest or value of the landmark and its site or the district;

(3) The architectural style, arrangement, texture, color, arrangement of color, and materials used on existing and proposed structures are compatible with the character of the existing landmark and its site or the historic district; and

(4) With respect to a proposal to demolish a building in a historic district, the proposed new construction to replace the building meets the requirements of paragraphs (b)(2) and (b)(3) of this section.

(c) In determining whether to approve a landmark alteration certificate, the landmarks board shall consider the economic feasibility of alternatives, incorporation of energy-efficient design, and enhanced access for the disabled.

9-11-19 **Unsafe Or Dangerous Conditions Exempted.**

Nothing in this chapter shall be construed to prevent any measures of construction, alteration, relocation, or demolition necessary to correct the unsafe or dangerous condition of any structure, other feature, or parts thereof where such condition is declared unsafe or dangerous by the city building or zoning division or fire department and where the proposed measures have been declared necessary by the city manager to correct the condition, as long as only such work that is absolutely necessary to correct the condition is performed. Any temporary measures may be taken without first obtaining a landmark alteration certificate under this chapter, but a certificate is required for permanent alteration, relocation, or demolition.

9-11-20 **Property Maintenance Required.**

(a) The city council intends to preserve from deliberate or inadvertent neglect the exterior portions of any landmarked building or designated feature and all interior portions thereof whose maintenance is necessary to prevent deterioration of any exterior portion. No owner, lessee, or occupant of any landmarked building or designated feature shall fail to undertake such repairs or maintenance as are necessary to prevent significant deterioration of the exterior of the structure or designated feature beyond the condition of the structure on the effective date of the designating ordinance.

(b) No owner, lessee, or occupant of any landmarked building or designated feature shall fail to comply with all applicable provisions of this code and other ordinances of the city regulating property maintenance, including, without limitation, weed control[1], garbage[2], and housing[3].

(c) Before the city attorney files a complaint in municipal court for failure to maintain the property on the landmark site or within a historic district, the landmarks board or city manager shall notify the property owner, lessee, or occupant of the need to repair, maintain, or restore the property, and shall give the owner a minimum of thirty days to perform such work.

9-11-21 **Recognition Of Structures Of Merit.**

(a) Purpose: The landmarks board may approve a list of structures of historical, architectural, or aesthetic merit that have not been designated as individual landmarks, to which the board may add to from time to time, in order to recognize and encourage the protection, enhancement, and use of such structures. Nothing in this chapter shall be construed to impose any additional regulations or controls upon structures of merit included on the list.

(b) Application: An application for recognition as a structure of merit may be submitted by the property owner or by the landmarks board.

[1]Chapter 6-2, "Weed Control," B.R.C. 1981.
[2]Chapter 6-3, "Trash," B.R.C. 1981.
[3]Chapter 10-2, "Housing Code," B.R.C. 1981.

(c) Procedure: The city manager shall refer to the landmarks board any application or resolution for the recognition of a structure of merit.

(d) Criteria For Recognition: The landmarks board may recognize a structure as a structure of merit if the structure is of historical, architectural, or aesthetic merit.

(e) Record Of Historic Structures: The landmarks board shall maintain a record of historic structures in the city that have been officially designated as such by agencies of the state or federal government and shall add such structures to the list authorized by subsection (a) of this section.

(f) Recognition By Landmarks Board: The landmarks board may authorize such steps as it deems desirable to recognize the merit of and to encourage the protection, enhancement, perpetuation, and use of any such listed structure or of any designated landmark or any structure in a designated historic district by, without limitation, issuing certificates of recognition and authorizing plaques to be affixed to the exteriors of such structures. The board shall cooperate with appropriate state and federal agencies in such efforts.

(g) Recommendations For Historical Names: The landmarks board may recommend that the city council and any other appropriate agency give historical names from Boulder's history to streets, squares, walks, plazas, and other public places.

Ordinance Nos. 5929 (1997); 7080 (2000).

9-11-22 **Enforcement And Penalties.**

(a) No person shall violate or permit to be violated any of the requirements of this chapter or the terms of a landmark certificate. Except in the case of a violation of section 9-11-23, "Review Of Permits For Demolition, On-Site Relocation, And Off-Site Relocation Of Buildings Not Designated," B.R.C. 1981, no municipal summons or complaint may be issued charging a violation of this chapter or the terms of a landmark alteration certificate unless the alleged violation has not been corrected within thirty days after the city manager has delivered notice thereof personally or mailed by regular mail to the last address of the owner of the property listed in the records of the Boulder County Assessor.

(b) Violations of this chapter are punishable as provided in section 5-2-4, "General Penalties," B.R.C. 1981, except that the penalty for the unlawful demolition of a building in violation of section 9-11-12, "Landmark Alteration Certificate Required," or 9-11-23, "Review Of Permits For Demolition, On-Site Relocation, And Off-Site Relocation Of Buildings Not Designated," B.R.C. 1981, is a fine of not more than $5,000.00 per violation or incarceration in jail for not more than ninety days or both such fine and incarceration.

(c) In addition to any other remedies prescribed by this chapter or by this code or other ordinance of the city, the city attorney, acting on behalf of the city council, may maintain an action for an injunction to restrain or correct any violation of this chapter.

Ordinance Nos. 5801 (1996); 7048 (2000).

9-11-23 **Review Of Permits For Demolition, On-Site Relocation, And Off-Site Relocation Of Buildings Not Designated.**

(a) Purpose: The purpose of the review of permit applications for demolition, on-site relocation, and off-site relocation of buildings that are over fifty years old is to prevent the loss of buildings that may have historical or architectural significance. The purpose of this section

is also to provide the time necessary to initiate designation as an individual landmark or to consider alternatives for the building.

(b) Permit Requirement: No person shall demolish or relocate any building which is over fifty years old without first applying to the city manager for a permit under this section, receiving the permit, and conducting the demolition or relocation of the building before the permit expires. The application and permit shall be in addition to any application or permit required under chapter 10-5, "Building Code," B.R.C. 1981, and shall be on a form provided by the city manager, although the manager may combine the application and permit with any other form or permit at the manager's discretion. An applicant for a permit under this section shall pay the fee prescribed by section 4-20-37, "Historic Preservation Application Fees," B.R.C. 1981, prior to the initial review and the landmarks board public hearing review, if the additional review is required. In the event that an initial stay is imposed, the time requirements of this section shall be tolled until such public hearing review fee has been paid.

(c) Demolition Determination: The city manager shall determine if demolition review under this section is required by examining building permit applications for buildings described in subsection (b) of this section. A proposed action that meets the definition of "demolition" or "demolish" in section 9-16-1, "General Definitions," B.R.C. 1981, shall be subject to the review process required by this section. For the purposes of this review, on-site relocation shall mean the relocation of the building on the current building site. Off-site relocation shall mean the relocation of the building off the current building site.

(d) Initial Review: The initial review shall occur within fourteen days after the city manager accepts a completed permit application to determine whether there is probable cause to believe that the building may be eligible for designation as an individual landmark consistent with the purposes and standards in sections 9-11-1, "Legislative Intent," and 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981.

(1) Staff Review: The city manager may review permit applications for all accessory buildings over fifty years old, all on-site relocations of buildings over fifty years old, and all demolition and off-site relocations for primary buildings constructed during or after 1940. If the city manager determines that there would be no significant impact or potential detriment to the historic resources of the city, the permit shall be issued if all other requirements of the permit process have been met. If the city manager determines that there is probable cause to believe that the building may be eligible for designation as an individual landmark, the issuance of the permit shall be stayed for up to sixty days from the date that a completed application is accepted by the city manager, and the permit shall be referred to the landmarks board for a public hearing. The applicant shall be notified of the initial review determination within fourteen days of the decision.

(2) Committee Review: The city manager and two designated members of the landmarks board shall review all demolition and off-site relocation permit applications for buildings built prior to 1940. If the city manager and two designated members of the landmarks board unanimously determine that there would be no significant impact or potential detriment to the historic resources of the city, the city manager shall issue the permit if all other requirements of the permit process have been met. If the city manager or one of the two designated members of the landmarks board determines that there is probable cause to believe that the building may be eligible for designation as an individual landmark, the issuance of the permit shall be stayed for up to sixty days from the date that a completed application is accepted by the city manager, and the permit shall be referred to the landmarks board for a public hearing. The applicant shall be notified of the initial review determination within fourteen days of the decision.

(e) Notice Of Public Hearing: The city manager shall publish notice of the time, place, and subject matter of the public hearing before the landmarks board in a newspaper of general

circulation in the city at least ten days before the hearing. At least ten days before the hearing, the city manager shall also:

(1) Post the property subject to the application to indicate that a permit review appeal has been requested; and

(2) Mail written notice to the record owners of the property subject to the application. If the address of the property owner is not a matter of public record, any failure to send notice by mail does not invalidate any proceedings on the permit application.

(f) Landmarks Board Public Hearings On Permits: The landmarks board shall hold a public hearing on the permit application within seventy-five days after the city manager accepts a completed application, pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. If the landmarks board fails to hold a public hearing within seventy-five days after the city manager accepts a completed permit application, the city manager shall issue the permit if all other requirements of the permit process have been met. The landmarks board shall consider and base its decision upon any of the following criteria:

(1) The eligibility of the building for designation as an individual landmark consistent with the purposes and standards in sections 9-11-1, "Legislative Intent," and 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981;

(2) The relationship of the building to the character of the neighborhood as an established and definable area;

(3) The reasonable condition of the building; and

(4) The reasonable projected cost of restoration or repair.

In considering the condition of the building and the projected cost of restoration or repair as set forth in paragraphs (f)(3) and (f)(4) of this section, the board may not consider deterioration caused by unreasonable neglect.

(g) Decision Of The Landmarks Board: If the landmarks board finds that the building to be relocated or demolished does not have historical significance under the criteria set forth in subsection (f) of this section, the city manager shall issue a permit if all other requirements of the permit process are met. If the board finds that the building may have historical significance under the criteria set forth in subsection (f) of this section, the application shall be suspended for a period not to exceed one hundred eighty days from the date the permit application was accepted by the city manager.

(h) One Hundred Eighty Day Stay Period: During the period of a stay of the issuance of a permit for demolition or relocation, the landmarks board may take any action that it deems necessary and consistent with this chapter to preserve the structure, including, without limitation, consulting with civic groups, public agencies, and interested citizens; recommending acquisition of the property by private or public bodies or agencies; exploring the possibility of moving buildings that would otherwise be demolished; and salvaging building materials. If individual landmark or district designation has not been initiated during the one hundred eighty day period, the city manager shall issue a permit if all other requirements of the permit process have been met.

(i) Record Of Demolished And Moved Properties: Prior to the issuance of a permit for demolition or relocation, the city manager may require the applicant to provide information about the building, including, without limitation, the date of original construction, significant events and occupants, architectural features, and a description of the building through photographs,

plans, and maps. The city manager shall determine where the documentation is to be deposited.

(j) Expiration: Any approval pursuant to this section shall expire one hundred eighty days after such approval is made if the applicant has failed to procure the permit, or if the work authorized by such permit has not commenced. A decision or failure to take action by the city manager and two members of the landmarks board pursuant to subsection (d) of this section, or by the landmarks board pursuant to subsection (g) of this section, shall be considered an approval.

Ordinance Nos. 5627 (1994); 5801 (1996); 5929 (1997); 7048 (2000); 7080 (2000); 7120 (2001); 7183 (2002); 7213 (2002).

9-11-24 **Landmarks Board And City Manager Authorized To Adopt Rules.**

The landmarks board and the city manager are authorized to adopt rules and regulations under chapter 1-4, "Rulemaking," B.R.C. 1981, that the landmarks board or the city manager determine are reasonably necessary to implement the requirements of this chapter.

Ordinance No. 7225 (2002).

9-12

TITLE 9 LAND USE CODE

Chapter 12 Subdivision[1]

Section:

[1]Adopted by Ordinance No. 7476.

9-12-1 **Legislative Intent.**

This chapter establishes the minimum requirements to protect public health, safety, or welfare in the subdivision of land. The purposes of regulating land subdivision are:

(a) To assure future buyers of land that the subdivider owns the land proposed to be sold, provides access to each property, and constructs and provides for maintenance of improvements, utilities, and amenities;

(b) To apportion the costs of public services and facilities serving subdivision residents through payment of fees, provision of facilities, and dedication of land and rights-of-way to the city in order to assure that new development pays its way and does not burden the city's fiscal resources;

(c) To insure that proposed sites are appropriate for development; and

(d) To obtain accurate surveying and permanent public record of the separate interests created and conveyed by subdivision.

9-12-2 **Application Of Chapter.**

(a) Approval Requirements: The approving agency shall not approve a final plat of a subdivision unless it conforms to the provisions of this chapter.

(b) Prohibition Of Sale Before Plat Approval: No person shall sell or commence construction upon any portion of a proposed subdivision, or advertise or hold out as a subdivided lot any parcel of land, until a plat thereof is recorded under the requirements of this chapter.

(c) Exceptions: The provisions of this chapter apply to all divisions of land except the following:

(1) Any division of a tract of land that creates parcels of land each of which comprises thirty-five or more acres of land;

(2) Any division of land to heirs through a judicial estate proceeding;

(3) Any division of land pursuant to a judicial partition;

(4) Any division of land that creates a cemetery lot;

(5) Any division of land occurring from the foreclosure of a deed of trust; or

(6) Any adjustment of a lot line that meets the requirements of section 9-12-3, "Adjustment Of Lot Lines," B.R.C. 1981.

(d) Applicable Regulations: Any plat of a subdivision submitted in accordance with subdivision requirements in effect at the time of submitting the final plat may, at the subdivider's request, be processed under such requirements.

(e) Scope - Generally: The provisions of this chapter apply to all land located within the city and in the process of annexation.

(f) Scope - Outside The City Limits: The provisions of paragraph 9-12-12(a)(2), B.R.C. 1981, and this title for major arterial and collector streets apply to all unincorporated land located within three miles of the city limits when a major street plan has been filed with the Boulder County Planning Department in accordance with section 31-23-212, C.R.S.

Ordinance Nos. 4803 (1984); 5377 (1991); 5425 (1991); 7211 (2002).

9-12-3 Adjustment Of Lot Lines.

(a) Scope: The city manager is authorized to grant exemptions from the subdivision process for the transfer of part of one lot or parcel for the purpose of enlarging an existing adjacent lot or parcel if such transfer meets the requirements of this section. If an applicant cannot meet the standards of this section, then an adjustment may be approved, if it meets the applicable standards, as part of a minor subdivision or a subdivision.

(b) Application Requirements: The subdivider shall submit to the city the following items:

(1) An application for a lot line adjustment on a form provided by the city manager and the fee prescribed in section 4-20-43, "Development Application Fees," B.R.C. 1981.

(2) An improvement survey plat, showing the location of the buildings and structures.

(3) A subdivision replat meeting all the requirements of paragraphs 9-12-8(b)(1) through (b)(10), B.R.C. 1981, and a legal description of the parcel to be transferred as part of the lot line adjustment and legal descriptions of the lots resulting from the lot line adjustment.

(4) Such replat document shall be named with the same name as that of the original subdivision and shall indicate thereon that the replat is for the purpose of adjusting property lines.

(5) A title commitment or attorney memorandum based upon an abstract of title, current as of the date of submitting the replat.

(6) If the requirements of section 9-12-9, "Lot Line And Boundary Verification," B.R.C. 1981, have not been met on the original plat, the subdivider shall provide the lot line and boundary verification required by section 9-12-9, "Lot Line And Boundary Verification," B.R.C. 1981, and pay the verification fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981.

(7) A shadow analysis for any existing building drawn in compliance with section 9-9-17, "Solar Access," B.R.C. 1981, and any other standards as may be required by the city manager.

(c) Standards: The city manager will approve the lot line adjustment after finding that the following standards have been met:

(1) The lot line adjustment will not be approved if the part of another lot or parcel being transferred and the lot or parcel to which the former is added will create, immediately after the transfer, two or more potential building sites or lots permitted under this title.

(2) The lot line adjustment will not be approved if the transfer reduces a lot or parcel to a size below that required by such title, including any applicable requirement for planned unit developments or site review.

(3) The lot line adjustment will not create a nonstandard lot or parcel or create nonstandard setbacks for any existing structures or buildings.

(4) The frontage of any of the lots to which the lot line adjustment is applied will not be relocated to another street.

(5) The basic shape of any of the lots to which the lot line adjustment is applied is maintained.

(6) The lots or parcels, after the lot line adjustment, and existing structures will comply with the lot standards of section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981, and the solar access requirements of section 9-9-17, "Solar Access," B.R.C. 1981.

(d) City Manager Approval: No person shall transfer land under this section until after the city manager reviews the map and legal description of the property and all other information required under this section to verify that the transfer is exempt under this chapter. The city manager shall sign the documents of transfer before they are recorded and will record the approved replat map after the applicant has recorded the documents of transfer.

Ordinance No. 7211 (2002).

9-12-4 **Elimination Of Lot Lines.**

(a) Scope: Notwithstanding any other provisions of this chapter, existing lot lines forming the boundary between two or more conforming platted lots located within the same subdivision or lot lines between lots or parcels that have merged to form one building lot pursuant to subsection 9-9-2(c), B.R.C. 1981, may be removed or eliminated through a replatting process which conforms to the requirements of this section.

(b) Limitations: The provisions of this section shall not apply to a replat that:

(1) Requires the dedication or vacation of easements on the replat; or

(2) Changes the location of any remaining lot lines in the subdivision.

(c) Application Requirements: The subdivider shall submit to the city the following items:

(1) An application for lot line elimination on a form provided by the city manager and the fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981.

(2) A subdivision replat meeting all the requirements of section 9-12-8, "Final Plat," B.R.C. 1981.

(3) Such replat document shall be entitled with the same name as that of the original subdivision and shall indicate thereon that the replat is for the purpose of removing the lot lines between specific lots.

(4) A title commitment or attorney memorandum based upon an abstract of title, current as of the date of submitting the replat.

(5) If the requirements of section 9-12-9, "Lot Line And Boundary Verification," B.R.C. 1981, have not been met on the original plat, the subdivider shall provide the lot line and boundary verification required by section 9-12-9, "Lot Line And Boundary Verification," B.R.C. 1981, and pay the verification fee prescribed by subsection 4-20-43(a), B.R.C. 1981.

(d) Standards: If the replat meets the requirements of this code and other ordinances of the city or requirements determined by the city manager to be necessary to protect the public health, safety, or welfare, the manager shall issue a Notice of Disposition approving or denying the replat.

(e) City Manager Decision: The city manager shall notify the planning board pursuant to subsection 9-4-4(b), B.R.C. 1981, of the disposition of the replat application.

(f) City Manager Approval: The city manager shall sign all approved replats and, upon the payment of the recording fees prescribed by subsection 4-20-43(a), B.R.C. 1981, the city clerk shall record all such replats in the office of the Boulder County Clerk and Recorder. Any such approved replat not recorded within six months after the date it was approved shall automatically expire.

Ordinance Nos. 5230 (1989); 5425 (1991); 5921 (1997); 5971 (1998); 7211 (2002).

9-12-5 **Minor Subdivision.**

(a) Scope: A minor subdivision is a division of land that is already served by city services, will not require the extension of streets or public improvements, and will not result in more than one additional lot.

(b) Limitations: The provisions of this section shall not apply to a replat that:

(1) Requires any variations to section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981;

(2) Requires the dedication of public or private access easements or public right-of-way for new streets, alleys, or shared access driveways;

(3) Requires the extension of a public improvement such as a street, alley, water main, sewer main, or requires any engineering plans, including, but not limited to, drainage reports for any public or private improvement;

(4) Is located on lands containing slopes of fifteen percent or greater;

(5) Requires the removal of an existing principal building; or

(6) Is located in a nonresidential zone district described in section 9-5-2, "Zoning Districts," B.R.C. 1981.

(c) Application Requirements: The subdivider shall submit to the city the following items:

(1) An application for a minor subdivision on a form provided by the city manager and the fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981;

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(2) A preliminary plat meeting all of the requirements of section 9-12-6, "Application Requirements For A Preliminary Plat," B.R.C. 1981;

(3) A final plat meeting all of the requirements of section 9-12-8, "Final Plat," B.R.C. 1981;

(4) A title commitment or attorney memorandum based upon an abstract of title, current as of the date of submitting the minor subdivision;

(5) A lot line and boundary verification required by section 9-12-9, "Lot Line And Boundary Verification," B.R.C. 1981, if the requirements of section 9-12-9, "Lot Line And Boundary Verification," B.R.C. 1981, have not been met on the original plat; and

(6) A shadow analysis for any existing buildings that is drawn in compliance with section 9-9-17, "Solar Access," B.R.C. 1981, and any other standards as may be required by the city manager.

(d) Notice Requirements: The subdivider shall satisfy the notice requirements in section 9-12-7, "Staff Review And Approval Of Preliminary Plat," B.R.C. 1981.

(e) Standards For Minor Subdivisions: The city manager will approve the minor subdivision after finding that the following standards have been met:

(1) The land is in a residential zoning district described in section 9-5-2, "Zoning Districts," B.R.C. 1981;

(2) The division of land will create no more than one additional lot;

(3) The division of land will not require the extension of any public improvements, including, without limitation, the extension of roads or utilities to serve the property;

(4) If the minor subdivision is a replat of a previously approved subdivision, the document shall be named with the same name as that of the original subdivision and shall indicate thereon that it is a replat of the original subdivision. Newly adjusted or created lots shall be designated to adequately indicate that original lot lines have been adjusted with a similar lot name; and

(5) The lots and existing structures will comply with the lot standards of section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981, and the solar access requirements of section 9-9-17, "Solar Access," B.R.C. 1981.

(f) Dedication And Vacation Of Easements: Right-of-way necessary to bring an existing street or alley up to a current city standard, or public easements for utilities or sidewalks may be dedicated on a minor subdivision plat. The city may approve the vacation of city utility easements on the replat.

(g) Minor Subdivision Review Procedure: If the final plat and the required plans, specifications, agreements, and guarantees meet the requirements of this code, the City of Boulder *Design And Construction Standards*, and other ordinances of the city or requirements determined by the city manager to be necessary to protect the public health, safety, or welfare, the manager shall approve the final plat in accordance with the procedure set forth in section 9-12-10, "Final Plat Procedure," B.R.C. 1981. If there are no public improvements associated with the minor subdivision, the city manager can waive the requirements for a subdivision agreement.

Ordinance Nos. 7211 (2002); 7484 (2006).

9-12-6 Application Requirements For A Preliminary Plat.

(a) Application Requirements: Any preliminary plat submitted for subdivision approval shall be drawn to a scale of no less than one inch equals one hundred feet, and of a scale sufficient to be clearly legible, including streets and lots adjacent to the subdivision. The preliminary plat may be an application under section 9-2-14, "Site Review," B.R.C. 1981, if it meets both the requirements of this section and those of chapter 9-2, "Review Processes," B.R.C. 1981. The applicant shall include on the preliminary plat or in accompanying documents:

(1) The proposed name of the subdivision;

(2) The location and boundaries of the subdivision, names of all abutting subdivisions with lines indicating abutting lots, or, if the abutting land is unplatted, a notation to that effect, and names of all abutting streets;

(3) Contours at two-foot intervals if the slope is less than ten percent and five feet where the slope is greater than ten percent;

(4) The date of preparation, scale, and north sign (designated as true north);

(5) A vicinity map showing at least three blocks on all sides of the proposed subdivision, which may be of a different scale than the plat;

(6) The location of structures and trees of five-inch caliper or more on the property and approximate location of structures off the property within ten feet of the proposed plat boundary;

(7) The name, address, and telephone number of the licensed surveyor, licensed engineer, or designer of the plat;

(8) The name, address, and telephone number of owner, verification of ownership of the property, and current title report or an attorney memorandum based upon an abstract of title, current as of the date of the submittal;

(9) The total acreage;

(10) The location and dimensions of all existing public improvements[1], easements, drainage areas, irrigation ditches and laterals, and other significant features within or adjacent to the proposed subdivision;

(11) The location and dimensions of all proposed public improvement[1], public easements, lot lines, parks, and other areas to be dedicated for public use, a dedication thereof to the public use, and identification of areas reserved for future public acquisition;

(12) Geological stability information upon request of the city manager if the manager determines or the subdivider has any reason to believe that building or other problems may arise from construction in the area proposed for development;

(13) Zoning on and adjacent to the proposed subdivision;

(14) A designation of areas subject to the one-hundred year flood and the estimated flow rate used in determining that designation, and base flood elevation data and the source used in determining that elevation;

(15) The number of lots and each lot size;

[1]As enumerated in section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981.

(16) Proposed uses of each lot;

(17) Proposed ownership and use of outlots;

(18) The location and size of existing utilities within or adjacent to the proposed subdivision including, without limitation, water, sewer, storm sewers and drainage facilities, fire hydrants within three hundred fifty feet of the property, electricity, and gas, which shall be placed on separate engineering drawings;

(19) A master utility plan showing proposed plans for private and public utility systems including water, sewer, electric, gas, drainage, telephone, telecommunications, and any other services that will supply the property;

(20) A shadow analysis for any existing buildings that is drawn in compliance with section 9-9-17, "Solar Access," B.R.C. 1981, and any other standards as may be required by the city manager.

(b) Vacation Of Utility Easements: A subdivider may vacate city utility easements on the plat.

Ordinance Nos. 5199 (1989); 5377 (1991); 5391 (1991); 5562 (1993); 7211 (2002).

9-12-7 **Staff Review And Approval Of Preliminary Plat.**

(a) City Manager Review: The city manager shall review all preliminary subdivision plats and approve those that the manager finds meet all requirements of this code and other ordinances of the city or are necessary to protect the public health, safety, and welfare. The manager shall process those that include applications for site reviews under chapter 9-2, "Review Processes," B.R.C. 1981, under the requirements of that chapter and shall ensure that the conditions of the site review approval will be met within the future subdivision. The manager shall process preliminary plats that do not include applications for site reviews and provide to the subdivider a list of any deficiencies that may exist.

(b) Notice Of Surface Estate: The city manager shall notify tenants of the property and abutting property owners by first class mail that the subdivision is proposed and that any questions or comments thereon may be directed to the department of planning and community development.

(c) Notice Of Mineral Estate: The purpose of this notice provision is to comply with the notification of surface development requirements in article 24-65.5, C.R.S. The applicant shall:

(1) At least thirty days before a final decision on an application for development, send notice, by first class mail, to the mineral estate owner;

(2) Provide in the notice a statement about how the decision will be made, rights of appeal, the location of the property that is the subject of the application, and the name of the applicant, the City of Boulder as the approving authority, and the name and address of the mineral estate owner;

(3) Identify the mineral estate holder in a manner consistent with section 24-65.5-103, C.R.S.; and

(4) Certify, in a form acceptable to the city manager, that such notice has been provided to the mineral estate owner.

(d) Preliminary Plat Approval: The city manager upon approval, shall sign and date all approved preliminary plats.

(e) Preliminary Plat Expiration: Preliminary plat approval expires one year after the date of approval, if no final plat is approved within that time. If a preliminary plat is part of a site review, it expires when the site review expires.

Ordinance No. 7211 (2002).

9-12-8 **Final Plat.**

(a) A final plat may be submitted at the same time as a preliminary plat.

(b) In order to obtain city manager review of a final plat, the subdivider shall submit a final plat that conforms to the approved preliminary plat, includes all changes required by the manager or the planning board, and includes the following information:

(1) A map of the plat drawn at a scale of no less than one inch equals one hundred feet (and of a scale sufficient to be clearly legible) with permanent lines in ink and whose outer dimensions are twenty-four inches by thirty-six inches on a reproducible mylar sheet (maps of two or more sheets shall be referenced to an index placed on the first sheet);

(2) A one inch equals one hundred feet reduction of the plat;

(3) The title under which the subdivision is to be recorded;

(4) Accurate dimensions for all lines, angles, and curves used to describe boundaries, public improvements, easements, areas to be reserved for public use, and other important features. (All curves shall be circular arcs and shall be defined by the radius, central angle, tangent, arc, and chart distances. All dimensions, both linear and angular, are to be determined by an accurate control survey in the field that must balance and close within a limit of one in ten thousand. No final plat showing plus or minus dimensions will be approved.);

(5) The names of all abutting subdivisions, or, if the abutting land is unplatted, a notation to that effect;

(6) An identification system for all lots and blocks and names for streets;

(7) An identification of the public improvements, easements, parks, and other public facilities shown on the plat, a dedication thereof to the public use, and areas reserved for future public acquisition;

(8) The total acreage and surveyed description of the area;

(9) The number of lots and size of each lot;

(10) Proposed ownership and use of outlots;

(11) A designation of areas subject to the one hundred-year flood, the estimated flow rate used in determining that designation, and a statement that such designation is subject to change;

(12) A description of all monuments, both found and set, that mark the boundaries of the property and a description of all control monuments used in conducting the survey;

(13) A statement by the land surveyor that the surveyor performed the survey in accordance with state law;

(14) A statement by the land surveyor explaining how bearings, if used, were determined;

(15) The signature and seal of the Colorado registered land surveyor;

(16) A delineation of the extent of the one hundred year floodplain, the base flood elevation, the source of such delineation and elevation, and a statement that they are subject to change;

(17) The square footage of each lot;

(18) Certification for approval by the following:

(A) Director of planning,

(B) Director of public works and utilities,

(C) Director of parks and recreation, if park land is dedicated on the plat,

(D) Director of real estate and open space, if open space land is dedicated on the plat,

(E) Qwest Communications, and

(F) Public Service Company;

(19) Signature blocks for all owners of an interest in the property; and

(20) A signature block for the city manager's signature.

(c) The subdivider shall include with the final plat:

(1) Engineering drawings, certified by a professional engineer registered in the State of Colorado, for proposed public and private utility systems meeting the requirements of the City of Boulder *Design And Construction Standards*;

(2) An update to the preliminary title report or attorney memorandum based upon an abstract of title current as of the date of submitting the plat;

(3) Covenants for maintenance of private utilities or improvements, as prescribed by subsection 9-12-12(c), B.R.C. 1981; and

(4) Copies of documents granting any easements required as part of the plat approval, the county clerk and recorder's recording number, and proof of ownership of the property underlying the easement satisfactory to the city attorney.

Ordinance Nos. 5199 (1989); 5391 (1991); 5971 (1998); 5986 (1998).

9-12-9 **Lot Line And Boundary Verification.**

The subdivider shall provide to the city a computer check to assure that the exterior lines of the subdivision on the final plat close. In the absence of such verification, the city shall obtain such computer check and the subdivider shall pay the fee therefor prescribed by subsection 4-20-43(a), B.R.C. 1981, before recording the plat.

9-12-10 **Final Plat Procedure.**

(a) When submitting a final plat, the subdivider shall submit to the city manager engineering plans, and agreements with ditch companies, if needed.

(b) If the final plat and the required plans, specifications, agreements, and guarantees meet the requirements of this code, the City of Boulder *Design And Construction Standards*, and other ordinances of the city or requirements determined by the city manager to be necessary to protect the public health, safety, or welfare, the manager shall approve the final plat (subject to the provisions of subsection (d) of this section) within ninety days of the date of submitting the required documents. The manager shall then execute a subdivision agreement that incorporates the final plat, the undertaking to provide public improvements prescribed by section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981, the undertaking of financial guarantees prescribed by section 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981, the public improvement warranty prescribed by section 9-12-14, "Public Improvement Warranty," B.R.C. 1981, subdivider's commitment to provide an update of the preliminary title report or attorney memorandum current as of the date of recording the plat, and any other terms and conditions to which the parties agree.

(c) The applicant shall sign the subdivision agreement and the plat, and shall submit these to the city along with the fees prescribed by subsection 4-20-43(a), B.R.C. 1981, and financial guarantees required by section 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981.

(d) The city shall sign the subdivision agreement and the plat, and issue a disposition indicating the date of the plat approval.

(e) The city manager shall notify the planning board in writing within seven days of the disposition of the final plat application.

(f) Any person aggrieved by a decision of the city manager to approve or deny an application for a subdivision may appeal such decision to the planning board by filing an appeal with the city manager within fourteen days of the decision. The board shall hear the appeal or call-up of the subdivision application, after giving notice to all interested parties, within thirty days of the notice of appeal or call-up, under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The board shall determine whether the subdivision application meets the requirements of this code and other ordinances of the city or those determined by the city manager to be necessary to protect the public health, safety, and welfare and shall grant or deny the application.

(g) The city manager shall sign all plats of subdivision following planning board approval, or the expiration of the call-up period, as applicable. Within one week after any conditions of the subdivision agreement required to occur prior to recording have been met, the city clerk shall record all such plats and agreements in the office of the Boulder County Clerk and Recorder.

(h) A plat expires if not recorded within twenty-four months after the date is was submitted, unless the city manager extends final plat approval for not more than twelve months upon a showing of good cause.

Ordinance Nos. 5391 (1991); 5971 (1998); 5986 (1998).

9-12-11 **Application For Building Permits Prior To Plat Recording.**

The subdivider may apply for building permits after the final plat is approved by the city manager or planning board and signed by the city manager and the subdivision agreement is

executed, but no permit will be issued until the conditions of the agreement (required in the agreement to be met before recording) are met and the plat and agreement are recorded.

Ordinance No. 5391 (1991).

9-12-12 **Standards For Lots And Public Improvements.**

(a) Conditions Required: Except as provided in subsection (b) of this section, subdivision plats shall comply with section 9-9-17, "Solar Access," B.R.C. 1981, and meet the following conditions:

(1) Standards For Lots: Lots meet the following conditions:

(A) Each lot has access to a public street.

(B) Each lot has at least thirty feet of frontage on a public street.

(C) No portion of a lot is narrower than thirty feet.

(D) Lots meet all applicable zoning requirements of this title and section 9-9-17, "Solar Access," B.R.C. 1981.

(E) Lots with double frontage are avoided, except where necessary to provide separation from major arterials or incompatible land uses or because of the slope of the lot.

(F) Side lot lines are substantially at right angles or radial to the centerline of streets, whenever feasible.

(G) Corner lots are larger than other lots to accommodate setback requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981.

(H) Residential lots are shaped so as to accommodate a dwelling unit within the setbacks prescribed by the zoning district.

(I) Lots shall not be platted on land with a ten percent or greater slope, unstable land, or land with inadequate drainage unless each platted lot has at least one thousand square feet of buildable area, with a minimum dimension of twenty-five feet. The city manager may approve the platting of such land upon finding that acceptable measures, submitted by a registered engineer qualified in the particular field, eliminate or control the problems of instability or inadequate drainage.

(J) Where a subdivision borders an airport, a railroad right-of-way, a freeway, a major street, or any other major source of noise, the subdivision is designed to reduce noise in residential lots to a reasonable level and to retain limited access to such facilities by such measures as a parallel street, a landscaped buffer area, or lots with increased setbacks.

(K) Each lot contains at least one deciduous street tree of two-inch caliper in residential subdivisions, and each corner lot contains at least one tree for each street upon which the lot fronts, located so as not to interfere with sight distance at driveways and chosen from the list of acceptable trees established by the city manager, unless the subdivision agreement provides that the subdivider will obtain written commitments from subsequent purchasers to plant the required trees.

(L) The subdivider provides permanent survey monuments, range points, and lot pins placed by a Colorado registered land surveyor.

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(M) Where an irrigation ditch or channel, natural creek, stream, or other drainage way crosses a subdivision, the subdivider provides an easement sufficient for drainage and maintenance.

(N) Lots are assigned street numbers by the city manager under the city's established house numbering system, and before final building inspection the subdivider installs numbers clearly visible and made of durable material.

(O) For the purpose of ensuring the potential for utilization of solar energy in the city, the subdivider places streets, lots, open spaces, and buildings so as to maximize the potential for the use of solar energy in accordance with the following solar siting criteria:

(i) Placement Of Open Space And Streets: Open space areas are located wherever practical to protect buildings from shading by other buildings within the development or from buildings on adjacent properties. Topography and other natural features and constraints may justify deviations from this criterion.

(ii) Lot Layout And Building Siting: Lots are oriented and buildings sited in a way which maximizes the solar potential of each principal building. Lots are designed so that it would be easy to site a structure which is unshaded by other nearby structures and so as to allow for owner control of shading. Lots also are designed so that buildings can be sited so as to maximize the solar potential of adjacent properties by minimizing off-site shading.

(iii) Building Form: The shapes of buildings are designed to maximize utilization of solar energy. Existing and proposed buildings shall meet the solar access protection and solar siting requirements of section 9-9-17, "Solar Access," B.R.C. 1981.

(iv) Landscaping: The shading impact of proposed landscaping on adjacent buildings is addressed by the applicant. When a landscape plan is required, the applicant shall indicate the plant type and whether the plant is coniferous or deciduous.

(2) Transportation Standards For Streets, Alleys, And Sidewalks: Streets, curb and gutters, sidewalks, alleys, and the public rights-of-way therefor, are provided in conformity with the standards in the City of Boulder *Design And Construction Standards*, and meet the following conditions:

(A) Streets are aligned to join with planned or existing streets.

(B) Streets are designed to bear a relationship to the topography, minimizing grade, slope, and fill.

(C) There are no dead-end streets without an adequate turnaround and appropriate barriers.

(D) Access to freeway, arterial, or collector street occurs only at intersections approved by the city manager, if the manager finds that the access provides efficient traffic movement and safety for drivers and pedestrians.

(E) A street of only one-half width is not dedicated to or accepted by the city.

(F) When the plat dedicates a street that ends on the plat or is on the perimeter of the plat, the subdivider conveys that last foot of the street on the terminal end or outside border of the plat to the city in fee simple, and it is designated by using an outlot.

(G) Streets are provided as prescribed by the Boulder Valley Comprehensive Plan, adopted subcommunity or area plans, or the Transportation Master Plan.

(H) Alleys are encouraged and should be provided. If they are provided, they are paved or otherwise appropriately surfaced with a material approved by the city manager for the specific application and location.

(I) Sidewalks are provided in all subdivisions, unless the city manager determines that no public need exists for sidewalks in a certain location.

(J) Signs for street names (subject to approval of the city manager), directions, and hazards are provided.

(K) Traffic control signs are provided, as required by the city manager for control of traffic.

(L) Pedestrian crosswalks are provided, as required by the city manager for traffic control and, at a minimum, between streets where the distance between intersecting streets exceeds one thousand feet.

(M) Bike paths or lanes are provided in conformity with the City of Boulder Comprehensive Plan for bicycle facilities and are dedicated to the city.

(N) Private streets are not permitted.

(3) Standards For Water And Wastewater Improvements: Water and wastewater utilities are provided in conformity with the construction and design standards in the City of Boulder *Design And Construction Standards*, and meet the following conditions:

(A) Water and sanitary sewer mains are provided as necessary to serve the subdivision.

(B) Easements are provided for city utilities as prescribed by the City of Boulder *Design And Construction Standards*.

(C) Easements for utilities other than city utilities are provided as required by the applicable private utility.

(D) Newly installed telephone, electric, and cable television lines and other similar utility service are placed underground. Existing utilities are also placed underground unless the subdivider demonstrates to the manager that the cost substantially outweighs the visual benefit from doing so. But transformers, switching boxes, terminal boxes, meter cabinets, pedestals, ducts, electric transmission and distribution feeder lines, communication long distance trunk and feeder lines, and other facilities necessarily appurtenant to such facilities and to underground utilities may be placed above ground within dedicated easements or public rights-of-way.

(4) Standards For Flood Control And Storm Drainage: Flood control and storm drainage measures are provided as required by the city's master drainage plan and in conformity with the construction and design standards in the City of Boulder *Design And Construction Standards*, and meet the following conditions:

(A) The measures retain existing vegetation and natural features of the drainageway where consistent with the master drainage plan.

(B) Any land subject to flooding by a one hundred-year flood conforms to the requirements of chapter 11-5, "Storm Water And Flood Management Utility," B.R.C. 1981.

(C) Storm drainage improvements and storm sewers are maintained to collect drainage from the subdivision and convey it off-site into a city right of way or drainage system without adversely affecting adjacent property.

(D) Bridges, culverts, or open drainage channels are provided when required by the flood control utility master drainage plan.

(E) All subdivisions shall be designed to minimize flood damage.

(F) All subdivisions shall have public utilities and facilities, including, without limitation, sewer, gas, electrical, and water systems, located and constructed to prevent flood damage.

(G) All subdivisions shall have adequate drainage provided to reduce exposure to flood damage.

(5) Standards For Fire Protection: Fire protection measures meet the following conditions:

(A) Fire hydrants are provided as required by chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

(B) Fire lanes are provided where necessary to protect the area; an easement at least sixteen feet wide for fire lanes is dedicated to the city, remains free of obstructions, and permits emergency access at all times.

(b) Waiver Of Lot Standards: The planning board may waive the design requirements of paragraph (a)(1) of this section not otherwise required by any other provision of the code:

(1) If permitted as part of an approval under section 9-7-9, "Two Detached Dwellings On A Single Lot," B.R.C. 1981, or site review under section 9-2-14, "Site Review," B.R.C. 1981; or

(2) Upon request of the subdivider if the subdivider provides an alternative means of meeting the purposes of this chapter, which the board finds:

(A) Is necessary because of unusual physical circumstances of the subdivision; or

(B) Provides an improved design of the subdivision.

(c) Private Utilities And Improvements: If the subdivider installs private utilities or improvements, including, without limitation, streets or water, wastewater, and storm drain utilities, the subdivider shall provide mutual covenants in the deeds of all property owners of the subdivision for the continued and perpetual maintenance of the utilities or improvements.

(d) Approval Of Final Engineering Plans Required: No person shall construct or install any public or private utilities or improvements required by this chapter without first obtaining city manager review and approval of final engineering plans, profiles, and specifications therefor.

(e) Construction Timing: The subdivider shall construct and install on-site improvements and utilities (including, without limitation, streets adjoining the subdivision). If the city manager determines that it is in the best interest of the subdivision residents to postpone construction of an improvement so that the improvement can be constructed in conjunction with other city improvements, the subdivider shall deposit with the city funds sufficient to cover the cost of its construction or installation and promise to pay for any additional costs actually incurred; the city shall thereafter undertake such construction or installation when constructing or installing the related city improvements. If the city does not undertake construction of the

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related improvements within seven years of receipt of the funds, it shall return the funds to the current property owner(s).

(f) Installation Of Off-Site Improvements: The subdivider shall install off-site improvements and utilities required by this section necessary to serve the development if the subdivider's construction on the subdivision precedes the construction of such improvements by the city under its capital improvements program.

(1) Public Improvement Extension Agreement: Prior to the extension of any public improvement or facility that is not entirely within the subdivision and for which the subdivider expects to receive reimbursement for part or all of the costs of the extension, the subdivider shall enter into a "public improvement extension agreement" with the city, which contains the legal description of the property to be served, a description of the improvement to be extended, the name of the owner of the property, the terms of the reimbursement to the owner, and an agreement by the subdivider to provide to the city, within sixty days after the date of preliminary construction acceptance by the city, its costs for such work and to provide to the city a current address during the term of the agreement.

(2) Forfeiture Of Right To Reimbursement: If a subdivider fails to comply with the "public improvement extension agreement," the subdivider forfeits its right to reimbursement under this subsection.

(3) Collection And Repayment: At the time of annexation of, subdivision of, or issuance of a building permit for, whichever occurs first, a property abutting an improvement constructed under a "public improvement extension agreement," the city manager shall collect a charge per adjusted front foot based upon the original construction costs and shall reimburse the original subdivider for its original construction costs, but only to the extent of the collection so made.

(4) Maximum Amount Collected And Paid: In no event may the actual amount so paid to the subdivider by the city exceed the total original cost of the public improvement so extended. After the expiration of the period of reimbursement prescribed by paragraph (f)(6) of this section, any such monies collected shall be retained by the city.

(5) City Manager Estimate Of Cost Of Public Improvement: If the subdivider fails to supply its costs to the city within sixty days of extending a public improvement, the manager may estimate the costs of such extension for purposes of charging persons who thereafter connect thereto.

(6) Reimbursement Term: The term for which the subdivider is entitled to reimbursement under the "Public Improvement Extension Agreement" entered into between the subdivider and the city is ten years from the date of execution of the contract or until the total original construction cost has been reimbursed, whichever occurs first.

(g) Oversized Improvements: The subdivider shall construct such oversized improvements and utilities that the city manager determines are necessary. If such oversized improvements are determined by the manager not to be required to serve the development, the city shall reimburse the subdivider for the cost of the oversized portion beyond the cost of the standard size within sixty days after the subdivider supplies its costs for the improvements to the city.

(h) City Manager Authorized To Require Other Public Improvements: The city manager may require such other public improvements not enumerated in this section as the manager determines are necessary to serve the health, safety and welfare of the public and the prospective residents of the subdivision.

(i) Street Lights: If street lights are not provided by the subdivider, they will not thereafter be provided by the city, but may be installed through a local assessment district under chapter 8-1, "Local Improvements," B.R.C. 1981, for which benefitted property owners will pay one hundred percent. Once street lights are installed, the city will pay for electricity and maintenance thereof.

(j) Steep Slopes: The city manager may impose additional requirements over and above those required in subsection (a) of this section on lands containing slopes of fifteen percent or greater, if the manager determines such requirements are necessary in order to protect the health, safety, and welfare of the occupants and taxpayers of Boulder from the negative impacts of development in hillside areas.

Ordinance Nos. 4969 (1986); 5009 (1986); 5076 (1987); 5199 (1989); 5271 (1990); 5391 (1991); 5476 (1992); 5562 (1993); 5776 (1996); 5986 (1998); 7211 (2002).

9-12-13 **Subdivider Financial Guarantees.**

(a) In order to protect the city and prospective purchasers of and residents in a subdivision, except as provided in subsection (h) of this section, the subdivider shall provide to the city financial security to guarantee the installation of public improvements and other obligations undertaken by the subdivider in the subdivision agreement and the plat and shall record the undertaking to provide the guarantee.

(b) No building permit shall be issued for any portion of a subdivision for which the required financial guarantee has not been provided.

(c) The guarantee shall be in an amount to secure the full costs, as determined by the city manager, of constructing or installing the improvements and utilities required in section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981. The subdivider shall complete such improvements and utilities within eighteen months of the issuance of the first building permit and prior to occupancy of any structure abutting the improvements. The manager may extend the required time period for completion to be consistent with phasing of construction of structures, or the manager may reduce the time upon a determination that, under generally accepted engineering principles, any or all of the improvements are required within a shorter time to protect the health, safety, and welfare of the residents of the subdivision.

(d) The city manager shall annually review the guarantee to assure that it meets the full current cost of constructing the improvements whose installation it secures and may require the subdivider to amend the guarantee to meet such current costs.

(e) If the improvements are not completed according to the subdivision agreement or the plat within the time required by subsection (c) of this section, the city may complete the improvements and collect against the guarantor for their full cost of construction and installation.

(f) The subdivider's financial guarantee may be any of the following:

(1) An escrow of funds with the city;

(2) An escrow with a bank or savings and loan association upon which the city can draw as provided in this section;

(3) An irrevocable clean sight draft or letter of commitment upon which the city can draw as provided in this section;

(4) A performance bond for the benefit of the city upon which the city can collect as provided in this section; and

(5) Any other form of guarantee approved by the city manager that will satisfy the objectives of this section.

(g) Whenever the city receives financial guarantees in the form of the escrow of funds, the city shall take such measures as it deems appropriate to ensure that such funds are maintained in a secure manner. Any interest earned on such funds while they are controlled by the city shall accrue to the sole benefit of the city to be used, in part, to offset administrative costs associated with the management and tracking of such funds. However, the city shall pay interest to existing escrow account holders who provided financial guarantees to the city in the form of escrows of funds prior to July 1, 1998. As to those existing escrow funds, interest shall be paid at a rate of return to be determined by the city manager on an annual basis in light of those rates of interest typically being paid by local financial institutions on regular passbook accounts. Upon request, persons who deposited escrow funds prior to July 1, 1998, shall be permitted to substitute another acceptable form of financial guarantee, as provided by this chapter, for the escrow funds currently on deposit with the city.

(h) The city manager may allow construction of public improvements without the financial guarantee prescribed by this section if the manager approves the plans for such improvements and if the subdivider does not request building permits or sell the property until after the city's final construction acceptance of the improvements.

Ordinance No. 5984 (1998).

9-12-14 **Public Improvement Warranty.**

(a) The subdivider shall warrant all public improvements, private improvements in lieu of public improvements, and utilities for two years after acceptance by the city and shall secure the two-year warranty by an insurance policy, bond, or letter of credit, from a surety or financial institution and in a form acceptable to the city manager, payable to the city as beneficiary, in an amount adequate to replace or repair twenty percent of the total value of all of the improvements if they are damaged or become inoperable during the warranty period.

(b) If the city manager determines that any such public or other improvements or utilities need repair or replacement, the manager shall so notify the subdivider. The manager shall not approve any other development applications from or improvements constructed or installed by the subdivider until the subdivider satisfactorily repairs or replaces the defective improvements.

(c) If the subdivider fails to repair or replace any such public or other improvements or utilities after notice, the city manager may cause the work to be performed and charge the costs against the insurance policy, bond, or letter of credit. If the amount of the policy, bond, or letter of credit is less than the cost of repair or replacement the difference shall be due and payable to the city by the subdivider. If any letter of credit is due to expire before the end of the warranty period, and is not replaced no less than sixty days before its expiration with another letter of credit which is valid until the end of the warranty period or for an additional year, whichever is less, the city manager shall call the letter of credit and shall hold the funds thereby received in a separate account, and shall return such funds as are not expended or to be expended for warranty work to the subdivider at the end of the warranty period.

Ordinance No. 5264 (1990).

9-12-15 City Acceptance Of Improvements.

The city manager shall not accept improvements constructed or installed by a subdivider until the subdivider has submitted finished plans of improvements as installed, but the manager's approval of working plans under subsection 9-12-8(b), B.R.C. 1981, meets the requirement of this section if a registered engineer certifies that the previously submitted plans are accurate and accurately reflect the actual construction and installation.

9-12-16 Dedication Of Public Rights-Of-Way.

The subdivider shall dedicate rights-of-way for public streets up to the classification of collector streets, utility easements, drainage and maintenance easements, and other rights-of-way required by this chapter.

Ordinance No. 7041 (2000).

9-12-17 Enforcement Remedies.

(a) The city manager may enforce the provisions of this chapter by filing a complaint in the municipal court, by seeking injunctive relief in the District Court in and for Boulder County, or by seeking any other legal or equitable remedy.

(b) If the subdivider breaches the subdivision agreement in any respect, including failure to construct improvements as indicated in plans and specifications, the city may withhold approval of all building permits and other development applications requested for the area within the subdivision until the breaches have been cured.

9-12-18 Land In Process Of Annexation.

If land for which a subdivision application is filed is in the process of annexation, the subdivider shall meet all annexation requirements of the annexation agreement and resolutions and ordinances regarding the annexation adopted by the city council, in addition to requirements of this chapter.

TITLE 9 LAND USE CODE

Chapter 13 Inclusionary Zoning[1]

Section:

[1]Adopted by Ordinance 7476.

9-13-1 **Findings.**

(a) A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of recent housing studies, reports and analysis, it has become clear that the provisions of this chapter are necessary in order to preserve some diversity of housing opportunities for the city's residents and working people.

(b) The program defined by this chapter is necessary to provide continuing housing opportunities for very low-, low- and moderate-income and working people. It is necessary to help maintain a diverse housing stock and to allow working people to have better access to jobs and upgrade their economic status. It is necessary in order to decrease social conflict by lessening the degree of separateness and inequality. The increasingly strong employment base in this region, combined with the special attractiveness of Boulder, its increasing University related population and its environmentally sensitive urban service boundaries, all combine to make the continued provision of decent housing options for very low-, low- and moderate-income and working people in Boulder a difficult but vital objective. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing here for very low-, low- and moderate-income and working people. This in turn will have a negative effect upon the ability of local employers to maintain an adequate local work force.

(c) It is essential that appropriate housing options exist for University students, faculty and staff so that the housing needs of University related populations do not preclude non-University community members from finding affordable housing.

(d) A housing shortage for persons of very low-, low- and moderate-income is detrimental to the public health, safety and welfare. The inability of such persons to reside within the city negatively affects the community's jobs/housing balance and has serious and detrimental transportation and environmental consequences.

(e) Because remaining land appropriate for residential development within the city is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to very low-, low- and moderate-income residents and working people. This is particularly true because of the tendency, in the absence of intervention, for large expensive housing to be developed within the city which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all of the housing in the community, thus exacerbating the scarcity of affordable housing within the city.

(f) The primary objective of this chapter is to obtain on-site, privately owned, permanently affordable units. Some provisions of this chapter provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this chapter is that wherever possible, permanently affordable units constructed pursuant to these provisions be located on-site and be privately produced, owned and managed.

9-13-2 **Purpose.**

The purposes of this chapter are to:

(a) Implement the housing goals of the Boulder Valley Comprehensive Plan;

(b) Promote the construction of housing that is affordable to the community's workforce;

(c) Retain opportunities for people that work in the city to also live in the city;

(d) Maintain a balanced community that provides housing for people of all income levels; and

(e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the city.

9-13-3 General Inclusionary Housing Requirements.

(a) Scope Of Chapter: No person shall fail to conform to the provisions of this chapter for any new development which applies for a development approval or building permit for a dwelling unit after the effective date of this chapter. No building permit or certificate of occupancy shall be issued, nor any development approval granted, which does not meet the requirements of this chapter.

(b) Prohibitions: No person shall sell, rent, purchase, or lease a permanently affordable unit created pursuant to this chapter except to income eligible households and in compliance with the provisions of this chapter.

(c) Asset Limitations For Income Eligible Households: Income eligible tenants and purchasers of affordable units shall be subject to reasonable asset limitations set by the city manager. The city manager will establish maximum asset limitation requirements for tenants and purchasers of affordable units in order to accomplish the purposes of this chapter. The standard that the city manager will use to set the asset limitation is that the housing be available to people who, without assistance, would have difficulty marshaling the financial resources to obtain appropriate housing within the city.

(d) Permanently Affordable Ownership Units: Except as otherwise provided in this chapter, permanently affordable units that are required for developments that are intended for owner occupancy shall be provided as follows:

(1) On-Site: Permanently affordable units that are required to be constructed on-site shall be owner occupied in the same proportion as the dwelling units intended for sale as owner occupancy that are not permanently affordable within the development.

(2) Off-Site: Permanently affordable units that the developer may be allowed to provide off-site shall also be owner occupied in the same proportion as the dwelling units intended for sale as owner occupancy that are not permanently affordable within the development.

(e) Transition To Inclusionary Zoning Requirements: Developments of the type described in this subsection shall be permitted to develop utilizing no more than one of the following provisions:

(1) Developments Approved Prior To 1995: Developments which received development plan approvals prior to October 5, 1995, shall conform to the provisions of this chapter or, in the alternative, may develop in compliance with the conditions of their previously issued development plan approvals so long as the construction of dwelling units are completed by December 31, 2001.

(2) City Subsidized Developments: Developments subject to agreements with the city executed prior to the effective date of this chapter in order to receive Community Housing Assistance Program, HOME or Community Development Block Grant funds may either:

(A) Develop in compliance with affordable housing and restricted housing agreements executed prior to the effective date of this chapter and provide restricted units as required pursuant to ordinances in effect at the time such developments were approved;

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(B) Enter into a new agreement with the city manager to allow the development to retain funding pursuant to the earlier agreements, provide permanently affordable units as required pursuant to the earlier agreements and law, be relieved of all obligations to provide restricted units, and provide ten percent additional permanently affordable units as such units are defined by this title; or

(C) Refund all monies received pursuant to such agreements and agree that contracts providing for the provision of such funding shall be void. The development shall then develop in compliance with the provisions of this chapter.

(3) Development With Reservation Agreements: Developments for which reservation agreements have been entered prior to the effective date of this chapter may develop in compliance with the affordable housing and restricted housing conditions contained in those agreements if building permits for the dwelling units are applied for by December 31, 2001.

(4) Developments Subject To Annexation Agreements: Developments subject to affordable housing requirements imposed by annexation contracts entered into prior to the effective date of this chapter may develop in conformity with those contract provisions.

(5) Developments With Pending Project Approval Applications: Developers of developments for which applications were filed prior to the effective date of this chapter may request that the city manager vary the standards of this chapter to allow for development in conformity with the approvals. The city manager will grant such variance requests by finding that the proposed variance will result in benefits to the city that are equivalent to the benefits that would otherwise have been created by the application of the provisions of this chapter.

(6) Moderate Income Housing Program: Any development subject to Ordinance 4638, "Moderate Income Housing," as amended, and which has not entered into a separate agreement with the city manager to fulfill those requirements prior to the effective date of this chapter shall be relieved of its obligations under Ordinance 4638, as amended, and shall be subject to the requirements of this chapter.

(f) Permanently Affordable Unit Types: The distribution of dwelling unit types that meet the permanently affordable unit requirements of this section shall be as follows:

(1) Single-Family: In single-family detached dwelling unit developments, the required on-site permanently affordable units shall also be single-family detached units.

(2) Mixed Unit Type: In developments with the included single-family detached units, attached units, multi-family apartment type units, or other dwelling unit types, the required on-site permanently affordable units shall be comprised of the different unit types in the same proportion as the dwelling units that are not permanently affordable within the development.

(3) Alternative Distribution Ratios: The city manager is to approve different unit distributions among the permanently affordable unit types if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter, or if approved pursuant to a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981, results in a better design than not using the distribution of units provided for in this section.

(g) Reference Information: Whenever this chapter refers to information generated by HUD but no such information is generated by or available from that agency, the city manager shall generate appropriate information which can be utilized in the enforcement of the provisions of this chapter.

Ordinance No. 7212 (2002).

9-13-4 Inclusionary Obligation Based Upon Size Of Project.

(a) Developments Of Five Or More Dwelling Units: Any development containing five or more dwelling units is required to include at least twenty percent of the total number of dwelling units within the development as permanently affordable units.

(b) Developments Containing Four Dwelling Units Or Less: Any development containing four dwelling units or less may comply with the obligations of this chapter either by including one permanently affordable unit within the project, by dedicating an off-site permanently affordable unit, by dedicating land that meets the requirements set forth in section 9-13-6, "Off-Site Inclusionary Zoning Option," B.R.C. 1981, or by providing a cash-in-lieu financial contribution to the city's affordable housing fund established by section 9-13-5, "Cash-In-Lieu Equivalent For A Single Permanently Affordable Unit," B.R.C. 1981.

(c) Minimum Sizes For Permanently Affordable Units: The minimum size for permanently affordable units shall be as follows:

(1) The average floor area of the detached permanently affordable units in a development shall be a minimum of forty-eight percent of the average floor area of all the non-permanently affordable units which are part of the same development up to a maximum average size of one thousand two hundred square feet of floor area.

(2) The average floor area of the attached permanently affordable units in a development shall be a minimum of eighty percent of the average floor area of all the non-permanently affordable units which are part of the same development up to a maximum average size of one thousand two hundred square feet of floor area.

(3) The city manager will permit a decrease in size of the finished floor area, set forth in paragraph (c)(1) of this section, if the dwelling unit is increased in size by two square feet of unfinished and potentially habitable space for each square foot of finished square foot of floor area that is decreased, up to a maximum of four hundred unfinished square feet, upon finding that the unfinished space will be designed and configured in such a way as to allow for a simple conversion of the space at some future time. The factors that the city manager will consider to determine whether a simple conversion is possible include, without limitation, an adequate foundation, sound structural components, floor to ceiling heights, weather resistant roofs, appropriate exits, and window placement.

(4) The city manager is authorized to enter into agreements allowing permanently affordable units to constitute a smaller percentage of the total floor area contained within non-permanently affordable units at a given project if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter or to prevent an unlawful taking of property without just compensation in accordance with section 9-13-10, "No Taking Of Property Without Just Compensation," B.R.C. 1981.

9-13-5 Cash-In-Lieu Equivalent For A Single Permanently Affordable Unit.

(a) Cash-In-Lieu Equivalent: Whenever this chapter permits a cash-in-lieu contribution as an alternative to the provision of a single permanently affordable unit, the cash-in-lieu contribution shall be as follows:

(1) Detached Dwelling Units: For each unrestricted detached dwelling unit, the cash-in-lieu contribution for the calendar year of 2000 shall be the lesser of $13,200.00 or $55.00 multiplied by twenty percent of the total floor area of the unrestricted unit. The cash-in-lieu contribution will be adjusted annually as set forth in subsection (c) of this section.

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(2) Attached Dwelling Units: For each unrestricted attached dwelling unit, the cash-in-lieu contribution for the calendar year of 2000 shall be the lesser of $12,000.00 or $50.00 multiplied by twenty percent of the total floor area of the unrestricted unit. The cash-in-lieu contribution will be adjusted annually as set forth in subsection (c) of this section.

(b) Contribution-In-Lieu Provisions Affecting Certain Developments Containing A Single Dwelling Unit: A lot owner that intends to construct a single dwelling unit that will be the primary residence of the owner for not less than one year immediately following the issuance of a certificate of occupancy shall meet the standards set forth in section 9-13-4, "Inclusionary Obligation Based Upon Size Of Project," B.R.C. 1981, or meet the following standards:

(1) Designation Of Home As A Permanently Affordable Unit: The owner shall make the unit a permanently affordable unit, except that such initial owner does not have to meet income or asset qualifications imposed by this chapter. The income and asset limitations shall apply to subsequent owners of the affordable unit.

(2) Alternative Method Of Paying Cash-In-Lieu Contribution: If the owner of a unit described in this subsection chooses to comply with inclusionary zoning obligations imposed by this chapter by making an in-lieu contribution as set forth in section 9-13-4, "Inclusionary Obligation Based Upon Size Of Project," B.R.C. 1981, the owner shall have the option of deferring payment of that contribution until such time as the property is conveyed to a subsequent owner, subject to the following:

(A) The amount of the cash-in-lieu contribution shall be increased or decreased to reflect the percentage of change, if any, between the actual valuation determined by the Boulder County Assessor of the property upon which the unit is constructed following completion of such construction and the most recent actual valuation determined by the Boulder County Assessor of the same property at the time of transfer of title to a subsequent owner.

(B) The owner executes legal documents, the form and content of which are approved by the city manager, to secure the city's interest in receipt of the deferred cash-in-lieu contribution.

(3) Alternative Methods Of Compliance: If the owner of a unit described in this subsection chooses to comply with the inclusionary zoning obligations imposed by this chapter by utilizing an in-lieu contribution approach, the city manager shall have discretion to accept in-lieu consideration in any form so long as the value of that consideration is equivalent to or greater than the cash-in-lieu contribution required by this chapter and the city manager determines that the acceptance of an alternative form of consideration will result in additional benefits to the city consistent with the purposes of this chapter.

(4) Waiver Of Inclusionary Zoning Obligation For Certain Size-Restricted Developments: The owner of a lot who constructs a single dwelling unit upon that lot may elect to be exempted from the inclusionary zoning requirements imposed by this chapter if all of the following conditions are met:

(A) Limitation On Eligible Lots: The dwelling unit is a single detached dwelling unit built on a lot created prior to October 5, 1995;

(B) Primary Residence Of Lot Owner: The dwelling unit is intended to be the primary residence of the owner and, following completion of the unit, the lot owner lives in the unit continuously for no less than one year immediately following the issuance of a certificate of occupancy;

(C) Maximum Size: The floor area of the single detached residential unit does not exceed one thousand six hundred square feet;

(D) Restriction On Size: Restrictive covenants or other legal documents, the form and content of which are acceptable to the city manager, are executed to ensure that the single detached residential unit remains size restricted in perpetuity to a floor area not exceeding one thousand six hundred square feet; and

(E) One-Time Exemption: No person shall be permitted to use the exemption set forth in this subsection more than one time.

(c) Annual Escalator: The city manager is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached and attached housing, using information provided by Boulder County Assessor records for the City of Boulder.

(d) Affordable Housing Fund Established: The city manager shall establish an affordable housing fund for the receipt and management of permanently affordable unit cash-in-lieu financial contributions. Monies received into that fund shall be utilized solely for the construction, purchase, and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of this chapter.

Ordinance No. 7212 (2002).

9-13-6 Off-Site Inclusionary Zoning Option.

(a) On-Site And Off-Site Inclusionary Zoning Requirements: Except as otherwise provided in this chapter, in developments that require more than one permanently affordable ownership unit, the developer must construct a minimum of one-half of the required permanently affordable units on-site.

(b) Variance To On-Site Construction Requirement: The city manager is authorized to enter into agreements to allow a greater percentage of the required permanently affordable unit obligation to be satisfied off-site if the city manager finds:

(1) Securing such off-site units will accomplish additional benefits for the city consistent with the purposes of this chapter; or

(2) If zoning, environmental, or other legal restrictions make a particular level of on-site compliance unfeasible.

(c) Requirements For Fulfilling Obligation Off-Site: To the extent that a developer is authorized to fulfill some portion of the permanently affordable housing obligation off-site, the developer may satisfy that obligation through any combination of the following alternate means:

(1) In-Lieu Contribution: To the extent permitted by this chapter, developers may satisfy permanently affordable unit obligations by making contributions to the city's affordable housing fund in an amount that is calculated according to the standards set forth in subsection 9-13-5(a), B.R.C. 1981.

(2) Land Dedication: To the extent permitted by this chapter, permanently affordable unit obligations may be satisfied by dedication of land in-lieu of providing affordable housing on-site. Land dedicated to the city or its designee shall be located in the City of Boulder. The value of land to be dedicated in satisfaction of this alternative means of compliance shall be determined, at the cost of the developer, by an independent appraiser, who shall be selected

from a list of certified appraisers provided by the city, or by such alternative means of valuation as to which a developer and the city may agree. The land dedication requirement may be satisfied by:

(A) Land At Equivalent Value: Conveying land to the city or its designee that is of equivalent value to the cash-in-lieu contribution that would be required under section 9-13-5, "Cash-In-Lieu Equivalent For A Single Permanently Affordable Unit," B.R.C. 1981, plus an additional fifty percent, to cover costs associated with holding, developing, improving, or conveying such land; or

(B) Land To Construct Equivalent Units: Conveying land to the city or its designee that is of equivalent value (as of the date of the conveyance) to that land upon which required units would otherwise have been constructed (upon completion of construction). Land so deeded must be zoned such as to allow construction of at least that number of units for which the obligation of construction is being satisfied by the dedication of the land.

(C) Dedication Of Existing Units: To the extent permitted by this chapter, permanently affordable unit obligations may be satisfied by restricting existing dwelling units which are approved by the city as suitable affordable housing dwelling units through covenants, contractual arrangements, or resale restrictions, the form and content of which are acceptable to the city manager. Off-site units shall be located within the City of Boulder. The restriction of such existing units must result in the creation of units that are of equivalent value, quality, and size of the permanently affordable units which would have been constructed on-site if this alternative had not been utilized. Where a proposed development consists of ownership units, units created under this section shall be ownership units. The value of dwelling units created pursuant to this section as a way of meeting the permanently affordable unit requirement shall be determined, at the expense of the developer, by an appraiser who shall be selected by the developer from a list of certified appraisers provided by the city or by such alternative means of valuation as to which a developer and the city may agree.

9-13-7 Affordable Housing Requirements For Rental Projects.

(a) Manner Of Compliance: For developments containing rental units, permanently affordable unit obligations for such units shall be met in the following manner:

(1) On-Site Or Off-Site Units Permitted: All permanently affordable unit obligations of rental housing projects may be met through on-site units, off-site units, or by any combination of on-site and off-site units, which satisfy such permanently affordable unit obligation. Off-site units shall be equivalent in size and quality of on-site units that otherwise would be required by this chapter.

(2) Conversion Of Rental Developments To Ownership Units: A rental housing project that is not owned by the Housing Authority of the City of Boulder or its agents or in which the city does not have an interest through the Housing Authority of the City of Boulder or a similar agency consistent with section 38-12-301, C.R.S., that chooses to fulfill its permanently affordable unit obligations off-site shall enter into a covenant or agreement with the city. The covenant or other agreement shall be in a form acceptable to the city manager and shall insure that the number of permanently affordable units that would have been provided if the project was an ownership development with off-site units used to meet the total inclusionary zoning requirements will be provided in the event that the proposed rental development converts to an ownership development within five years of the final unit in the development receiving a certificate of occupancy. Such covenant or agreement shall provide for the appropriate adjustment to the inclusionary zoning requirements of this chapter.

(3) Variance To Permanently Affordable Housing Requirement For Rental Projects: The city manager may enter into agreements with the developers of rental housing projects such that permanently affordable unit obligations are satisfied in ways other than those listed in this chapter upon a finding by the city manager that such alternative means of compliance would result in additional benefits to the city which would further the objectives of this chapter.

(b) Determination Of Rental Rates For Permanently Affordable Units: If a developer of a rental housing project chooses to meet the permanently affordable unit requirements imposed by this chapter through the provision of on-site or off-site affordable rental housing, affordability of rental units shall be determined as follows:

(1) Maximum Rent: Rents charged for permanently affordable units in any one project must, on average, be affordable to households earning ten percentage points less than the HUD low-income limit for the Boulder PMSA, with no unit renting at a rate which exceeds affordability to a household earning more than the HUD low-income limit for the Boulder PMSA.

(2) Maximum Income For Tenants: No single household in a permanently affordable unit project shall have an income which exceeds the HUD low-income limit for the Boulder PMSA.

Ordinance No. 7212 (2002).

9-13-8 **Affordable Housing Requirements For Ownership Units.**

(a) Maximum Sales Price For Permanently Affordable Units: The maximum sale price for an affordable ownership unit shall be set by the city on a quarterly basis.

(b) Average Price Within A Development: The prices charged for permanently affordable units in any one project shall average a price affordable to a household earning the HUD low-income limit, with no unit exceeding a price affordable to a household earning ten percentage points more than the HUD low-income limit for the Boulder PMSA.

(c) Maximum Income For Purchasers Of Ownership Units: An ownership unit shall be sold to, or purchased by an income eligible household that meets the asset limitations established pursuant to this chapter.

(d) Approved Purchasers For Permanently Affordable Units: A developer or owner shall select a low-income purchaser after completing a good faith marketing and selection process approved by the city manager. Upon request, the city may provide the developer or owner of a permanently affordable unit with a list of households certified by the city as eligible to purchase the unit. However, a developer or property owner may select a low-income purchaser who is not on a furnished list so long as the city can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this chapter.

(e) Purchasers Of Permanently Affordable Units Required To Reside In Those Units: A purchaser of a permanently affordable unit shall occupy the purchased unit as a primary residence, except subject to rental restrictions for permanently affordable ownership units.

(f) Rental Restrictions For Permanently Affordable Ownership Units: No person shall rent a permanently affordable ownership unit, except as follows:

(1) Unit Initially Occupied: The owner shall initially reside in the permanently affordable ownership unit for a period of not less than five years.

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(2) Notice: The owner shall provide notice to the city prior to renting of the permanently affordable ownership unit of its intent to rent the unit.

(3) Limitation On Lease Period: The owner shall not rent or lease the entirety of the affordable unit for one or more periods aggregating not more than one year out of every seven-year period.

(4) Lease Documentation: Any lease or rental agreement for the lease or rental of a permanently affordable ownership unit pursuant to this section shall be in writing.

(5) Prior Approval: Before the date upon which it becomes effective, a copy of any lease or rental agreement for a permanently affordable unit shall be provided to the city, along with those documents which the city finds to be reasonably necessary in order to determine compliance with this section.

(6) Scope: The provisions of this section shall apply to all rental or lease arrangements under which any person, other than the owner, his or her spouse, his or her domestic partner and dependent children or parents, occupies any part of the property for any valuable consideration, whether that agreement is called a lease, rental agreement, or something else.

(7) Rental Of A Bedroom Permitted: At all other times, the only part of a permanently affordable unit which an owner may rent or lease is a bedroom, subject to all requirements of city ordinances concerning the renting of residential property.

(g) Resale Restrictions Applicable To Permanently Affordable Units: All permanently affordable ownership units developed under this chapter shall be subject to the following resale restrictions:

(1) Approved Purchasers For Resale Of Permanently Affordable Units: A seller of a permanently affordable unit must select a low-income purchaser by a method that complies with the good faith marketing and selection process approved by the city manager. At the request of an applicant, the city will provide the seller with the description of a process that meets this requirement. Upon request, the city may provide a potential seller of a permanently affordable unit with a list of households certified by the city as eligible to purchase the unit. All purchasers of permanently affordable units shall be part of income eligible households.

(2) Resale Price For Permanently Affordable Units: The resale price of any permanently affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(A) Customary closing costs and costs of sale;

(B) Costs of real estate commissions paid by the seller if a licensed real estate agent is employed and if that agent charges commissions at a rate customary in Boulder County;

(C) Consideration of permanent capital improvements installed by the seller; and

(D) The resale price may include an inflationary factor or shared appreciation factor as applied to the original sale price pursuant to rules as may be established by the city manager to provide for such consideration. In developing rules, the city manager shall consider the purposes of this chapter, common private, nonprofit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing. In the event that the city has not adopted rules that contemplate a particular arrangement for the use of an inflationary factor or shared appreciation factor, the city manager is authorized to approve a resale price

formula that is consistent with the purposes of this chapter, common private, nonprofit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing.

(3) No Special Fees Permitted: The seller of a permanently affordable unit shall not levy or charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this chapter.

(4) Deed Restriction Required: No person offering a permanently affordable unit for sale shall fail to lawfully reference in the Grant Deed conveying title of any such unit, and record with the county recorder, a covenant or Declaration of Restrictions in a form approved by the city. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this chapter.

Ordinance No. 7212 (2002).

9-13-9 Requirements Applicable To All Required Permanently Affordable Units.

(a) Construction Timing: The construction of required permanently affordable units in any development shall be timed such that they may be marketed concurrently with or prior to the market-rate units in that development. However, the city manager is authorized to enter into other phasing agreements if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter.

(b) Residents Eligible For Permanently Affordable Units: No person shall sell, lease or rent a permanently affordable unit except to income eligible households.

(c) Required Agreements: Prior to approval of any development review pursuant to sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, or a subdivision pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, applicants for residential development projects shall have entered into permanently affordable housing agreements with the city. Such agreements shall specify the number, type, location, approximate size, and projected level of affordability of permanently affordable units. Prior to application for a building permit for a residential development project, developers shall execute such restrictive covenants and additional agreements, in a form acceptable to the city, as are necessary to carry out the purposes of this chapter. No development review application or subdivision application shall be approved in the absence of proof of the execution of required agreements and covenants. No building permit application shall be accepted in the absence of proof of the execution of required agreements and covenants.

(d) Good Faith Marketing Required: All sellers or owners of permanently affordable units shall engage in good faith marketing efforts each time a permanently affordable unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance to become informed of the availability of such units. Every such seller or owner shall submit a public advertising plan targeting the appropriate income range for approval by the city manager.

9-13-10 No Taking Of Property Without Just Compensation.

(a) Purpose: It is the intention of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.

(b) Request For Review: Any applicant for the development of a housing project who feels that the application of this chapter would effect such an unlawful taking may apply to the city manager for an adjustment of the requirements imposed by this chapter.

(c) City Manager Review: If the city manager determines that the application of the requirements of this chapter would result in an unlawful taking of private property without just compensation, the city manager may alter, lessen or adjust permanently affordable unit requirements as applied to the particular project under consideration such that there is no unlawful uncompensated taking.

(d) Administrative Hearing: If after reviewing such application, the city manager denies the relief sought by an applicant, the applicant may request an administrative hearing within which to seek relief from the provisions of this chapter. Any such hearing shall be conducted pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this chapter would effect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the State of Colorado. If it is determined at such administrative hearing that the application of the requirements of this chapter would effect an illegal taking without just compensation, the city manager shall alter, lessen or adjust permanently affordable unit requirements as applied to the particular project under consideration such that no illegal uncompensated taking takes place.

9-13-11 **Administrative Regulations.**

To the extent the city manager deems necessary, rules and regulations pertaining to this chapter will be developed, maintained and enforced in order to assure that the purposes of this chapter are accomplished.

9-13-12 **Monitoring.**

Prior to July 1, 2002, the city manager will present sufficient information to the city council so that it can effectively review the operation of this chapter and determine whether any of the provisions of this chapter should be amended, adjusted or eliminated. Such information should be sufficient to allow the city council to evaluate the following:

(a) The effectiveness of this chapter in contributing to the purposes of this chapter;

(b) Any demographic trends affecting housing affordability indicating the need for amendments or alterations to the provisions of this chapter;

(c) The level of integration of the provisions of this chapter with other tools being utilized by the city as part of a comprehensive approach toward obtaining the goals of this chapter.

TITLE 9 LAND USE CODE

Chapter 14 Residential Growth Management System[1]

Section:

[1]Adopted by Ordinance No. 7476.

9-14-1 **Legislative Intent.**

This chapter is intended to accomplish the following purposes:

(a) Establish a residential building permit management system that provides for a long-term rate of growth in the city no greater than one percent per annum, but recognizes the potential for fluctuations in that rate on an annual basis;

(b) Provide for a rate of growth in the city that will assure the preservation of its unique environment and its high quality of life;

(c) Assure that such growth proceeds in an orderly manner and does not exceed the availability of public facilities and urban services;

(d) Avoid degradation in air and water quality;

(e) Avoid increases in crime and urban decay associated with unmanaged growth;

(f) Establish a residential building permit management system that shares available building permits on a prorated basis; and

(g) Encourage the completion of older developments in order to reduce infrastructure costs and to stabilize residential neighborhoods.

9-14-2 **General Provisions.**

A system of managing the issuance of residential building permits in the city is established with the following general provisions:

(a) Building Permits: No building permit for the construction of a new dwelling unit may be issued unless applied for in compliance with this chapter.

(b) Allocations Needed: One allocation is needed to secure a building permit to construct each dwelling unit, except as set forth below. The living quarters set forth below shall require:

(1) One-half allocation for an efficiency living unit; one-third allocation for a group residence; and one-sixth allocation or one-eighth allocation for each occupant for a group care facility or a residential care facility respectively, according to the density and occupancy restrictions of subsection 9-6-3(f), B.R.C. 1981;

(2) One-fifth allocation for accommodations without kitchens or one-third allocation for attached allocations for congregate care facilities, according to the density and occupancy restrictions of section 9-8-6, "Occupancy Equivalencies For Group Residences," B.R.C. 1981;

(3) One allocation for any other type of dwelling unit;

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(4) No allocation for an accessory dwelling unit, an owner's accessory unit, a bed and breakfast, a hostel, a hotel, or a motel.

(c) Maximum Allocations: The planning board shall not grant more than forty allocations to a development in a calendar year except upon a finding after a hearing held upon reasonable notice to the public, pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, that such accumulation of allocations would not prejudice the allocation process; and:

(1) That there is an unmet community need for such development; or

(2) That constraints of building size or building configuration or infrastructure phasing require a greater amount of allocations and that banking under subsection 9-14-7(h), B.R.C. 1981, is insufficient to remedy hardship; or

(3) That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year, in which case, upon application therefor, developments shall be awarded additional allocations in the last allocation period in a calendar year, on a prorated basis, up to a total of seventy-five allocations in any development in a calendar year.

(d) Building Permit Approvals: All building permit applications will be reviewed within twenty working days after submission of a complete application. At the end of the building permit review period, either a building permit will be made available for issuance or reasons will be given to the grantee why the permit cannot be issued, in which case the grantee has twenty working days in which to submit all required corrections. If the corrections are not completed in the time and manner required, the building permit application and related allocation are void unless reinstated by the city manager upon a finding of excusable neglect, after a hearing held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(e) Thirty Days To Obtain A Building Permit: Once a building permit is made available for issuance, the grantee has thirty days to obtain the permit. If the grantee fails to do so, the building permit application and related allocation is void unless reinstated by the city manager upon a finding of excusable neglect, after a hearing held under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(f) Construction And Inspection Schedule For A Building Permit: Once a building permit is issued, the permittee must adhere to the schedule for construction and inspection set forth in the International Building Code, chapter 10-5, "Building Code," B.R.C. 1981, unless compliance with a shorter schedule is required by the planning board under subsection 9-14-7(b), B.R.C. 1981. If a building permit expires or is terminated under the provisions of the International Building Code, the related allocation is void.

(g) Guarantee Of One Allocation For Each Development: Each development shall be entitled to receive at least one allocation per allocation period. The first allocation of an allocation period shall be subtracted from the allocations available in the next quarter if such an allocation is not available in the present allocation period. If there is more than one request for such an allocation, it shall be awarded in a manner consistent with the rules for granting allocations for developments with multiple owners set forth in subsection 9-14-6(d), B.R.C. 1981.

9-14-3 **Allocations Available.**

(a) Total Unadjusted Allocations: The unadjusted number of allocations per year available through 2010 shall be as in table 14-1 of this section.

TABLE 14-1: ALLOCATIONS BY YEAR

Year	Allocations
2006	428
2007	432
2008	436
2009	440
2010	444

(b) Allocations Counted: All building permits issued for the construction of a new dwelling unit shall be counted against the allocations available except for those exemptions granted pursuant to subsection 9-14-8(a), B.R.C. 1981.

(c) Adjustment Of Allocations For Next Calendar Year: The number of allocations available for the next calendar year shall be adjusted at the end of each year by the following factors, if applicable:

(1) By subtracting the number of allocations borrowed and reserved during the previous calendar years under subsection (e) of this section and prior growth management systems;

(2) By adding the number of allocations that have been reserved under prior growth management ordinances, but not used, during the prior calendar year; and

(3) By adding the number of allocations available but not granted in prior calendar year, up to a total of twenty-five percent of the current year's unadjusted allocations, and granting such allocations prior to any other grant during the next calendar year. To the extent any excess allocations are granted under the provisions of section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, during the last allocation period, the number of excess allocations so granted shall be subtracted from the total allocations not granted allocations but otherwise available for carry over. All other allocations available but not granted during such prior year shall be void.

(d) Adjustment Of Allocations For Next Allocation Period: The number of allocations available pursuant to subsection (a) of this section for the next allocation period shall be adjusted at the end of each allocation period by the following factors, if applicable:

(1) By subtracting the number of exemptions for dwelling units issued pursuant to subsections 9-14-8(b) and (c), B.R.C. 1981, that received building permits during such prior allocation period;

(2) By subtracting the number of allocations reserved from the allocation period under prior growth management ordinances;

(3) By subtracting the number of allocations required to allow all developments to receive one allocation per quarter under subsection 9-14-2(g), B.R.C. 1981, or to add up to one

allocation for any development which needs one additional allocation to commence construction, as determined by the planning board under paragraph 9-14-4(b)(2) or (b)(3), B.R.C. 1981;

(4) By subtracting the number of allocations required to round allocations under subsection 9-14-6(a), B.R.C. 1981; and

(5) By adding the number of allocations or building permits surrendered or voided during such prior allocation period.

(e) Borrowing Allocations: At any time, for good cause, the planning board may, after a hearing held upon reasonable notice to the public, borrow allocations and subtract this number from subsequent calendar years' allocations set forth in subsection (a) of this section. The planning board shall specify the calendar year from which the allocations are borrowed and shall not borrow from any year beyond those set forth in subsection (a) of this section. Such borrowed allocations shall be subject to all other provisions of this chapter. No allocations may be borrowed to provide excess allocations under the provisions of section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981.

(f) Maximum Annual Allocations: Notwithstanding any other provision of this chapter to the contrary, the total number of allocations granted by the planning board during a calendar year shall not exceed twenty percent over the unadjusted allocation number set forth in subsection (a) of this section. The exemptions granted pursuant to subsection 9-14-8(a), B.R.C. 1981, shall not be counted against the total number of allocations granted by the planning board.

9-14-4 Allocation Schedule.

(a) Review Of Application: Review of applications for allocations shall occur quarterly. Deadlines for applications and allocation shall be set by regulation of the planning board.

(b) Quarterly Allocations: One-quarter of the allocations available in each calendar year are available in each allocation period, unless such number is modified subject to the following criteria:

(1) At any time, for good cause, at a hearing held upon reasonable notice to the public by the planning board; or

(2) At the time of granting allocations, in order to round allocations under subsection 9-14-6(a), B.R.C. 1981, in order to allow all developments to receive one allocation per year under subsection 9-14-2(g), B.R.C. 1981, by an action of the city manager, ministerial in character, and not subject to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981; or

(3) At the time of granting allocations, in order to add up to one allocation to any development which needs one additional allocation to commence construction, after a hearing by the planning board held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof.

(c) Administrative Procedures: An applicant for an allocation shall apply in accordance with the administrative procedures established by the city manager and the planning board. No application shall be made unless the land for which the allocation is requested meets all the requirements of this chapter and any other ordinance of the city on or before the last day for submitting applications, including, without limitation, final reading of the annexation and zoning or rezoning ordinance, or approval of a subdivision plat, or a site review or planned unit development that does not require a subdivision, pursuant to this title. In addition, any

appeals or call-ups initiated before the planning board, the BOZA, or the city council must be determined at least twenty-one days before the planning board allocation grant. The applicant is responsible for meeting such deadlines.

9-14-5 **Applications.**

(a) Application Requirements: An applicant for an allocation shall apply on a form provided by the city manager and provide, without limitation, the following information:

(1) The number of allocations requested;

(2) The total number of dwelling units within the development;

(3) For uses by right, a site plan suitable for a building permit application; and

(4) Other documentation and information which the planning board may require in order to review the application and apply the standards and obtain compliance with the intent and purposes of this chapter.

(b) Multiple Applications Within A Development: Except as provided in section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, if more than one applicant submits an application for a development, the allocation requests within the development shall be combined and treated as a single application.

(c) Pro Rata Allocations: Except as provided in section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, if the total number of allocations applied for in a development is more than the number which can be applied for under the provisions of subsection (e) of this section or subsection 9-14-2(c), B.R.C. 1981, the applications shall be reduced pro rata so that the total allocations applied for in any such development do not exceed such number.

(d) One Application Per Allocation Period Maximum: Except when applying for excess allocations as provided in section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, an applicant shall not file more than one application for a particular development during any allocation period.

(e) Maximum Allocations: In any allocation period, a development may apply for one allocation for each dwelling unit in the development that has not received an outstanding building permit, allocation, or certificate of occupancy, up to forty allocations. However, if the total number of allocations from all developments in an allocation period exceeds the number of allocations available, the city manager shall recalculate each development's request according to the following formula: one allocation for each dwelling unit in the development that has not received an outstanding building permit, allocation, or certificate of occupancy, up to twenty allocations and one allocation for each additional four such dwelling units, up to an additional twenty allocations.

(f) Allocations For Substantially Completed Developments: Subject to the other provisions of this section, a development with ten or less, but more than one, dwelling units remaining in the development that have not received an outstanding building permit, allocation, or certificate of occupancy, may apply for ten allocations or for allocations equal to the total number of units in the development, whichever is less, regardless of the number of dwelling units which have not yet received an outstanding building permit, allocation, or certificate of occupancy. Allocations shall be granted only up to the number required to complete the development.

(g) City Manager Review Of Applications: The city manager will review applications in order to determine whether they meet the requirements of this code and other ordinances of the city, including, without limitation, the Boulder Valley Comprehensive Plan. If an application does not meet such requirements, it will be returned to the applicant with a written notice of the deficiencies. The applicant has five days from the date of receipt of such a notice in which to appeal to the planning board pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof or to revise the application for reconsideration during that allocation period. Acceptance of an application or approval of an allocation does not constitute a finding by the city manager or the planning board that the development meets the requirements of this chapter or other ordinances of the city.

(h) Alterations To Applications Prohibited: An applicant may not alter its submitted application to request a different number of allocations after the application deadline for the quarter in which such application is made.

(i) Modification Of Plans: No person shall modify the building permit application that accompanies an application for an allocation, except as follows:

(1) The applicant may modify a building permit application, substitute a plan, or move the building permit application from one lot to another lot within a development during the quarter that the allocation was awarded.

(2) The city manager may request the applicant to correct a building permit application at any time prior to the issuance of a building permit notwithstanding the limitations set forth in paragraph (i)(1) of this section. The applicant shall have twenty days, after the receipt of a written deficiency notice, to revise the application. If the applicant fails to respond within the ten days, the allocation shall expire.

9-14-6 Calculation And Award Of Allocations.

(a) Rounding Rule: Allocations will be rounded up if the prorated grant is 0.5 or greater.

(b) Award Of Allocations: Unless modified by regulation of the planning board, the procedure for awarding allocations will be as follows for each allocation period:

(1) The planning board will determine whether or not to permit banking under subsection 9-14-7(h), B.R.C. 1981.

(2) A staff recommendation will be made to the planning board proposing grants of allocations, which will be made available to the public at least five calendar days prior to the hearing considering granting such allocations.

(3) The planning board will hear any appeals from applicants concerning compliance with the requirements of subsection 9-14-5(g), B.R.C. 1981. Such appeals shall be held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof.

(4) The planning board will determine whether to borrow under subsection 9-14-3(e), B.R.C. 1981.

(5) The planning board may find that more than one development exists for the purposes of this chapter where contiguous parcels of land have been combined to produce a unified development plan if an improved land use design is achieved by such combination.

(6) The planning board, at a public hearing held upon reasonable notice to the public, pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof, or the city manager, if no hearing is required, will award the available allocations on the basis of the formula set forth in subsection (c) of this section.

(c) Building Permits For Allocations: For each allocation period, the number of building permit allocations to be awarded to each development shall be equal to the number of allocations requested for that development multiplied by the total number of unborrowed and unreserved allocations divided by the total number of allocations requested in that allocation period. Developments applying shall be granted a minimum of one allocation per quarter under the provisions of subsection 9-14-2(g), B.R.C. 1981, prior to any proration, and such proration shall be subject to all other provisions of this chapter affecting grants of allocations, including, without limitation, the provisions of subsection 9-14-2(c), paragraphs 9-14-4(b)(2) and (b)(3), and subsections 9-14-5(c), (e), and (f), B.R.C. 1981. If insufficient allocations are available, a random selection shall be held to determine the order in which allocation requests are granted.

(d) Distribution Of Allocation To Developments With Multiple Owners: If a development with multiple owners applying for allocations receives less than all of the requested allocations, unless unanimous agreement is reached, a random selection shall be held to determine the order in which allocation requests are granted. Applicants not receiving an allocation will have the priority established by such agreement or random selection within that development in future allocation periods.

(e) Grant Of Allocations If Fewer Than Total Are Requested: In the event that fewer allocations are requested than are available during any allocation period, the city manager will grant all allocations requested within two weeks of the application date without action of the planning board, subject to the restrictions of subsection 9-14-2(c), B.R.C. 1981.

9-14-7 **Conditions Of Approval.**

(a) Length Of Allocation Validity: Allocations are valid for a total of two allocation periods. The first allocation period shall be the allocation period in which the allocation is granted. The second allocation period shall be the next allocation period after which the allocation is granted. Once the grantee of an allocation receives a building permit, the grantee shall comply with the construction schedule prescribed by subsection 9-14-2(f), B.R.C. 1981.

(b) Planning Board Conditions: For good cause, the planning board may impose terms and conditions on the grant of any allocation including, without limitation, modification of the time period set forth in subsection (a) of this section.

(c) Allocations Granted For Specific Developments: Each allocation shall be granted for a specific development and shall indicate such development. Any assignee of any allocation is subject to the terms and conditions under which the original allocation was granted.

(d) Planning Board Action: The planning board may take action pursuant to subsection (e) of this section upon a finding that:

(1) The grantee failed to comply with the terms and conditions of an allocation's approval, including, without limitation, all provisions of this code and other ordinances of the city;

(2) The grantee surrendered a banked allocation substantially later than it knew or should have known in good faith that it would not be needed; or

(3) The grantee could not reasonably have anticipated using the number of allocations applied for or banked.

(e) Planning Board Hearing And Sanctions: At any time, after a hearing held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof, the planning board may impose for violation of subsection (d) of this section any or all of the following sanctions:

(1) Void any allocation;

(2) Revoke the building permit for any dwelling unit as to which the allocation is voided;

(3) Suspend a grantee's and a grantee's assignee's privilege to apply for any allocation or building permit for a period of up to eighteen months.

(f) Allocations Surrendered Or Voided: If a grantee of an allocation or allocations in a development surrenders an allocation or a building permit or allows an allocation or a building permit to become void, that number of allocations shall be subtracted from the allocations otherwise awardable to that grantee in that development in the next allocation period after the allocations or building permits are surrendered or become void unless the surrendered or voided allocation was awarded in an allocation period in which excess allocations existed.

(g) Failure To Use Allocations: If, in two out of any four consecutive allocation periods, a grantee of an allocation or allocations in a development surrenders an allocation or a building permit or allows an allocation or a building permit to become void, then the grantee may not reapply for any allocation in that development for two consecutive allocation periods, unless permitted by the planning board upon a finding of extreme hardship at a hearing held upon reasonable notice to the public prior to the relevant application deadline. The provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, shall apply to such hearing, except for the notice provisions thereof. This subsection shall not apply to surrendered or voided allocations or building permits which were not subject to the penalty provision of subsection (f) of this section.

(h) Banking Of Allocations: Notwithstanding any other provision of this section, a development which cannot use all allocations granted may bank allocations under the provisions of this subsection:

(1) An applicant desiring to bank allocations may do so:

(A) Without consent, if it is banking to its minimum building size(s); or

(B) With the consent of the planning board, upon a finding that building configuration or infrastructure phasing require that a larger increment of the development be built at one time.

(2) Application for banking shall be made at or before the time of the allocation application, declaring the number of dwelling units in each building in the development, the number of allocations which may be sought to be banked, and the reason therefor.

(3) The planning board shall determine at a hearing held upon reasonable notice to the public, pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof, prior to the hearing considering granting allocations, whether or not to permit banking and if so, for what maximum period.

(4) An applicant banking allocations must apply in every allocation period until the number of allocations sought to be banked is granted and shall not bank such allocations after such number is granted.

(5) An applicant banking allocations shall notify the city manager in writing within ten days after the allocations are granted of the number of allocations being banked and the reason therefore.

(6) No allocations granted under section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, may be banked.

9-14-8 **Exemptions.**

(a) Exempt Dwelling Units Not Counted: The following types of dwelling units will not be counted against the total allocations available set forth in section 9-14-3, "Allocations Available," B.R.C. 1981, and may be issued a building permit without an allocation:

(1) Permanently affordable dwelling units approved by the city manager;

(2) Dwelling units built pursuant to a development right pursuant to the intergovernmental agreement between the city and Boulder County, dated April 4, 1995, that is transferred into the city;

(3) Housing projects built by the University of Colorado for the sole purpose of providing housing for students, staff, and faculty of the university;

(4) Dwelling units that are not permanently affordable units in developments with a minimum of thirty-five percent permanently affordable dwelling units and a phasing plan approved by the city manager that provides for the concurrent construction of the permanently affordable and non-permanently affordable dwelling units; and

(5) Mixed use developments.

(6) Dwelling units built on land that was rezoned from a nonresidential zoning district classification in subparagraphs 9-5-2(c)(2)(D) to (c)(2)(H) and paragraph (c)(3), B.R.C. 1981, to a residential zoning district classification in subparagraphs 9-5-2(c)(1) and (c)(2)(A) to (c)(2)(C), B.R.C. 1982, after August 19, 2004.

Ordinance No. 7522 (2007).

(b) Exempt Dwelling Units Counted: No development shall receive more than forty allocations per year pursuant to this subsection. However, such developments may apply for excess allocations under the provisions of section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981. Detached dwelling units on single family lots plotted on or before November 10, 1976, will be counted against the total allocations available set forth in section 9-14-3, "Allocations Available," B.R.C. 1981, and may be issued a building permit outside the quarterly allocation process.

(c) Exempt Allocations Granted By Planning Board: The planning board may allocate up to a total of thirty exemptions per year to developments in the categories set forth below. Such allocations will be counted against the total allocations available set forth in section 9-14-3, "Allocations Available," B.R.C. 1981. The planning board will grant such allocations upon finding good cause, after reasonable notice to the public and a public hearing and upon such conditions as it may prescribe for the following types of dwelling units:

(1) Landmarked buildings; and

(2) Group housing for a special population.

(d) Exemption Applications: An applicant for an exemption under subsection (a) or (b) of this section shall file a request with the city manager on a form furnished by the manager providing information from which the manager can reasonably determine whether the applicant is entitled to an exemption. For exemption applications pursuant to subsections (a) and (b) of this section, the manager will inform the applicant in writing within a reasonable time of denial or approval. Such determination may be appealed to the planning board at a hearing held upon reasonable notice to the public pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

9-14-9 Regulations.

The planning board is authorized to adopt regulations to implement the provisions of this chapter.

9-14-10 Excess Allocations Provisions.

(a) Award Of Excess Allocations: Notwithstanding the provisions of subsections 9-14-4(a), 9-14-6(c), (d), and 9-14-7(a), B.R.C. 1981, the city manager may award excess allocations to developments under the provisions of this section. Excess allocations shall not include those allocations that are not accepted after award pursuant to subparagraph 9-14-6(b)(5), B.R.C. 1981, or are voided or surrendered under section 9-14-2, "General Provisions," 9-14-3, "Allocations Available," or 9-14-7, "Conditions Of Approval," B.R.C. 1981.

(b) Conditions For Excess Allocations: In addition to all applicable requirements of this chapter, excess allocations may be awarded subject to the following conditions:

(1) Applications for excess allocations will be processed and completed on a first come, first served basis. If more than one applicant in a development submits a request for excess allocations, the time of filing the application will control, and no apportionment among various applicants in a development will occur.

(2) Notwithstanding the limitations of subsection 9-14-5(e), B.R.C. 1981, the city manager may award no more than twenty-five excess allocations or ten percent of the available excess allocations in an allocation period, whichever is less, to a development.

(3) Excess allocations are valid until the end of the allocation period in which they are granted or thirty days, whichever is less.

9-14-11 Monitoring And Evaluation.

Prior to December 31, 2004, and after the completion of the 2000 Census, city council will review the demographics of the city and the number of buildable or redevelopable lots and shall establish, amend, or adjust, as it deems appropriate, the number of available allocations and exemptions for subsequent years to correspond to a maximum rate of growth in the city's number of total dwelling units to approximately one percent.

TITLE 9 LAND USE CODE

Chapter 15 Enforcement[1]

Section:

9-15-1 General Provisions.

(a) No person shall occupy, use, or change the use of any structure or land except in conformity with all of the provisions of this title and the conditions of any approval granted under this title.

(b) No person shall erect, move, or alter any building or structure unless a building permit has been issued therefor by the city manager in conformity with all of the requirements of this title. As part of the application for a building permit, an applicant shall submit building plans, landscape plans, site plans, and other evidence to demonstrate compliance with the provisions of this title.

(c) No person shall occupy, use, or change the use of any building or land for which activity a building permit is required until the city manager has issued a certificate of occupancy. Such certificate shall verify that the entire building and proposed use thereof, as applicable, complies with the building permit and the provisions of this title. Such certificate may be combined with any other certificate of occupancy required by any other provision of this code or any ordinance of the city.

(d) No person shall occupy, use, or change the use of a building or land for which a certificate of completion is required under subsection 9-2-11(a), B.R.C. 1981, until the city manager has issued a certificate of completion. Such certificate shall verify that the proposed use complies with all conditions of any approval and the provisions of this title.

(e) In accordance with the provisions of section 5-2-11, "Prosecution Of Multiple Counts For Same Act," B.R.C. 1981, each day during which illegal construction, alteration, maintenance, occupancy, or use continues, constitutes a separate offense remediable through the enforcement provisions of this chapter.

(f) The owner, tenant, and occupant of a structure or land and the agents of each of them are jointly and severally liable for any violation of this title with respect to such structure or land.

[1]Adopted by Ordinance No. 7476.

(g) For any violation of any provision of this title or any approval granted under this title, the city manager may pursue, singly or in combination, any remedies provided by this chapter.

(h) No person shall intentionally or negligently misrepresent the provisions of this title with respect to the nature or use of land, including, without limitation, permitted uses, zoning district designations, occupancy limitations, and status of development thereon.

Ordinance No. 4928 (1985).

9-15-2 **Inspections Authorized.**

In order to ensure compliance with the provisions of this title, any approval granted under this title, or action taken to remedy any violation of such title or approval, the city manager shall, subject to the provisions of subsection 2-6-3(e), B.R.C. 1981, inspect any structure or land.

9-15-3 **Administrative Procedures And Remedies.**

(a) If the city manager finds that a violation of any provision of this title or any approval granted under this title exists, the manager, after notice and an opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

(1) Impose a civil penalty according to the following schedule:

(A) For the first violation of the provision or approval, $100.00;

(B) For the second violation of the same provision or approval, $300.00; and

(C) For the third violation of the same provision or approval, $1,000.00;

(2) For a violation concerning the use of a residential building under a rental license, revoke such license;

(3) Require the filing of a declaration of use as provided in section 9-15-6, "Declaration Of Use," B.R.C. 1981; or

(4) Issue an order reasonably calculated to ensure compliance with the provisions of this title or any approval granted under this title.

(b) Prior to the hearing, the city manager may issue an order that no person shall perform any work on any structure or land, except to correct any violation found by the manager to exist with respect to such structure or land.

(c) If notice is given to the city manager at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the structure or land. If the manager finds that the violation has been corrected, the manager may cancel the hearing.

(d) No person shall fail to comply with any action taken by the manager under this section.

Ordinance Nos. 5391 (1991); 5639 (1994).

9-15-4 Criminal Sanctions.

(a) The city attorney, acting on behalf of the people of the city, may prosecute any violation of this title or any approval granted under this title in municipal court in the same manner that other municipal offenses are prosecuted.

(b) The penalty for violation of any provision of this title is a fine of not more than $2,000.00 per violation. In addition, upon conviction of any person for violation of this title, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court issued under this section is a violation of this section and is punishable by a fine of not more than $4,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

(c) Notwithstanding the provisions of subsection (b) of this section, the following specific sentencing considerations shall apply to fines imposed for violations of section 9-8-5, "Occupancy Of Dwelling Units," B.R.C. 1981:

(1) The court shall consider any evidence presented by the defendant that a potential fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally capitalized owner of the ability to continue operating a rental housing business of the sort involved in the case before the court. No fine that is confiscatory shall be enforced by the court.

(2) In imposing a fine in any single case or in any consolidated cases, the court may weigh all factors normally and properly considered in connection with the imposition of fines, including the seriousness of the violation, the past record of the defendant, the economic circumstances of the defendant and all mitigating or aggravating factors relevant to the violation or to the defendant. In addition, in determining the amount of any fine, the court may consider:

(A) The imposition of a fine that would deprive the defendant of any illegal profit collected because of the occurrence of the over-occupancy violation or violations on the rental housing property;

(B) The imposition of a reasonable penalty in addition to any level of fine that is attributable to illegally obtained profit; and

(C) The imposition of such additional fine as is determined by the court to constitute a reasonable amount to be suspended in order to ensure compliance with any terms of probation imposed by the court.

(3) No fine imposed in a single case alleging multiple dates of violation, nor any fine in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that might be imposed for fifteen separate violations unless the court finds special aggravating circumstances. Where special aggravating factors are at issue, the following procedures shall apply:

(A) The defendant shall be entitled to ten days' notice of any special aggravating factors upon which the prosecution intends to rely at the sentencing hearing or about which, based upon evidence previously presented, the court is concerned. If necessary in order to provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.

(B) A judicial finding of the existence of special aggravating factors shall not mandate that the court impose any particular level of fine but will, rather, provide the sentencing court with discretion to determine a fine based upon all the criteria set forth in this subsection.

(C) Special aggravating factors, for the purpose of this subsection, shall require a judicial finding of one or more of the following:

(i) The occupancy violations at issue were flagrant and intentional on the part of the defendant;

(ii) The defendant, after learning of the over-occupancy condition, failed to attempt corrective action over a sustained period of time; or

(iii) A fine equivalent to the maximum fine permitted for fifteen separate violations would be inadequate to disgorge the defendant of illegal profits obtained as a consequence of the violations or would be inadequate to ensure that the violation is neither profitable nor revenue neutral for the offender.

Ordinance Nos. 4928 (1985); 5639 (1994); 7288 (2003).

9-15-5 **Other Remedies.**

The city attorney may maintain an action for damages, declaratory relief, specific performance, injunction, or any other appropriate relief in the District Court in and for the County of Boulder for any violation of any provision of this title or any approval granted under this title.

9-15-6 **Declaration Of Use.**

If the city manager determines that a person is using a structure or land in a way that might mislead a reasonable person to believe that such use is a use by right or otherwise authorized by this title, the manager may require such person to sign under oath a declaration of use that defines the limited nature of the use and to record such declaration in the office of the Boulder County Clerk and Recorder against the title to the land. In addition to all other remedies and actions that the city manager is authorized to use under the Boulder Revised Code or other applicable federal, state or local laws to enforce the provisions of this title, the city manager is authorized to withhold any approval affecting such structure or land, including, without limitation, a building permit, use review, site review, subdivision, floodplain development permit, or wetland permit until such time as the person submits a declaration of use that is in a form acceptable to the city manager.

Ordinance No. 7117 (2001).

9-15-7 **Private Right Of Action.**

Any person injured by a violation of any provision of this title or approval granted under this title may maintain an action for damages, declaratory relief, specific performance, injunction, or any other appropriate relief in the District Court in and for the County of Boulder against the person causing the violation. If plaintiff prevails, plaintiff shall be entitled to an award of attorney's fees. Upon filing such an action, plaintiff shall send notice thereof to the city, but nothing in this title authorizes the city or its employees or agents to be named as a defendant in such litigation.

9-15-8 **Unauthorized Buildings And Uses Arising Before December 31, 1962.**

(a) It is a specific defense to a charge of violating any provision of chapter 9-5, "Modular Zone System," 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981, that the building, the use of the building, or

the alteration of the building which is in violation was in existence on or before December 31, 1962, has remained continuously in existence since then, and met all applicable zoning and building requirements in effect at the time the use was changed or the work was done. If evidence of such building, use, or alteration appears on the Maps of the City of Boulder published by Marden Maps, copyright 1952, as maintained for inspection in the planning department, it is presumed to have been in existence before December 31, 1962.

(b) Upon notification in any manner by the city that a current use or structure is unauthorized, a person desiring to use the specific defense set forth in subsection (a) of this section shall apply to the city manager within thirty days for a building permit and a certificate of occupancy, indicating the date on which the use was changed or the work was done or that the work was done before the applicant purchased the property. In every case, the applicant shall indicate that the use was changed or the work was done before December 31, 1962.

(c) The city manager will provide to an applicant under this section a list of measures that must be taken to bring the building, use, or alteration into compliance with this title and title 10, "Structures," B.R.C. 1981. In the event that a measure required to bring the property into compliance cannot be accomplished due to lot size, location of structure, or setback requirements, the city manager may waive any such requirements as needed to permit compliance based on the manager's reasonable opinion of how the values served by the various requirements of the zoning code will be best served.

(d) The city manager will examine the use or inspect the work and issue a certificate of occupancy if:

(1) The use or work met the applicable zoning and building code standards in effect at the time that the use was changed or the work was done; and

(2) The applicant has taken the measures required under subsection (c) of this section.

In the case of rental housing, the property also shall meet all current requirements of chapter 10-2, "Housing Code," B.R.C. 1981.

(e) The applicant shall pay the current water and wastewater plant investment fees if such would otherwise be due on an ordinary permit application, any development excise tax or transportation excise tax, or other excise tax similarly due, any park or other special district fees similarly due, and any water, wastewater, and other charges or increases therein that would have been charged had the city been properly notified of the change in use or status when it occurred. These continuing fees shall be immediately due from the current owner for any period during which such owner has or had any interest, direct or indirect, in the property and from any previous owner for any such period if and when such owner reacquires any such interest.

(f) Failure to comply with subsections (b) and (e) of this section renders the specific defense of subsection (a) of this section unavailable.

Ordinance Nos. 5391 (1991); 5562 (1993); 7117 (2001).

9-15-9 Multiple Dwelling Units And Occupancy - Specific Defenses.

(a) Specific Defenses To Alleged Violations Related To Multiple Dwelling Units: If a charge of violation of any provision of chapter 9-5, "Modular Zone System," 9-6, "Use Standards," 9-7, "Form And Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981, is premised solely upon the multiple dwelling units provisions of subsection 9-16-1(c), B.R.C. 1981, it is a specific defense to such charge that, on a continuing basis, the

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residents of the dwelling unit share utilities and keys to all entrances to the property and that they function as a single housekeeping unit. For purposes of this section, to "function as a single housekeeping unit" means to share major functions associated with residential occupancy and to share a single common kitchen as the primary kitchen.

(b) Specific Defenses To Alleged Violations Related To Occupancy Of Units For Guest Occupancy: If a charge of violation of any provision of chapters 9-6, "Use Standards," and 9-7, "Form And Bulk Standards," or section 9-8-5, "Occupancy Of Dwelling Units," B.R.C. 1981, is premised upon exceeding allowable occupancy limits based upon the number of persons residing in or occupying a dwelling unit, it is a specific defense as to any alleged occupant that such person spent the night in the unit without remuneration as a social guest for periods of time which never exceeded a cumulative total of fourteen nights in any ninety day period. "Spending the night" for the purposes of this subsection means to be on the premises during the hours of 12:00 midnight through 5:00 a.m., or to sleep on the premises for more than five hours at any time in any twenty-four hour period. If the defense is established as to an alleged occupant, that person shall be considered a social guest and not an occupant for the purposes of proof of the charge of violation. Conversely, any person who spends more than a cumulative total of fourteen nights in any ninety day period in any dwelling unit is an occupant of that unit for those nights for the purposes of the occupancy limits established in this title.

(c) Specific Defenses To Alleged Violations Related To Occupancy Of A Unit Which Is A Rental Property: The following shall constitute specific defenses to any alleged violation of subsection 9-8-5(a), B.R.C. 1981, relating to the occupancy of units:

(1) It shall be a specific defense to an alleged violation of subsection 9-8-5(a), B.R.C. 1981, that a defendant is a nonresident landlord or nonresident property manager and:

(A) Prior to the initiation of the prosecution process, the defendant undertook and pursued means to avoid over-occupancy violations by engaging in active and diligent property management practices that were reasonable under the circumstances; or

(B) The defendant had no actual knowledge of the over-occupancy of the relevant rental housing property prior to the initiation of the prosecution process. However, this specific defense shall not apply when a defendant reasonably should have been aware of the occupancy violation through the use of active and diligent property management practices.

(C) For the purposes of this subsection, the initiation of a prosecution process occurs when any of the following events occurs:

(i) A potential defendant is first contacted by a city investigator in connection with the investigation of an occupancy violation;

(ii) A summons and complaint alleging an occupancy violation is served upon a defendant; or

(iii) A criminal complaint is filed against a defendant alleging an occupancy violation.

(D) For purposes of this subsection, a "nonresident landlord" or "nonresident property manager" means a person who is neither a full-time nor part-time resident of the property that he or she owns or manages.

(2) For the purpose of this subsection, "active and diligent management practices" means those practices that, under the circumstances, are reasonably likely to prevent or correct any over-occupancy violations. The following factors will be considered in determining whether or not a nonresident landlord or nonresident property manager utilized diligent and active

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management practices. However, the existence or nonexistence of any single one of these factors shall not, of itself, be determinative:

(A) Written leases or other writings that document the maximum permitted number of occupants in each rental housing unit, the names of such occupants, the procedures required to add additional occupants, and a description of the potential consequences that may apply in any case of over-occupancy;

(B) Annual inspections of rental premises and more frequent inspections when tenants change or when there is any indication of problems at a rental housing site;

(C) The use of periodic written communications to remind tenants of applicable occupancy rules;

(D) Investigation and prompt action, where appropriate, when there are indications that occupancy violations may be occurring. Such indications may include, but are not limited to, the following:

(i) Receipt of a rent or lease payment from any person not listed on the lease or approved as an agent of the resident;

(ii) Receipt of a complaint or information from any source regarding alleged occupancy violations;

(iii) Receipt of a complaint or information from any source related to excess parking, excess trash, excess noise or of any other condition or impact associated with a rental housing site that would put a reasonable property manager on notice that additional investigation related to occupancy is appropriate;

(iv) Receipt of a complaint or information from any source suggesting that conditions at the rental housing site are less than safe or habitable; or

(E) Any other reasonable steps taken to ensure compliance with applicable code provisions with regard to levels of occupancy.

Ordinance Nos. 5562 (1993); 5660 (1994); 7484 (2006); 7535 (2007).

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TITLE 9 LAND USE CODE

Chapter 16 Definitions[1]

Section:

9-16-1 General Definitions.

(a) The definitions contained in chapter 1-2, "Definitions," B.R.C. 1981, apply to this title unless a term is defined differently in this chapter.

(b) Terms identified with the references shown below after the definition are limited to those specific sections or chapters of this title:

(1) Airport influence zone (AIZ).

(2) Floodplain regulations (Floodplain).

(3) Historic preservation (Historic).

(4) Inclusionary zoning (Inclusionary Zoning).

(5) Residential growth management system (RGMS).

(6) Solar access (Solar).

(7) Wetlands Protection (Wetlands).

(8) Signs (Signs).

(c) The following terms as used in this title have the following meanings unless the context clearly indicates otherwise:

"Accessory" means subordinate or incidental to, and on the same lot or on a contiguous lot in the same ownership as, the building or use being identified or advertised. (Signs)

"Accessory building or structure" means a detached building or structure located upon the same lot as the principal building or structure to which it is related and that:

(1) Is subordinate to and customarily found with the principal building, structure, or use of the land;

(2) For residential uses, the building coverage is no greater than the building coverage for the existing or proposed principal building;

(3) Is operated and maintained for the benefit or convenience of the occupants, employees, and customers of or visitors to the premises with the principal use;

(4) Is used only by the occupant of the principal building or structure;

(5) Is not used as living or sleeping quarters; and

[1]Adopted by Ordinance No. 7476.

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(6) For residential uses, the building or structure does not have any bathtub or shower fixtures and no more than one of any of the following combinations of plumbing fixtures:

(A) One sink, one clothes washer connection, and one hose bib; or

(B) One sink and one toilet.

"Accessory dwelling unit" means a separate and complete single housekeeping unit within a detached dwelling unit, permitted under the provisions of subsection 9-6-3(a), B.R.C. 1981.

"Accessory sales" means incidental retail sales in a nonresidential zone where retail sales are not otherwise permitted. Sales not exceeding fifteen percent (twenty-five percent in an IS zone) of the gross floor area are permitted if the products sold are directly related to the principal use. Examples, art work sold at an artist's studio, convenience goods in a hotel or motel, health care products sold by a healing arts practitioner, or a factory outlet store selling products manufactured on the site.

"Accessory use" means a use located on the same lot as the principal building, structure, or use to which it is related and that:

(1) Is subordinate to and customarily found with the principal use of the land;

(2) Is operated and maintained for the benefit or convenience of the occupants, employees, and customers of or visitors to the premises with the principal use.

"Activity" means an action, direct or indirect, that may have an impact on a wetland or a wetland function. (Wetlands)

"Addiction recovery facility" means a facility that may permit short-term overnight stays that provides for the treatment of persons having drug or alcohol abuse problems under the supervision of professional health care or social services providers.

"Administrative review" means a review process wherein the city manager is granted the authority to make an evaluation and the final decision.

"Adult education facility" means an academic educational use serving a clientele at least fifty percent of which are individuals who are eighteen years of age or older.

"Affordable housing fund" means a fund to which contributions collected pursuant to chapter 9-3, "Inclusionary Zoning," B.R.C. 1981, shall be deposited and from which monies shall be expended, solely to construct, purchase, and maintain permanently affordable units and for the costs of administering programs consistent with the purposes of said chapter. (Inclusionary Zoning)

"Airport" means areas used for landing or take-off of aircraft, airport buildings, tie down areas, and appurtenant areas, which the city has represented to the federal government as being held for airport purposes. (AIZ)

"Alley" means a public roadway designed to serve as secondary access to the side or the rear yard of those properties whose principal frontage is on a public street.

"Allocation" means an approval required as a condition precedent to obtaining a building permit for each dwelling unit in a development, unless exempted pursuant to section 9-14-8, "Exemptions," B.R.C. 1981. (RGMS)

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"Allocation period" means a review period, generally three months in duration, commencing on the first day on which applications may be accepted for such allocation period and ending on the day preceding the first day on which applications may be accepted for the next allocation period. (RGMS)

"Alteration" means any addition or modification of any portion of the exterior of a building or designated feature that changes the architectural style, arrangement, texture, or material of the building or feature or significantly changes the color. Alteration includes, without limitation, the removal or replacement of historic building elements, materials, windows, doors, and porches if such change, addition, or modification is visible from the public street, sidewalk, alley, or park. (Historic)

"Animal hospital and veterinary clinic" means a place where animals or pets are given medical or surgical treatment and where the boarding of animals is limited to those receiving medical care or treatment.

"Animal kennel" means an establishment where domestic animals such as cats and dogs are boarded, trained, bred, or provided daycare.

"Antenna for wireless telecommunications services" means an antenna attached to a principal building for the purpose of providing wireless telecommunications services, utilizing frequencies authorized by the Federal Communications Commission for "cellular," "enhanced specialized mobile radio" and "personal communications services" telecommunications services including, without limitation, "paging systems."

"Applicant" means the owner of a particular property, who may be represented by an agent designated in writing, who applies for any process or permit governed by this title.

"Applicant" means the owner or option holder of property upon which there is a proposed development or activity regulated by section 9-3-9, "Wetlands Protection," B.R.C. 1981. (Wetlands)

"Approving authority" means the individual or agency which grants final approval to an applicant under this title.

"Appurtenances" means:

(1) Architectural features not used for human occupancy, consisting of spires, belfries, cupolas or dormers; silos; parapet walls, and cornices without windows; and

(2) Necessary mechanical equipment usually carried above the roof level having no more than twenty-five percent roof coverage, including, without limitation, chimneys, ventilators, skylights, antennas, microwave dishes, and solar systems, and excluding wind energy conversion systems.

"Architectural projection" means any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, including, without limitation, a roof overhang, mansard, unenclosed exterior balcony, marquee, canopy, awning, pilaster, and fascia, but not including a sign. (Signs)

"Area median income" means the current median family income as determined by the United States Secretary of Housing and Urban Development with adjustments for family size for the Boulder-Longmont primary metropolitan statistical area.

"Area of special flood hazard" means the land in the floodplain subject to a one percent or greater chance of flooding in any given year. Such areas may be designated as Zones A, AO, AH, AE and A1-30 on the FIRM for the City of Boulder. (Floodplain)

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"Art or craft studio space" means the workshop of an artist, sculptor, photographer, craftsperson, furniture maker, or cabinet maker primarily used for on-site production of unique custom goods by hand manufacturing involving the use of hand tools and small-scale equipment, which may include accessory gallery.

"Atrium" means an opening through at least one floor level of a building that is enclosed on all sides and by the roof or upper floors of the building, but excluding a stairway, elevator, or other space for mechanical equipment.

"Automatic teller machine (ATM)" means an automated structure providing limited banking services without personal attendants.

"Automobile parking garage" means an enclosed or unenclosed structure for parking motor vehicles, but shall not be used for long-term storage of such vehicles.

"Avigation easement" means Appendix F, "Avigation Easement," of this title. (AIZ)

"Awning" means an architectural projection roofed with flexible material, including, without limitation, fabric, supported entirely from an exterior wall of a building, and that may be retracted, folded, or collapsed against the face of the supporting building. (Signs)

"Awning sign" means a sign depicted or placed upon, attached to, constructed in, or supported by a marquee, canopy, or awning. (Signs)

"Banner" means a sign of flexible material, including, without limitation, fabric, that does not include rigid supporting materials. (Signs)

"Base station" means transmission equipment that feeds a telecommunications signal to and from an antenna.

"Basement" means any enclosed area of a building having its lowest floor a minimum of two feet below grade level on all sides. (Floodplain)

"Basement" means that portion of a building that is partially or totally below grade such that no portion of the space extends more than two feet above the natural grade around the perimeter of the building. (See figure 26 of this section.)

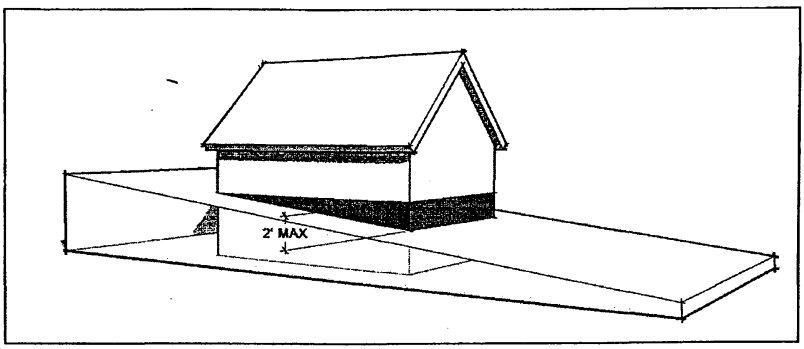

Figure 26: Basement

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"Bed and breakfast" means a building of a residential character other than a hotel or motel compatible with the neighborhood offering:

(1) Temporary lodging for less than one month;

(2) Twelve or fewer rooms for guests;

(3) At least one meal daily for guests; and

(4) A manager residing on the premises, but not providing the accessory uses normally associated with a hotel.

"Bedroom" means a room that is not a garage, kitchen, bathroom, dining area, or living room, that has over seventy square feet of floor area, and that is used for sleeping or capable of being used for sleeping.

"Beneficiary" means the owner or possessor of any real property protected by a solar fence, the owner or possessor of any real property for which a solar access permit has been issued pursuant to this title, and any person entitled to the beneficial use of any energy produced by a solar energy system for which access is protected, in whole or in part, by the terms of this title. (Solar)

"Berm" means a strip of mounded topsoil which provides a visual screen.

"Best management practices" means economically feasible conservation practices and land and water management measures that avoid or minimize adverse impacts to the chemical, physical or biological characteristics of wetlands. These practices may be further described in rules promulgated by the city manager, which may be amended from time to time, pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981. Such practices include, without limitation, avoiding wetlands whenever practicable; controlling soil loss; reducing water quality degradation; appropriate use of native wetland plant material; and minimizing the impacts on hydrologically connected surface and ground water and on the plants and animals that it supports. The rules presently used are "City Of Boulder Wetlands Protection Program: Best Management Practices" adopted July, 1995; and "City Of Boulder Wetlands Protection Program: Best Management Practices - Revegetation Rules" adopted July, 1998. (Wetlands)

"Boarding house" means an establishment where, for direct or indirect compensation, lodging, with or without meals, is offered for one month or more. A boarding house does not include a fraternity or sorority.

"Boulder Valley planning area" means the limits of the area defined in the Boulder Valley Comprehensive Plan, as it may be amended. (Wetlands)

"Breezeway" means a roofed at grade open passage connecting a detached single-family dwelling unit to an accessory building. A breezeway is not a space enclosed by walls.

"Broadcasting and recording facility" means a studio for the purpose of broadcasting radio or television, or a studio for recording of live performances.

"Buffer area" means an area around a wetland within which activities are likely to have an adverse impact upon wetland functions. Buffer area boundaries are determined according to the criteria set forth in paragraphs 9-3-9(c)(5) and (c)(6), B.R.C. 1981. (Wetlands)

"Buffer zone" means an area between land uses providing fencing, berms, mounds, plant materials, or any combination thereof to act as visual or noise buffers.

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"Building" means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind. For purposes of this title, portions of buildings connected by fully enclosed attachments that are useable by the buildings' occupants shall be treated as one building.

"Building" means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind. (Historic)

"Building and landscaping contractors" means the various trades that make up the construction and landscape industry such as plumbing, carpentry, electrical, mechanical, painting, roofing, concrete, landscaping and irrigation.

"Building coverage" means the maximum horizontal area within the outer perimeter of the building walls, dividers, or columns at ground level or above, whichever is the greater area, including, without limitation, courts and exterior stairways, but excluding:

(1) Uncovered decks, porches, patios, terraces, and stairways all less than thirty inches high; and

(2) The outer four feet of completely open, uncovered, cantilevered balconies that have a minimum of eight feet vertical clearance below.

"Building envelope" means that area on a lot on which a structure can be erected consistent with existing setback requirements that is defined by the setback lines applicable to that lot consistent with the underlying zoning district, or as modified pursuant to a variance, a site review, or prior city approval. (See figure 27 of this section.)

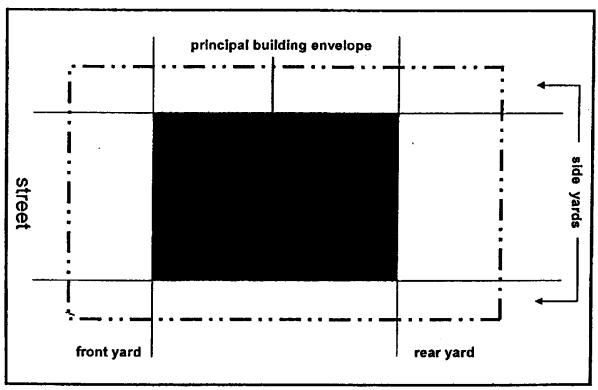

Figure 27: Building Envelope (General)

"Building envelope" means that area on any lot on which a structure can be erected consistent with existing setback requirements, and is defined by the setback lines applicable to that lot. For planned unit developments or other property that may not be subject to setback requirements as prescribed in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, the building envelope is defined by a line running around the protected structures on the property eight feet from their exterior walls but running no closer than five feet from any property boundary (to the extent required to avoid running closer than five feet

to any property boundary this line may run less than eight feet from the exterior wall of any protected structure). (Solar)

"Building mass" means the three-dimensional bulk of a building (height, width, and depth).

"Building material sales" means a business primarily engaged in the retail sale from the premises of supplies used in construction including, without limitation, doors, hardware, windows, cabinets, paint, wall coverings, floor coverings, garden supplies, and large appliances and where the storage of materials is primarily within the principal building, but does not include a lumber yard.

"Building modification" means a change to the interior or exterior of a building including, without limitation, interior reconfiguration, remodeling, or changes to building facades or a change to a building that results in an increase in size, volume, floor area, or building coverage.

"Building permit" has the same meaning as the same term in chapter 10-5, "Building Code," B.R.C. 1981.

"Building, principal" means the building containing the primary use on the lot.

"Building site" means either a lot or a number of parcels that have merged together to form a single building site pursuant to subsection 9-9-2(c), B.R.C. 1981.

"Business support services" means establishments that provide support services primarily to other businesses such as: duplicating, mailing, parcel shipping, security, property management, business equipment repair, and office supplies.

"B.V.R.C." means the Boulder Valley Regional Center, as specified in this title. (Signs)

"Caliper" means the diameter of the tree trunk measured six inches above the ground for trees up to and including four-inch caliper size and twelve inches above the ground for larger trees.

"Campground" means an area on which accommodations for temporary occupancy, such as tents or recreational vehicles, are located or may be placed for less than one month, and which is primarily used for recreational purposes and retains an open air or natural character.

"Canopy" means a roofed architectural projection which is supported by an exterior wall of a building and by additional supports, including, without limitation, columns, upright poles, or braces extended from the ground. (Signs)

"Canopy sign" - see definition of "awning sign." (Signs)

"Car pool lot" means a facility used for parking of vehicles where the occupants of such vehicles are transported to and from other destinations via mass transit or car pool.

"Caretaker dwelling unit" means one dwelling unit associated with a nonresidential use in a nonresidential zone which is occupied by one or more employees who reside on site and oversee or manage the operation or provide care, protection, or security for the property.

"Carport" means a covered building for the shelter of vehicles that is not enclosed on more than two sides.

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"Cemetery" means lands used for the internment of the dead including mausoleums, graves, columbarium, related sales and maintenance facilities, and a mortuary or funeral chapel.

"Center" or "centerline" means an imaginary line that is equidistant from the boundaries of the street.

"Certificate of completion" means a written document that is required prior to occupancy, issued for a use upon a developer's compliance with the provisions of this code and any applicable development agreement.

"Change in a watercourse" means any change in an existing thalweg, bed, or bank of a watercourse. (Floodplain)

"City manager" means the city manager of the City of Boulder, Colorado, or the manager's authorized representative.

"Close" means the time at which a business ceases to accept additional patrons for service.

"College or university" means a post-secondary education provided by a public or private institution which awards associate, baccalaureate, or higher degrees, but does not include an adult education facility, vocational, or trade school.

"Commercial kitchen and catering" means an establishment in which the principal use is the preparation of food or meals on the premises, and where such food or meals are delivered to an off site location for sale or consumption.

"Commercial sign" means a sign which identifies, advertises, or directs attention to a business or is intended to induce a purchase of a good, property, or service, including, without limitation, any sign naming a brand of good or service and any sign which is not a noncommercial sign. (Signs)

"Computer design and development facility" means a business primarily engaged in the development of, or engineering of, computer software or computer hardware, but excluding retail sales, computer hardware manufacturers, and computer repair services.

"Concept plan" means a generalized plan prepared in compliance with section 9-2-13, "Concept Plan Review And Comment," B.R.C. 1981, for proposed projects that exceed the Site Review thresholds of subsection 9-2-14(b), B.R.C. 1981.

"Conditional use" means a use that is allowed within a zoning district after demonstrating compliance with specific criteria.

"Congregate care facility" means a facility for long-term residence exclusively by persons sixty years of age or older, and which shall include, without limitation, common dining and social and recreational features, special safety and convenience features designed for the needs of the elderly, such as emergency call systems, grab bars and handrails, special door hardware, cabinets, appliances, passageways, and doorways designed to accommodate wheelchairs, and the provision of social services for residents which must include at least two of the following: meal services, transportation, housekeeping, linen, and organized social activities.

"Construction sign" means a temporary sign announcing development, construction, or other improvement of a property by a building contractor or other person furnishing services, materials, or labor to the premises, but does not include a "real estate sign." (Signs)

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"Contributing building" means a building within a historic district established pursuant to chapter 9-11, "Historic Preservation," B.R.C. 1981, that the city manager finds is consistent with the description of the characteristics of the historic district justifying its designation and is in substantially original condition; has had minimal changes to the defining characteristics of the building; or has been appropriately restored to a substantially original condition. Contributing buildings may have been previously altered with compatible additions.

"Control" means a fully automatic device, which can turn on, off, or dim lights at predetermined times. A control includes, without limitation, an astronomical time clock, photocell, motion detector, and dimmer.

"Convenience retail sales" means a retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood.

"Conveyance zone" means those portions of the floodplain required for the passage or conveyance of the one hundred-year flood based on equal encroachment (measured in volume of water) of the floodplain from the edges of the flood channel to a point where the one hundred-year flood profile will be raised by six inches or more, after considering a reasonable expectation of blockage at bridges and other obstructions by flood borne debris. (Floodplain)

"Cooperative housing unit" means an individual building for cooperative living that meets the criteria for such units set forth in subsection 9-6-3(b), B.R.C. 1981, as amended.

"Courtyard" means any open, unclimatized space, without a roof, bounded by building walls for at least seventy-five percent of its perimeter.

"Crawl space" means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawl spaces having the lowest floor a minimum of two feet below grade level on all sides shall be considered a basement, and not a crawl space. (Floodplain)

"Critical species" means plant, animal or other wildlife species listed in the most current Boulder County Comprehensive Plan as a species of concern; or the most current Boulder Valley Comprehensive Plan as a species of local concern. (Wetlands)

"Crop production" means the commercial growing of horticultural materials such as vegetables, fruit trees, flowers, ornamental plants, and sod for wholesale sales.

"Crown spread" means the typical circumference of a tree at maturity.

"Custodial care facility" means a facility providing custodial care and treatment in a protective living environment for persons residing voluntarily or by court placement including, without limitation, correctional and post-correctional facilities, juvenile detention facilities, and temporary detention facilities.

"Data processing facilities" means facilities where electronic data is processed by employees, including, without limitation, data entry, storage, conversion or analysis, subscription and credit card transaction processing, telephone sales and order collection, mail order and catalog sales, and mailing list preparation.

"Day shelter" means a facility providing basic services generally during daylight hours, which may include food; personal hygiene support; information and referrals; employment, mail and telephone services; but excluding overnight sleeping accommodations, to people with limited financial resources, including people who are homeless.

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"Daycare center" means a facility:

(1) Licensed by the state, if applicable;

(2) Providing care for children or adults who do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight; and

(3) Which may include some instruction.

(4) Which is not located within a dwelling unit.

"Daycare home" means a facility:

(1) Licensed by the state, if applicable;

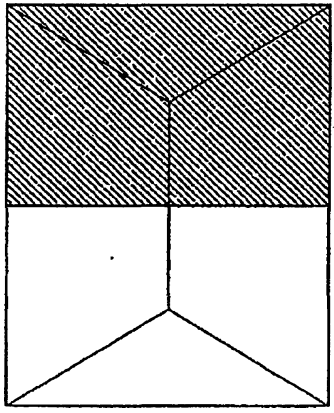
(2) Which is located within a dwelling unit;

(3) Providing care for twelve or fewer children or adults who (except for family members) do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight. Family members who receive care in the facility are included in the total.

"Declaration of use" means a document signed under oath and recorded against the title of land in order to provide notice that the use of the land or structure is subject to certain limitations and that the use will remain in compliance with this code and other ordinances of the city.

"Demolition" or "demolish" means an act or process which removes one or more of the following. The shaded area illustrates the maximum amount that may be removed without constituting demolition.

(1) Fifty percent or more of the roof area as measured in plan view (see diagram);



(2) Fifty percent or more of the exterior walls of a building as measured contiguously around the "building coverage" as defined in this section (see diagram); or

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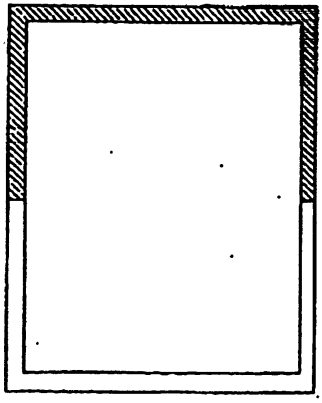
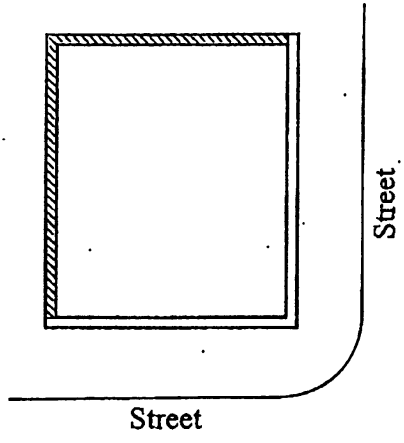


(3) Any exterior wall facing a public street, but not an act or process which removes an exterior wall facing an alley (see diagram).



A wall shall meet the following minimum standards to be considered a retained exterior wall:

(A) The wall shall retain studs or other structural elements, the exterior wall finish, and the fully framed and sheathed roof above that portion of the remaining building to which such wall is attached;

(B) The wall shall not be covered or otherwise concealed by a wall that is proposed to be placed in front of the retained wall; and

(C) Each part of the retained exterior walls shall be connected contiguously and without interruption to every other part of the retained exterior walls. (Historic)

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"Designated feature" means any structure or object other than a building located on a landmark site or within a historic district that is identified in the ordinance designating the landmark site or historic district. This includes, but is not limited to: bridges, environmental features, landscaping features, memorials, sculptures, signs, towers, engineered products or items of natural substance. (Historic)

"Developer" means any person who seeks a city permit or approval for the construction of a development.

"Development" means any change to improved or unimproved real estate, including, without limitation, constructing, relocating, rehabilitating, reconstructing or expanding or enlarging (but not maintaining) a building or other structure or portion thereof, or establishing or changing a use, or mining, dredging, filling, grading, paving, or excavation. (Floodplain)

"Development" means the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, without limitation, a planned unit development, site review or subdivision approval. (Inclusionary Zoning)

"Development" in reference to the residential growth management system in chapter 9-14, "Residential Growth Management System," B.R.C. 1981, means the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, without limitation, a planned unit development, site review or subdivision approval, but not including a subdivision platted into single-family lots on or before November 10, 1976. (RGMS)

"Development permit" means any permit or authorization issued by the city as a prerequisite for undertaking any improvement to real property including, without limitation, building permits, site reviews, variances, use reviews, nonconforming use permits, discretionary review, subdivision, annexation, initial zoning, or rezoning.

"Developmentally disabled person" means a person with a temporary or permanent, emotional, or mental disability such as mental retardation, cerebral palsy, epilepsy, autism, Alzheimer's disease, emotional disturbances, but does not include mentally ill persons who are dangerous to others.

"Dormitory" means a building intended or used principally for long-term sleeping accommodations only by students of a college, university, or other public, quasi public, or private institution. A common kitchen and common rooms for social, media, entertainment, and recreation purposes may also be provided.

"Drip line" means a vertical line extending downward from the tips of the outermost branches of a tree or shrub to the ground.

"Drive-thru" means any use that is not a gasoline service station, which by design, physical facilities, services, or operating procedures permits persons to receive services or obtain goods while remaining in their motor vehicles.

"Duplex" means a structure containing two dwelling units.

"Duplicating service" means a commercial use providing reproduction and duplicating services, including, offset printing, photocopying, and blueprint printing.

"Dwelling unit" means one room or rooms with internal connections for residential occupancy and including bathroom and kitchen facilities. Multiple dwelling units exist if there is more than one meter for any utility, address to the property, or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units; or if there is a lockable,

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physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, or rooms with no internal connections.

"Dwelling unit, attached" means three or more dwelling units within a structure.

"Dwelling unit, detached" means no more than one dwelling unit within a structure.

"Economically feasible" means a measure which the city manager finds to be reasonable, comparing the cost of the mitigation with the cost of project and the environmental benefit, using a reasonable person standard. The cost of the project shall not be a factor in avoiding an otherwise reasonable measure, but more expensive measures may be reasonable if the overall cost of the project is high enough that the mitigation cost becomes a minor part of the total cost. (Wetlands)

"Efficiency living unit" means a dwelling unit that contains a bathroom and kitchen and does not exceed a maximum floor area of four hundred square feet.

"Electric sign" means any sign containing electric wiring, but not including signs illuminated by exterior light sources, such as floodlights. (Signs)

"Emergency shelter" means a facility providing intermediate-term housing to people with limited financial resources, including people who are homeless, where occupancy is permitted on a twenty-four-hour basis. Accessory services that also may be provided at the facility include food, counseling, transportation services, and services to support the personal care of the residents of the facility including medical care, dental care, and hygiene.

"Equipment repair and rental with outdoor storage" means a business that rents and/or repairs items such as tools, construction, lawn, garden, building maintenance, party equipment, and the rental of moving trucks and trailers, but does not include an automobile repair or rental facility, and may include outdoor storage of equipment.

"Essential municipal and public utility services" means distribution, collection, communication, supply, or disposal systems, including, without limitation, poles, wires, transformers, disconnects, regulators, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories that are reasonably necessary for public utilities or the city to furnish adequate service or for the public health, safety, or welfare.

"Exceptional hardship" means a substantially disproportionate burden in relationship to the benefit to be derived from conformance with the requirements of this title. (Floodplain)

"Excess allocation" means an allocation that is not awarded by the planning board or the city manager pursuant to subsection 9-14-6(b), B.R.C. 1981. (RGMS)

"Exemption" means a dwelling unit approved under section 9-14-8, "Exemptions," B.R.C. 1981, that does not require an allocation to receive a building permit. (RGMS)

"Existing manufactured home park or subdivision" means a manufactured home park for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed prior to July 12, 1978. (Floodplain)

"Expansion of nonconforming use" means any change or modification to a nonconforming use that constitutes:

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(1) An increase in the occupancy, floor area, required parking, traffic generation, outdoor storage, or visual, noise, or air pollution;

(2) Any change in the operational characteristics which may increase the impacts or create adverse impacts to the surrounding area including, without limitation, the hours of operation, noise, or the number of employees;

(3) The addition of bedrooms to a dwelling unit, except a single-family detached dwelling unit; or

(4) The addition of one or more dwelling units.

"Expansion or enlargement of a structure" means any addition of an exterior wall to the structure or any addition to the floor area of the structure, whether under, at, or above grade, and whether or not the external dimensions of the structure are changed, or the reconstruction of a flood-damaged portion of a structure, so long as such expansion, enlargement or reconstruction does not constitute a "substantial modification" or a "substantial improvement." (Floodplain)

"Expansion to existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, without limitation, the installation of utilities, the construction of streets, final site grading, or the pouring of concrete pads). (Floodplain)

"Family" means the heads of household plus the following persons who are related to the heads of the household: parents and children, grandparents and grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, first cousins, the children of first cousins, great-grandchildren, great-grandparents, great-great-grandchildren, great-great-grandparents, grandnieces, grandnephews, great-aunts, and great-uncles. These relationships may be of the whole or half blood, by adoption, guardianship, including foster children, or through a marriage or a domestic partnership meeting the requirements of chapter 12-4, "Domestic Partners," B.R.C. 1981, to a person with such a relationship with the heads of household.

"FEMA" means the Federal Emergency Management Agency. (Floodplain)

"Fill material" means material used for the primary purpose of replacing a wetland with dry land. Examples of fill include rock, sand, and dirt. (Wetlands)

"Financial institution" means a use that provides financial and banking services to consumers and clients. Typical uses include banks, savings and loans associations, savings banks, credit unions, and automatic banking and teller machines.

"Flood" or "flooding" means a general or temporary condition of partial or complete inundation of normally dry land areas from a watercourse that temporarily overflows the boundaries within which it is ordinarily confined or from the rapid accumulation of runoff of surface water caused by rain, snow melt, flow blockage, or any other source. (Floodplain)

"Flood channel" means a natural or artificial watercourse with a definite bed and banks which periodically or continuously conducts flowing water and is shown on the Flood Channel Inventory Map prepared by the city's Utility Division of the Public Works Department. (Floodplain)

"Flood fringe" means those portions of the floodplain that are not in the conveyance zone or in the high hazard zone. (Floodplain)

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"Flood Insurance Rate Map (FIRM)" means the official map on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. (Floodplain)

"Flood insurance study (FIS)" means the official report provided by the Federal Emergency Management Agency that included flood profiles, the Flood Boundary-Floodway Map, and the water surface elevations of the base flood. (Floodplain)

"Flood profile" means a graph showing the elevations of the floodwater surface and the elevations of the underlying land as a function of distance along a path of flow. (Floodplain)

"Flood protection elevation" means an elevation of: 1) two feet above the elevation of the water surface of a one hundred-year flood as determined pursuant to sections 9-3-2 through 9-3-8, B.R.C. 1981, or, if no such elevation is determined, two feet above the highest grade adjacent to a structure, or 2) two feet above the base flood elevation in AE zones or two feet above the flood depth number indicated for AO zones on the FIRM for the City of Boulder, whichever is higher. (Floodplain)

"Floodplain" means the area that is inundated by a flood. (Floodplain)

"Floodplain development permit" means any permit granted under the terms and conditions of sections 9-3-2 through 9-3-8, B.R.C. 1981, for development on land in a floodplain. (Floodplain)

"Floodplain, five hundred-year" means the area inundated by a flood having a 0.2 percent or greater chance of occurring in any given year. (Floodplain)

"Floodplain, one hundred-year" means the area inundated by a flood having a one percent or greater chance of occurring in any given year. (Floodplain)

"Floodproofing" means any combination of structural and nonstructural changes, modifications, or adjustments to structures or real property which reduce or eliminate flood damage to improved or unimproved real property, water and sanitary facilities, structures and their contents. (Floodplain)

"Floodway, FEMA regulatory" means the channels of watercourses and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. (Floodplain)

"Floor area" means the total square footage of all levels measured to the outside surface of the exterior framing, or to the outside surface of the exterior walls if there is no exterior framing, of a building or portion thereof, which includes stairways, elevators, the portions of all exterior elevated above grade corridors, balconies, and walkways that are required for primary or secondary egress by chapter 10-5, "Building Code," B.R.C. 1981, storage and mechanical rooms, whether internal or external to the structure, but excluding an atrium on the interior of a building where no floor exists, a courtyard, the stairway opening at the uppermost floor of a building, and floor area that meets the definition of uninhabitable space.

"Floor area" means the total square footage of all levels measured to the outside surface of all buildings or portions thereof, which includes stairways, elevators, storage and mechanical rooms, whether internal or external to the structure, but excluding up to two hundred fifty square feet of unfinished floor area in basements and up to five hundred square feet of floor area in accessory buildings or attached or detached garages that are primarily used for personal storage or for the parking of automobiles for the occupants of the dwelling unit. (Inclusionary Zoning)

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"Floor area ratio (FAR)" means the ratio of the floor area of a building to the area of the lot on which the building is situated.

"Footcandle (fc)" means a unit of illuminance equivalent to one lumen per square foot.

"Freestanding sign" means a sign that is supported by one or more columns, upright poles, or braces extended from the ground or from an object on the ground, or that is erected on the ground, if no part of the sign is attached to any part of a building, structure other than its own support, or other sign. (Signs)

"Frontage, building" means the horizontal, linear dimension of that side of a building that abuts a street, a parking area, a mall, or other circulation area open to the general public and that has either the primary window display of the enterprise or the primary public entrance to the building; in industrial districts, the building side with the primary entrance open to employees is the building frontage; where more than one use occupies a building, each such use having a primary window display or a primary public entrance for its exclusive use is considered to have its own building frontage, which is the front width of the portion of the building frontage occupied by that use. (Signs)

"Fuel sales" means a facility for the dispensing and retail sales of petroleum, natural gas, propane, and bio fuels intended for motor vehicles, and does not include any motor vehicle repair or maintenance services.

"Full cutoff light fixture" means a light fixture with a light distribution pattern that results in no light being projected at or above a horizontal plane located at the bottom of the fixture.

"Fully shielded from view" means that the light emitted by a light fixture is not visible from adjacent streets and properties.

"Fully shielded light fixture" means a light fixture that provides internal or external shields or louvers that prevents light being emitted by the fixture from causing glare or light trespass impacts.

"Functional values" means the ratings assigned to wetland functions for the purpose of defining the relative value of wetlands. See definition of "significant wetland." (Wetlands)

"Functions" means the beneficial roles served by wetlands, including, without limitation, storage of floodwaters, groundwater recharge and discharge, protection of water quality by sediment trapping and shoreline anchoring, habitat for plants, wildlife, and other animals, food chain support for a broad range of wildlife and fisheries, long- and short-term nutrient retention, and recreation which does not harm or disturb the wetland. (Wetlands)

"Gasoline service station" means a use providing fuel sales, vehicle repair, service, and maintenance and where no more than fifteen percent of the floor area is used for the sale of convenience and variety goods.

"Glare" means the sensation produced by light within the visual field that is sufficiently greater than the light to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance or visibility.

"Good cause" means any reason found to be sufficient to justify the request made. Whenever the term is used in chapter 9-14, "Residential Growth Management System," B.R.C. 1981, it requires the applicant to request a hearing and to assume the burden of proof, but the approving agency may consider such a finding on its own motion, the hearing shall be quasi-legislative in character, and the hearing shall not be subject to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. (RGMS)

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"Governmental facility" means a municipal, county, state, or federal structure, building, or use.

"Ground cover" means plant materials that generally do not exceed twelve inches in height and will provide one hundred percent surface coverage within two growing seasons of planting.

"Greenhouse and plant nursery" means and establishment where flowers, shrubbery, vegetables, trees and other horticultural and floricultural products are grown, propagated, and may be sold.

"Ground floor facade facing a street" means the area of a wall measured across the facade of a building that is nine feet above the finished grade.

"Group home facility" means a facility providing custodial care and treatment in a protective living environment for the handicapped or the aged person. This category of facility includes, without limitation, group homes for persons who are sixty years of age or older, group homes for the developmentally disabled or mentally ill, drug or alcohol abuse or rehabilitation centers, and facilities for persons with acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.

"Handicap" means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Federal Controlled Substances Act (21 U.S.C. section 802)).

"Hazard" means any structure or use of land which endangers or obstructs the airspace required for aircraft in landing, take-off, and maneuvering at the airport, as determined by the city manager. (AIZ)

"Hazardous substance" means any substance, as determined from time to time by the city manager pursuant to the rule making authority granted by subsection 9-3-2(c), B.R.C. 1981, that is flammable, radioactive, toxic, or explosive, and that in times of flooding could be released in sufficient quantities to be harmful to humans, animals, or plant life. (Floodplain)

"Heads of the household" means one person or up to two persons who are married or are domestic partners meeting the requirements of chapter 12-4, "Domestic Partners," B.R.C. 1981.

"Height" means the vertical distance from the lowest point within twenty-five feet of the tallest side of the structure to the uppermost point of the roof. The lowest point shall be calculated using the natural grade. The tallest side shall be that side whose lowest exposed exterior point is lower in elevation than the lowest exposed exterior point of any other side of the building.

"Height of a sign," "high," or "in height" means the vertical distance measured from the elevation of the nearest sidewalk, or, if there is no sidewalk within twenty-five feet, from the lowest point of the finished grade on the lot upon which the sign is located and within twenty-five feet of the sign, to the uppermost point on the sign or the sign structure, whichever is higher. (Signs)

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"High hazard zone" means those portions of the floodplain where an unacceptably high hazard to human safety exists defined as those areas where the product number of flow velocity (measured in ft./sec.) times flow depth (measured in feet) equals or exceeds four, or where flow depths equal or exceed four feet. (Floodplain)

"High water use zone" means a portion of a landscaped area having plants that require approximately eighteen to twenty gallons per square foot of water per growing season or one-half inch of water three times per week.

"Historic preservation organization" means an organization with demonstrated experience and expertise in historic preservation that has been recognized by the Landmarks Board.

"Historic resource" means a district, site, building, or object that is significant to local, state or national history, architecture, engineering, archaeology or culture. (Historic)

"Home occupation" means an occupation or profession conducted as an accessory use within a dwelling unit.

"Hospital" means any building or portion thereof licensed as a hospital by the Colorado Department of Health and used for diagnosis, treatment, surgery, and care of human ailments, including the usual and customary accessory uses and ancillary offices of a hospital.

"Hostel" means a facility for residence of under one month that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers who direct the guests' participation in the domestic duties and activities of the hostel.

"Hotel/motel" means an establishment that offers temporary lodging in rooms, for less than one month, and may include a restaurant, meeting rooms, and accessory uses and services, including, without limitation, newsstands, gift shops, and similar incidental uses conducted entirely within the principal building but excludes a "bed and breakfast," as defined in this section.

"Housing type" means the particular form which an attached or detached dwelling unit takes, including, without limitation, the following: single-family detached houses and mobile homes; single-family attached dwellings such as townhouses and row houses; duplexes, triplexes, and apartments.

"HUD" means the United States Department of Housing and Urban Development. (Inclusionary Zoning)

"HUD low income limit" means the maximum gross household income which allows a household to be considered "low income" for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area. (Inclusionary Zoning)

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of water content. (Wetlands)

"IESNA" means the Illuminating Engineering Society of North America.

"Illegal nonconforming sign" means a sign that was in violation of the law governing the erection or construction of such sign at the time of its erection and that has never been

erected or displayed in conformity with the law (including section 9-9-21, "Signs," B.R.C. 1981), including, without limitation, signs that are pasted, nailed, or painted, or otherwise unlawfully displayed upon structures, utility poles, trees, and fences. (Signs)

"Illuminance" means the amount of light that falls on a surface measured in footcandles.

"Illumination, direct" means lighting by an unshielded light source, including, without limitation, neon tubing, from which light travels directly to the viewer's eye. (Signs)

"Illumination, indirect" means lighting by a light source that is directed at the reflecting surface in such a way as to illuminate the sign from the front or by a light source that is designed to illuminate the building facade upon which a sign is displayed, but does not include lighting that is primarily used for purposes other than sign illumination, including, without limitation, parking lot lights or lights inside a building that may silhouette a window sign but that are not primarily intended to serve as inside illumination. (Signs)

"Illumination, internal" means lighting by a light source that is within a sign having a translucent background and silhouettes, opaque letters, or designs, or that is within letters or designs that are themselves made of translucent material. (Signs)

"In-kind" means the restoration or creation of a wetland with functions approximating those of a destroyed wetland. (Wetlands)

"Income eligible household" means an individual or family whose household meets the asset limitations established pursuant to this title and whose household income does not exceed ten percentage points more than the HUD low income limit for the Boulder Primary Metropolitan Statistical Area (PMSA), with adjustments for family size, for home buyers, or whose household income does not exceed the HUD low income limit for renters. Income eligible households will be approved by the city manager and placed on a list of approved households eligible to purchase affordable housing. The city manager will provide the list of eligible households to developers upon request. Households will be required to meet the household income requirements of this title. (Inclusionary Zoning)

"Indoor amusement establishment" means a commercial operation open to the public without membership requirements, including, without limitation, bowling alleys, indoor arcades, theaters, pool halls, skating rinks, dance halls, and reception/banquet facilities.

"Indoor recreational or athletic facility" means an indoor facility where persons participate in recreational or athletic activities, including, without limitation, a martial arts school, dance studio, and an exercise and health club.

"Inorganic mulch" means non-living, non-biodegradable materials used in landscaped areas to retard erosion and weed growth, add nutrients to the soils, and retain moisture in the soils.

"Insubstantial breach" means a shadowing that is caused by narrow slender items that cast narrow slender shadows; and at all protected points and during the protected time and during the time period for which protection has been provided, they together reduce the total amount of solar energy available by ten percent or less. Insubstantial breaches may include, without limitation, those caused by utility poles, chimneys, wires, flagpoles, slender antennas, or tree trunks and branches. (Solar)

"Intended for human occupancy" means, as applied to structures, capable of and likely to be used for residential habitation, or for commercial, industrial or governmental occupation by persons on a regular basis. Examples of structures normally not intended for human occupancy include, without limitation, garages useable solely for the parking of vehicles or

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storage, open air carwashes, unheated pavilions, porches or patio covers, crawl spaces, flood resistant enclosures useable solely for building access, barns and other agricultural buildings, garden storage sheds, ATMs, and mausoleums. (Floodplain)

"Isolated wetland" means a wetland lacking a hydrologic connection to other wetlands, connection to "state waters" as described by section 25-8-103(19), C.R.S., or waters considering both surface and subsurface flows. (Wetlands)

"Junk" means any manufactured good, appliance, fixture, furniture, machinery, motor vehicle, or trailer that is abandoned, demolished, discarded, dismantled, or so worn, deteriorated, or in such a condition as to be generally unusable in its existing state, including, without limitation, scrap metal, scrap material, waste, bottles, tin cans, paper, rubble, boxes, crates, rags, used lumber, building materials, motor vehicles and machinery parts, and used tires.

"Junk yard" means a building, structure, or parcel of land or portion thereof, used for the collection, storage, dismantling, salvaging, demolition, or sale of junk on the premises for more than one week, but excludes such uses within enclosed buildings.

"Landscaped area" means any land set apart for planting grass, shrubs, trees, or similar living materials, including, without limitation, land in an arcade, plaza, or pedestrian area, and of which fences and walls may be a part.

"Landscaping" means materials, including, without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non-living natural materials commonly used in landscaped development.

"Legal description" means a description of real property by lots, blocks, subdivision, or metes and bounds, but excludes an assessor's tract number.

"Legal nonconforming sign" means any sign that was lawfully erected and maintained under the law governing such sign before its annexation but which does not conform to the provisions of section 9-9-21, "Signs," B.R.C. 1981, or which was lawfully erected and maintained under the law of the city, but which does not comply with the provisions of section 9-9-21, "Signs," B.R.C. 1981, because of subsequent changes in such law. (Signs)

"Light bulb" means the component of the light fixture that produces the actual light. A bulb includes, without limitation, a lamp or tube.

"Light fixture" or "luminaire" means the complete lighting unit consisting of one or more of the following: the lamp, ballast, housing, and the parts designed to distribute the light, to position and protect the lamps, and to connect the lamp to the power supply. Light fixtures also include any "electric sign" as defined in this title.

"Light pollution" means any light that is emitted into the atmosphere, either directly or indirectly by reflection against any exterior surface, including, without limitation, the ground, buildings, cars, glass, or windshields, that alters the appearance of the night sky, interferes with astronomical observation, or interferes with the natural functioning of vegetation or wildlife.

"Light source" means neon, fluorescent, or similar tube lighting, an incandescent bulb, including, without limitation, the light-producing elements therein, and any reflecting surface that, by reason of its construction or placement, becomes the light source. (Signs)

"Light trespass" means light projected onto a property from a light source located on a different property. (See figure 22 of this section.)

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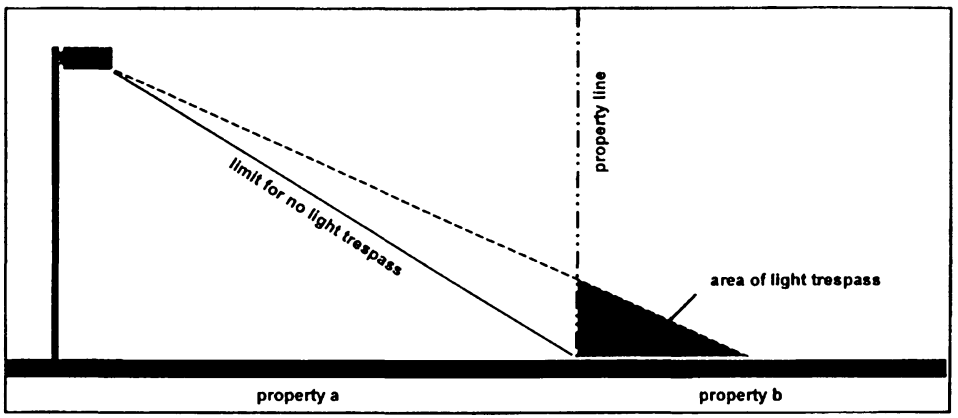

Figure 22: Light Trespass

"Live-work unit" means a structure with a combination of uses where work activities occur as allowed in the industrial zoning districts and includes a dwelling unit for the business occupant, but not including a caretaker dwelling unit. Such unit shall have only one kitchen and shall be occupied by either the owner, the tenant, or the owner's or tenant's employee plus any other persons that may be allowed to occupy a dwelling unit pursuant to section 9-8-5, "Occupancy Of Dwelling Units," B.R.C. 1981. The live-work unit must be the residence of a person responsible for the work performed on the premises.

"Lot, building" means a parcel of land, including, without limitation, a portion of a platted subdivision, that is occupied or intended to be occupied by a building or use and its accessory buildings and uses, together with the yards required under the provisions of this code; that has not less than the minimum area, useable open space, building coverage, and off-street parking spaces required by this code for a lot in the district in which such land is situated; that is an integral unit of land held under unified ownership in fee or co-tenancy or under legal control tantamount to such ownership; and that is precisely identified by a legal description.

"Lot frontage" means the length of the front lot line measured at the street right-of-way line.

"Lot, platted" means a lot that has been subdivided pursuant to a legal subdivision approval process and is precisely identified by reference to a block and lot.

"Low-volume irrigation" means a method of irrigation that applies water directly to the root zone of plants at a slower rate (generally less than six gallons per hour) and with less runoff than above ground systems. Low volume irrigation systems can include point source drip emitters, in-line emitter tubing, and microsprays.

"Low water use zone" means a portion of a landscaped area having plants that require approximately zero to three gallons of water per square feet over the growing season or one-half inch of water every other week.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement or crawl space). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure

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in violation of the applicable design requirements of sections 9-3-2 through 9-3-8, B.R.C. 1981. (Floodplain)

"Lumber yard" means a business primarily engaged in the processing and sale of lumber and construction materials, where the majority of construction materials are stored outdoors or in non-climatized structures.

"Lumen" is a measure of light energy generated by a light source. The lumen rating of a light bulb or lamp is provided by the bulb manufacturer.

"Maintenance" means any activity undertaken to repair or prevent the deterioration, impairment, or failure of any previously constructed improvement or structure including, without limitation, the replacement of structural components. Maintenance does not include total replacement of existing facilities or reconstruction that materially enlarges or expands a facility. (Wetlands)

"Maintenance" means the replacing, repairing, or repainting of a portion of a sign structure or renewing of copy that has been made unusable by ordinary wear and tear, weather, or accident. (Signs)

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle." (Floodplain)

"Manufactured home park or manufactured home subdivision" means any lot or tract of land designed, used, or intended to provide a location or accommodation for one or more manufactured homes and upon which any manufactured home or homes are parked or located, whether or not the lot or tract or any part thereof is held or operated for profit, on which construction was completed on or after July 12, 1978. (Floodplain)

"Manufacturing use with potential off-site impacts" means all research and development facilities, testing laboratories, and facilities for the manufacturing, fabrication, processing, or assembly of products which may produce effects on the environment that are measurable at or beyond the property line, provided that any noise, smoke, vapor, dust, odor, glare, vibration, fumes, or other environmental contamination is controlled in accordance with applicable city, state, or federal regulations, but not including computer design and development facilities nor telecommunications and electronic communications uses.

"Manufacturing uses" means research and development facilities, testing laboratories, and facilities for the manufacturing, fabrication, processing, or assembly of products, provided that such facilities are completely enclosed and provided that any noise, smoke, vapor, dust, odor, glare, vibration, fumes, or other environmental contamination produced by such facility is confined to the lot upon which such facilities are located and is controlled in accordance with applicable city, state, or federal regulations, but not including computer design and development facilities nor telecommunications and electronic communications uses.

"Marquee" means a permanently roofed architectural projection whose sides are vertical and are intended for the display of signs, and which is supported entirely from an exterior wall of a building. (Signs)

"Marquee sign" - see definition of "awning sign." (Signs)

"Maximum allowable light level" is the maximum initial horizontal illuminance for exterior areas measured at one hundred hours of operation, in footcandles at grade level, anywhere

within the property including areas under canopies, balconies or other non-enclosed or partially enclosed areas.

"Maximum lumen rating" means the maximum initial light output measured in lumens as established by the lamp manufacturer. If a light fixture has multiple lamps, this rating refers to the combined total lumens of all lamps within the fixture.

"Medical and dental laboratory" means a facility that provides services to the medical community such as pathological testing, dental services including the manufacturing of orthodontic appliances, crowns, and dentures, and the manufacturing of prosthetics and orthopedic appliances.

"Medical or dental clinic or office" means the office of physicians, medical doctors, chiropractors, or dentists licensed to practice medicine or dentistry in the State of Colorado, where the primary use is the delivery of health care services, where sale of merchandise is incidental to the delivery of services, and where no overnight accommodations are provided.

"Mining industries" means a facility or business engaged in the removal of any earth materials, including those extracted from open mining and oil and natural gas drilling or production, from places of natural occurrence to surface locations.

"Minor improvements" means accessory structures which are not enclosed by exterior walls as defined in this subsection. (Wetlands)

"Mitigation plan" means a plan for the creation or restoration of a wetland that is destroyed or otherwise negatively affected by an activity. (Wetlands)

"Mixed use development" means a building that contains dwelling units that are located in any BMS, BC, I, MU, BR, BT, or DT zoning district. (RGMS)

"Mobile home park" means a site containing spaces with required improvements and utilities that are leased or owned for long-term placement of manufactured housing, subject to the requirements of chapters 9-7, "Form And Bulk Standards," 9-8, "Intensity Standards," 9-9, "Development Standards," and 10-12, "Mobile Homes," B.R.C. 1981.

"Moderate water use zone" means a portion of a landscaped area having plants that require approximately ten gallons of water per square foot over the growing season or three-quarters inch of water once per week.

"Mortuary and funeral chapel" means a facility in which the deceased are prepared for burial or cremation, where funeral arrangements can be managed, and where funeral services can be conducted.

"Moveable object" means an item or material not anchored to the ground that is subject to being transported by water, including, without limitation, a manufactured home not anchored to a permanent foundation, a tank, a trash dumpster, lumber, and other materials, but not a motor vehicle. (Floodplain)

"Museum" means an establishment that exhibits artistic, historical, scientific, and natural objects of interest, and may include accessory uses such as a restaurant, meeting space, gift shops, theaters, and planetariums.

"Neighborhood business center" means nonresidential uses in a residential district that are constructed and operated in accordance with the standards of subsection 9-6-9(f), B.R.C. 1981.

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"New construction" means structures for which the "start of construction" commenced on or after July 12, 1978, and includes any subsequent improvements to such structures. (Floodplain)

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading, or pouring of concrete pads) is completed on or after July 12, 1978. (Floodplain)

"Noncommercial sign" means a sign which in no way identifies, advertises, or directs attention to a business or is intended to induce a purchase of a good, property, or service or portrays or symbolizes a good, property, or service, especially, but, without limitation, a brand or trade name, an identifiable container shape, or a trademark, within one thousand feet from a point of commercial solicitation, sale, or distribution of such good, property, or service. (Signs)

"Nonconforming use" means any use of a building or use of a lot that is not permitted by section 9-6-1, "Schedule Of Permitted Land Uses," B.R.C. 1981, but excludes a conforming use in a nonstandard building or on a nonstandard lot; a legal existing use that has not been approved as a conditional use or a use review use, or a use approved pursuant to a valid special review or use review approval. A nonconforming use also includes an otherwise conforming use, except a single dwelling unit on a lot, that does not meet the parking and residential density requirements, including, without limitation, the requirements for minimum lot area per dwelling unit; useable open space per dwelling unit, or required off-street parking requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981.

"Nonprofit membership club" means a nonprofit organization with established formal membership requirements, bylaws, and with the objective of providing for the interests of its members.

"Nonresidential structure" means any structure or any portion of a structure used exclusively for, or designed as and capable of being used for, office, commercial, industrial, or governmental occupation. (Floodplain)

"Nonstandard building" means any building that does not conform to the setback or height requirements of section 9-7-1, "Schedule Of Form And Bulk Standards," or 9-8-1, "Schedule Of Intensity Standards," B.R.C. 1981, unless the nonstandard features of the building were approved as part of a planned unit development or a site review, or as a variance.

"Nonstandard lot" means any lot that does not conform to the minimum lot area requirement of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, or frontage upon a public street required by section 9-12-12, "Standards For Lots And Public Improvements," B.R.C. 1981, unless the nonstandard nature of the lot was approved as part of a planned unit development or a site review.

"Non-vehicular repair and rental services" means a business that primarily provides services rather than goods such as: appliance repair, electronics repair, furniture repair, small power equipment repair, and tool and equipment rental without outdoor storage.

"Noxious weed" means an alien plant or part of an alien plant that has been designated by Colorado state regulations as being a state Noxious Weed.

"Objectionable or harmful substance, condition, or operation" means any use or operation that causes or contributes to:

(1) A physical hazard by fire, explosion, radiation, or other cause, to persons or property at or beyond the property line of the premises in question;

(2) Contamination of surface or underground water or any wastewater or sanitary sewer system;

(3) An infestation;

(4) Fly ash, smoke, gas, or dust that constitutes a hazard to the health, safety, or welfare of any person, animal, plant life, or other property, at or beyond the property line of the premises in question;

(5) Offensive odors or noise at or beyond the property line of the premises in question;

(6) Distracting, unreasonable, or illegal noise, vibration, or electrical disturbance at or beyond the property line of the premises in question; or

(7) Any public nuisance.

"Obstruction" means any item or material not constituting a moveable object in, along, across, or projecting into the floodplain that might impede, retard, or change the direction of a flow of water, either by itself or by catching or collecting debris carried by such water, in a way that the city manager determines would increase the flood hazard to adjacent properties. (Floodplain)

"Obstruction of solar access protected by permit" means that any object, structure, building, or vegetation casts a shadow on the collector portion of any existing or planned solar energy system that is protected by a solar access permit during the hours of the day and season of the year for which access is protected by the permit. (Solar)

"Off-premises sign" means any off-premises sign, including, without limitation, a billboard or general outdoor advertising device, that advertises or directs attention to a business, profession, commodity, entertainment, service, or activity conducted, sold, or offered elsewhere than on the same property or within the same building upon which such sign is located. (Signs)

"Off-site" means any property other than that defined as on-site. (Wetlands)

"Office" means the principal use of a room or rooms for the conduct of business by persons, including, without limitation, administrative offices, professional offices, and technical offices where there is no display of merchandise and the storage and sale of merchandise is clearly incidental to the service provided, but excluding medical or dental clinics or offices.

"Office, accessory" means an office subordinate to, a necessary part of, and in the same building with the principal business, commercial, or industrial use, including, without limitation, administrative, record-keeping, drafting, and research and development offices.

"Office, administrative" means an office providing management or administrative services to its affiliated industrial uses that are an equal or greater size, measured in floor area, of the administrative office use located within the city's industrial zoning districts.

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"Office, other" means office uses not included in the administrative, professional or technical office categories.

"Office, professional" means offices of firms or organizations providing professional service to individuals and businesses, including, without limitation, accountants, architects, attorneys, insurance brokers, realtors, investment counselors, and therapists, where a majority of client contact occurs at the office, but not including technical, medical, dental, or administrative offices.

"Office, technical" means offices of businesses providing professional services in a technical field, including, without limitation, publishers, engineering, graphic design, industrial design, and surveying offices, where a majority of client contact occurs at the client's place of business or residence, but not including professional, medical, dental, or administrative offices.

"On-site" means within the boundaries of the property. (Wetlands)

"One hundred-year flood" means a flood having a one percent chance of occurring in any year. (Floodplain)

"Organic mulch" means non-living, biodegradable materials used in landscaped areas to retard erosion and weed growth, add nutrients to the soils, and retain moisture in the soils.

"Out-of-kind" means the restoration or creation of a wetland with functions not approximating those of a destroyed wetland. (Wetlands)

"Outdoor display of merchandise" means the display of merchandise on the same premises on which it is sold.

"Outdoor entertainment" means a use of land which provides entertainment services partially or entirely outside of an enclosed building, including, without limitation, driving ranges, miniature golf facilities, amusement parks, or go-cart tracks.

"Outdoor storage" means an area of land where goods may be stored as a principal use in an unclimatized environment, including, without limitation, automobiles, boats, recreational vehicles, and contractors' supplies but does not include junk yards.

"Overnight shelter" means a facility providing short-term overnight accommodation without charge or at a nominal charge to people with limited financial resources, including people who are homeless, the primary purpose of which is to provide housing to individuals on a day-by-day basis. Accessory services that also may be provided at the facility include food, counseling, transportation services, and services to support the personal care of the residents of the facility including medical care, dental care, and hygiene.

"Owner" means a person, as defined by this code, who, alone, jointly or severally with others, or in a representative capacity (including, without limitation, an authorized agent, executor, or trustee) has legal or equitable title to any property in question. (Signs)

"Owner occupied" means a dwelling unit that is actually and physically occupied as a principal residence by at least one owner of record of the lot or parcel upon which the dwelling unit is located, who possesses at least an estate for life or a fifty percent fee simple ownership interest, or is the trustor of a revocable living trust.

"Owner's accessory unit" means a separate and complete single housekeeping unit which is accessory to the owner's occupancy of the lot or parcel upon which the unit is located that is permitted under the provisions of paragraph 9-6-3(a)(4), B.R.C. 1981.

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"Parapet wall" means any portion of the vertical extension of a perimeter wall, constructed of materials similar in appearance to those used on the exterior wall below, and extending above but not enclosed by a roof. (Signs)

"Parking lot" means an off-street, ground level open area, used for the temporary storage of motor vehicles, including necessary access drives, drive lanes, parking stalls, and excluding sidewalks, carports, garages, and driveways that serve detached dwelling units, and parking garages and structures.

"Parking lot landscaping, interior" means landscaping that is internal to or extends into the parking lot and excludes landscaping that is required in any setback area, a landscaped area between a parking lot and a building that does not extend into the parking area, sidewalks, and areas designed to meet the requirements of subsection 9-9-14(b) or (c), B.R.C. 1981.

"Parks and recreation uses" means uses which include playfields, playgrounds, athletic facilities, and golf courses, which are owned by a public agency, a neighborhood or homeowners association and is operated for the benefit of the residents of the community, neighborhood or homeowners association.

"Permanently affordable unit" means a dwelling unit that is pledged to remain affordable forever to households earning no more than the HUD low income limit for the Boulder Primary Metropolitan Statistical Area, or, for a development with two or more permanently affordable units, the average cost of such units to be at such low income limit, with no single unit exceeding ten percentage points more than the HUD low income limit, and

(1) The unit is owner occupied;

(2) Is owned or managed by the Housing Authority of the City of Boulder or its agents; or

(3) Is a rental unit in which the city has an interest through the Housing Authority of the City of Boulder or a similar agency that is consistent with section 38-12-301, C.R.S.

Permanently affordable units shall be attained and secured through contractual arrangements, restrictive covenants, resale and rental restrictions, subject to reasonable exceptions, including, without limitation, subordination of such arrangements, covenants, and restrictions to a mortgagee, for both owner occupied and rental units. No unit shall be considered a permanently affordable unit until the location, construction methods, floor plan, fixtures, finish, and the cabinetry of the dwelling unit have been approved by the city manager. (Inclusionary Zoning)

"Permanently affordable unit" means a dwelling unit that is pledged to remain affordable forever to households earning up to eighty percent of the area median income through contractual arrangements, restrictive covenants, and resale restrictions, subject to reasonable exceptions, including, without limitation, subordination of such arrangements, covenants, and restrictions to a mortgagee. No unit shall be considered a permanently affordable unit until the location, construction methods, and techniques used to ensure that the dwelling unit will remain affordable to a household earning up to eighty percent of the area median income has been approved by the city manager. (RGMS)

"Personal service use" means an establishment that provides personal services for the convenience of the neighborhood, including, without limitation, barber and beauty shops, shoe repair shops, bicycle repair shops, dry cleaners, laundries, self-service laundries, bakeries, travel agencies, newsstands, pharmacies, photographic studios, duplicating services, automatic teller machines and the healing arts (health treatments or therapy generally not performed by a medical doctor or physician such as physical therapy, massage, acupuncture, aromatherapy, yoga, audiology, and homeopathy).

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"Plan view" means the view of a building from directly above which reveals the outer perimeter of the building roof areas to be measured across a horizontal plane. (Historic)

"Planting season" means that season of the year when plants may be planted successfully, generally from April 15 to October 15.

"PMSA" means the "Primary Metropolitan Statistical Area," as determined by the United States Department of Commerce. (Inclusionary Zoning)

"Pole" means a structure other than a building (including, without limitation, for this purpose transmission and distribution facilities of public utilities) which supports a light at a government-owned recreation facility, a light in the public right-of-way or a traffic signal in the public right-of-way, or an electrical transmission line or an electrical service line.

"Political sign" means a noncommercial sign concerning candidates for public office or ballot issues in a primary, general, municipal, or special election. (Signs)

"Porch" means a covered, unenclosed (except for railings) structure that projects from the exterior wall of a principal building, has no floor space above, and is intended to provide shelter to the entry of the building and supplemental outdoor living area.

"Possessor of real property" means a person not the owner of the property but who is responsible as lessee, caretaker, or otherwise for its care and upkeep and is in control of the property. (Solar)

"Primary building entrance location" means the principal public entrance to a building facing a public street.

"Printer and binder" means an industrial use that provides commercial printing services involving typesetting, printing, and the binding of printed media such as books, magazines, and periodicals but does not include a duplicating service.

"Projecting sign" means a sign attached to a building and extending in whole or in part fifteen inches or more horizontally beyond the surface of the building to which the sign is attached, but does not include an "awning sign." (Signs)

"Property" means a portion or parcel of land, including, without limitation, a portion of a platted subdivision, occupied or intended to be occupied by a building or use and its accessories, together with yards required under the provisions of this code, that is an integral unit of land held under unified ownership in fee or co-tenancy, or under legal control tantamount to such ownership. When a property is used together with contiguous properties for a single use or unified development, all of the properties so used shall be considered a single property for the purposes of section 9-9-21, "Signs," B.R.C. 1981. For the purposes of section 9-9-21, "Signs," B.R.C. 1981, an access easement shall be deemed a part of the property to which it provides access, so long as the easement is the sole connection of that property to the public street network and placement of the sign on the access easement is consistent with the easement. This access easement provision does not apply if there is a development agreement regarding placement of signs on the frontage of the development. (Signs)

"Property" means within the boundaries of the parcel proposed for development and any contiguous property owned by the applicant. (Wetlands)

"Prorated" means a system of allocating building permits in which developments or portions of developments applying in an allocation period receive the same proportion of dwelling units, according to the ratio of the total number of allocations available to the total number

requests in that period, as modified and elaborated in chapter 9-14, "Residential Growth Management System," B.R.C. 1981. (RGMS)

"Public entrance" means an entrance to a building or premises that is customarily used or intended for use by the general public and excludes a fire exit, an employee entrance or exit, and a loading dock entrance, in each case if not used by the public. (Signs)

"Public or private office uses providing social services" means an organization whose activities are conducted for the benefit of the community and not for the gain of any private person or organization, and may include, without limitation, patriotic, philanthropic, social service, welfare, benevolent, educational, cultural, charitable, scientific, historical, athletic, or medical activities.

"Public right-of-way" means the entire area between property boundaries: which is owned by a government, dedicated to public use, or impressed with an easement for public use; which is primarily used for pedestrian or vehicular travel; and which is publicly maintained, in whole or in part, for such use; and includes, without limitation, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking or parking strip, and any public way. (Signs)

"Publisher" means a business that is responsible for the creation of printed or electronic media including the commission of content and overseeing the writing, editing, design, printing, and marketing.

"Real estate sign" means a sign indicating the availability for sale, rent, or lease of the specific property, building, or portion of a building upon which the sign is erected or displayed. (Signs)

"Reconstruction" means exact replacement of an existing structure or portion thereof or exact structural repair of a damaged structure. (Floodplain)

"Recreational vehicle" means a vehicle which is: 1) built on a single chassis; 2) four hundred square feet or less when measured at the largest horizontal projections; 3) designed to be self-propelled or permanently towable by a light duty truck; and 4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. (Floodplain)

"Recyclable material" means newspaper, magazines, cardboard, telephone books, loose paper, glass containers, plastic containers, steel cans, aluminum cans and scraps, leaves and organic materials, and reusable clothing and household items.

"Recycling center" means an enclosed building used for storing recyclable material and unenclosed premises on which recyclable material is stored for one week or less.

"Recycling collection facility" means a bin or other weather tight container enclosed with a door or lid for the acceptance by donation, redemption, or purchase of recyclable material for transshipment to a recycling center or an industrial processing facility.

(1) A "small" recycling collection facility is an accessory to a principal building and use on its lot which complies with the provisions of section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981, concerning accessory buildings and uses, does not occupy a permanent building, and does not have containers occupying more than two hundred fifty square feet.

(2) A "large" recycling collection facility may be a principal or an accessory use or building of any size, may occupy a permanent structure, may also accept used motor oil in accordance

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with applicable health and safety regulations, and may include such power-driven light processing as is approved by use review.

"Recycling processing facility" means a building or enclosed space used for the collection of recyclable material, used motor oil and batteries in accordance with applicable health and safety regulations, and scrap metal but not including motor vehicles, and its processing for efficient shipment or to an end-user's specifications by baling, briquetting, compacting, composting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, or remanufacturing.

"Regulated activity" means those activities requiring a wetland permit pursuant to subsection 9-3-9(d), B.R.C. 1981. (Wetlands)

"Regulated area" means those areas described in subsection 9-3-9(b), B.R.C. 1981. (Wetlands)

"Rehabilitation" means any improvement, maintenance, or remodeling made to the interior or exterior of any existing structure or the reconstruction of a deteriorated or non-flood-damaged portion of an existing structure so long as such improvement or reconstruction does not constitute an "expansion or enlargement of a structure," "substantial modification," or a "substantial improvement." (Floodplain)

"Religious assembly" means a building or group of buildings are used or proposed to be used for conducting organized religious services and accessory uses associated with the use.

"Resident owner" means a person in whom is vested at least a five percent equity interest in the ownership in a cooperative housing unit through fee ownership, as a joint tenant, or a tenant in common, holder of a lease with a term of thirty years or more, or through an ownership interest in a corporation or association recognized under Colorado state law that owns or holds a lease of thirty years or more on the cooperative housing unit including, without limitation, a corporation, cooperative, partnership, or a limited liability company, provided that such person uses the cooperative housing unit as a principal residence.

"Residential care facility" means a facility providing social services in a protective living environment for adults or children, including, without limitation, group foster care homes; shelters for abused children or adults; nursing homes, intermediate care facilities, or residential care facilities.

"Residential structure" means any structure or any portion of a structure that is used for, or designed as and capable of being used for, the temporary or permanent domicile of persons, including, without limitation, a dwelling, a boarding house, a hotel, a motel, and similarly used structures. (Floodplain)

"Restaurant" means an establishment provided with a food preparation area, dining room equipment, and persons to prepare and serve, in consideration of payment, food or drinks to guests.

"Retail sales" means the selling of goods or merchandise directly to the ultimate consumer.

"Roof" means the cover of any building, including, without limitation, the eaves and similar projections. (Signs)

"Roof line" means the highest point on any portion of a building where an exterior wall and a roof enclose usable floor space, or the highest point on any parapet wall if the parapet wall extends around the entire perimeter of the roof, whichever is higher. (Signs)

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"Roof sign" means a sign painted on any roof of a building, supported by poles, uprights, or braces extending from any roof of a building, or projecting above any roof of a building, but does not include a "wall sign." (Signs)

"Sales or rental of vehicles" means the sale or rental of a self propelled or towed vehicle such as motorcycles, motorbikes, automobiles, trucks, snowmobiles, mobile homes, trailers, campers, recreational vehicles, boats, and the incidental sales of parts and accessories for such vehicles.

"School, elementary, junior, and senior high" means any public or private school for any grades between first and twelfth which satisfies state compulsory education requirements.

"Self-service storage facility" means a building consisting of individual, small, self-contained units within a building or group of buildings, which are leased or owned for the storage of business and household goods, but shall not include "outdoor storage" facilities as defined in this section.

"Service of vehicles with limited outdoor storage" means the repair, servicing, maintenance, or installation of accessories for vehicles including motorcycles, motorbikes, automobiles, trucks, snowmobiles, trailers, campers, recreational vehicles, sailboats, and powerboats where outdoor storage of a vehicle does not exceed five consecutive days.

"Service of vehicles with no outdoor storage" means the repair, servicing, maintenance, or installation of accessories for vehicles including motorcycles, motorbikes, automobiles, trucks, snowmobiles, trailers, campers, recreational vehicles, sailboats, powerboats and where there is no outdoor storage of vehicles between the hours of 9:00 p.m. and 7:00 a.m. of the following day.

"Setback" means the minimum distance in linear feet measured on a horizontal plane between the outer perimeter of a structure, above grade, and each of its lot lines. Where a lot abuts a major roadway, the building and use setback is measured as prescribed in section 9-7-1, "Schedule Of Form And Bulk Standards," B.R.C. 1981.

"Setback, landscaped" means a required setback that is intended to be used exclusively for landscaping purposes.

"Shrub" means a self-supporting deciduous or evergreen plant normally branched near the base, bushy, and normally less than fifteen feet in height at maturity as grown in Boulder County.

"Sign" means any object or device or part thereof situated outdoors or in an exterior window which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including, without limitation, words, letters, figures, design symbols, colors, sculpture, motion, illumination, or projected images. (Signs)

"Sign face" means the surface of a sign upon, against, or through which the message is displayed or illustrated. (Signs)

"Sign structure" means any supports, uprights, braces, or framework of a sign. (Signs)

"Significant wetland" means a wetland which meets one or more of the following criteria:

(1) Meets the criteria for significant wetland set forth in the Boulder County Comprehensive Plan as follows:

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(A) Important for flood control, water quality, and runoff stabilization;

(B) Designated as Critical Wildlife Habitat in the Boulder County Comprehensive Plan;

(C) Designated as a Critical Plant Association in the Boulder County Comprehensive Plan; or

(D) Designated as a part of a Natural Area in the Boulder County Comprehensive Plan;

(2) Performs at least one wetland function to a high or a very high degree, as set forth in *Advanced Identification Of Wetlands In The City Of Boulder Comprehensive Planning Area* (1988) by D. Cooper, Ph.D.;

(3) Provides habitat for the following species:

(A) Plant, animal, or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;

(B) Plant, animal, or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern, or species of undetermined status;

(C) Plant, animal, or other wildlife species listed in the Boulder County Comprehensive Plan as critical;

(D) Plant, animal, or other wildlife species listed as a Species of Local Concern in the Boulder Valley Comprehensive Plan;

(4) Could be made a significant wetland through reasonable changes in management practices;

(5) Has a hydrological connection to a significant wetland, the impairment of which would adversely affect the significant wetland; or

(6) Is designated as part of a natural ecosystem in the Boulder Valley Comprehensive Plan. (Wetlands)

"Small theater or rehearsal space" means an establishment for live dramatic, operatic, or dance performances open to the public, without membership requirements, whose seating capacity does not exceed three hundred seats and seating area does not exceed three thousand square feet, or any area for the rehearsal of such live performances.

"Soil moisture sensing device" means a device that measures the amount of moisture in the soil and turns off a sprinkler controller when moisture has reached a pre-set quantity.

"Solar access area" means one of three areas for the purposes of establishing varying levels of solar access protection. (Solar)

"Solar collector" means any device used to collect solar energy and convert it to any other form of energy, including, without limitation, photovoltaics, flatplate concentrating devices, vacuum tubes, and greenhouses. (Solar)

"Solar energy system" means any human-made system that relies upon sunshine as an energy source and is capable, through physical, chemical, or biological means, of collecting, distributing, storing (if appropriate to the technology), and applying solar energy to beneficial use so as to reduce the amount of non-solar energy that would otherwise be used by at least ten percent. (Solar)

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"Solar exception" means a variance of the solar access requirements of section 9-9-17, "Solar Access," B.R.C. 1981. (Solar)

"Solar fence" means a hypothetical obstruction designed as provided in subsection 9-9-17(d), B.R.C. 1981. (Solar)

"Solar noon" means the time at which the sun is due south and in its highest position above the horizon. (Solar)

"Special population" means persons over the age of sixty, disabled persons, single parents, or the homeless. (RGMS)

"Start of construction" means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. (Floodplain)

"Story" means that portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then between the floor and the ceiling next above it. A basement is a story if any portion of the space included between the surface of the floor and the surface of the ceiling above it extends more than two feet above the natural grade around the perimeter.

"Streetscape" means the pedestrian and landscape improvements generally within public right-of-way, or provided on private property if the right-of-way is not wide enough to provide the area needed to provide trees and sidewalks.

"String of lights" means a series of lights attached to a wire, race, or inserted in transparent tubing in such a way that it can be moved about or hung in various ways, and whose bulbs are not light fixtures permanently attached to a building or other structure.

"Structure" means anything constructed or erected with a fixed location on the ground above grade, but the term does not include poles, lines, cables, or other transmission or distribution facilities of public utilities.

"Structure" means any constructed or manufactured object other than an automotive vehicle, and a travel trailer, a camper, a camper bus, or a motor home. (AIZ)

"Structure" means a building or other roofed construction, a basement, a wall, a fence, a manufactured home, or a storage tank. (Floodplain)

"Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development, but the term excludes any transaction that is exempt from the subdivision regulation under chapter 9-12, "Subdivision," B.R.C. 1981.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred. (Floodplain)

"Substantial improvement" means any repair, reconstruction, rehabilitation, addition, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. This term

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includes structures which have incurred "substantial damage," regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: 1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or 2) any alteration of a structure listed on the National Register of Historic Places or the Colorado Inventory of Historic Places or designated as an individual landmark under section 9-11-2, "City Council May Designate Or Amend Landmarks And Historic Districts," B.R.C. 1981. (Floodplain)

"Substantial modification" means any expansion or enlargement of a structure which equals or exceeds fifty percent of the floor area of the structure intended for human occupancy, considered cumulatively, commencing July 12, 1978. (Floodplain)

"Suspended sign" means a sign suspended from an architectural projection. (Signs)

"Tavern" means an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where snacks are available for consumption on the premises.

"Telecommunications use" means businesses primarily engaged in the design, development, engineering, or provision of telecommunication access services but excluding retail sales, manufacturing, and repair or installation services to customers.

"Temporary outdoor entertainment" means an outdoor use open to the public such as a carnival, amusement rides, fair, outdoor theater, promotional event, musical performance, or dance for a limited duration of time.

"Temporary sales" means a use of land that results in sales from a tent, canopy, trailer, temporary structure, or a parked vehicle, or sales on a vacant parcel of land or any parking lot regardless of location. Not included are sales from push carts or mobile food vendors which are subject to different regulations and licensing.

"Townhouse" means an attached single-family dwelling unit located or capable of being located on its own lot, and is separated from adjoining dwelling units by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit.

"Transitional housing" means a facility providing long-term housing in multi-family dwelling units with or without common central cooking facilities, where participation in a program of supportive services is required as a condition of residency to assist tenants in working towards independence from financial, emotional, or medical conditions that limit their ability to obtain housing for themselves.

"Transparent materials" means glass or other similar materials that possess a minimum sixty percent transmittance factor and a reflectance factor of not greater than 0.25.

"Tree" means a self-supporting deciduous or evergreen plant normally fifteen feet or more in height at maturity as grown in Boulder County.

"Turf grass" means continuous plant coverage consisting of grass species that, when regularly mowed, form a dense growth of leaf blades and roots.

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"Understory planting" means the plant materials such as turf, ground cover, or low-growing shrubs that cover the ground area under a tree in a landscaped area.

"Uniformity ratio" means the ratio between the maximum and the minimum light level within a specific use area such as a parking lot.

"Uninhabitable space" means a room that is six feet or less in floor to ceiling height, or a room solely used to house mechanical or electrical equipment that serves the building, including, without limitation, heating, cooling, electrical, ventilation and filtration systems, or any parking facility located completely below grade on all sides of the structure regardless of the topography of the site (see definition of "floor area").

"Use review use" means a use permitted in a given district only after review and approval as provided in section 9-2-15, "Use Review," B.R.C. 1981.

"Variance" means a permitted deviation or waiver of the land use regulations if all of the applicable criteria for a variance have been found to be met by the appropriate approving authority.

"Very low water use zone" means a portion of a landscaped area having plants that require no irrigation once established.

"Vested rights" means the right to undertake and complete a development pursuant to section 9-2-19, "Creation Of Vested Rights," B.R.C. 1981.

"Visible beyond the boundaries of the property upon which it is located" means any sign which can be read by a person with 20/20 vision from or beyond any property line. For the purposes of applying section 9-9-21, "Signs," B.R.C. 1981, any letters, figures or symbols which are not larger than two inches in height are deemed not to be visible even though they are due to their close proximity to a property line, up to an aggregate of ten square feet in total area of such visible but small lettering on the property. (Signs)

"Vocational or trade school" means a secondary or higher education facility primarily teaching useable skills that prepare students for jobs in a trade to be pursued as a career or occupation but does not include a college or university.

"Wall sign" means a sign displayed upon or against the wall of an enclosed building, if the exposed face of the sign extends not more than fifteen inches horizontally from the face of the wall, including, without limitation, a sign erected upon or against the side of a roof having an angle of more than forty-five degrees from the horizontal. (Signs)

"Water use zone" means a portion of a landscaped area having plants with similar water needs that are either not irrigated or irrigated by a circuit with the same schedule.

"Watercourse" means a stream, a creek, a pond, a slough, a gulch, an arroyo, a reservoir, a lake or a portion of the floodplain functioning as a natural or improved channel carrying flows, not constituting a flood. The term includes, without limitation, established natural and human-made drainage ways for carrying storm runoff but does not include irrigation ditches.

"Wetland" means an open body of water; an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances will support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation as specified under the procedures in the *Federal Manual For Identifying And Delineating Jurisdictional Wetlands* (January, 1989), Interagency Cooperative Publication, Fish and Wildlife Service, Environ-

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mental Protection Agency, and Department of Army, Soil Conservation Service; or an area delineated on the Wetlands Maps; or streams from top of the bank to top of the bank of the active channel, including ephemeral streams. (Wetlands)

"Wetland boundary determination" means a method for determining a wetland boundary which occurs in the field. The methodology adopted by the city is the "Comprehensive Wetland Boundary Determination" as described in the *Federal Manual For Identifying And Delineating Jurisdictional Wetlands* (January, 1989), Interagency Cooperative Publication, Fish and Wildlife Service, Environmental Protection Agency, and Department of Army, Soil Conservation Service. (Wetlands)

"Wetland creation" means an activity bringing a wetland into existence at a site at which it did not formerly exist. (Wetlands)

"Wetland restoration" means an activity that returns a wetland from a disturbed or altered condition with lesser acreage or function to a condition with greater acreage or function. (Wetlands)

"Wetlands map" means the City of Boulder wetlands delineation maps as adopted pursuant to subsection 9-3-9(c), B.R.C. 1981. (Wetlands)

"White light source" means a spectrum of light produced by, but not limited to, incandescent, halogen, metal halide, induction, and fluorescent lamps having a color temperature between two thousand six hundred fifty and four thousand degrees Kelvin and a minimum Color Rendering Index (CRI) of 65.

"Wholesale business" means a business primarily engaged in the selling of merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to such individuals or companies.

"Wind energy conversion system" means any machine that converts wind to another form of energy.

"Wind sign" means a sign consisting of one or more banners, flags, pennants, wind socks, ribbons, spinners, streamers, captive balloons, or other objects or material fastened in such a manner as to move upon being subjected to pressure by wind. (Signs)

"Window sign" means a sign that is located inside a building on or within three feet of a window or door through which it can be seen from the exterior of the building, but excludes merchandise included in a display. (Signs)

"Xeriscape™" means the application of a set of landscaping principles that in concert promote water conservation. Xeriscape™ was trademarked by the Denver Water Board in 1981.

"Yard, front, rear, and side" means the open space between the buildings and the property lines at the front, rear, and sides of the property, respectively. On a corner lot, the open space adjacent to the shorter street right-of-way shall be considered the front yard. The rear yard is opposite the front yard, and the side yard is between the rear yard and the front yard. (See figures 29 and 30 of this section.)

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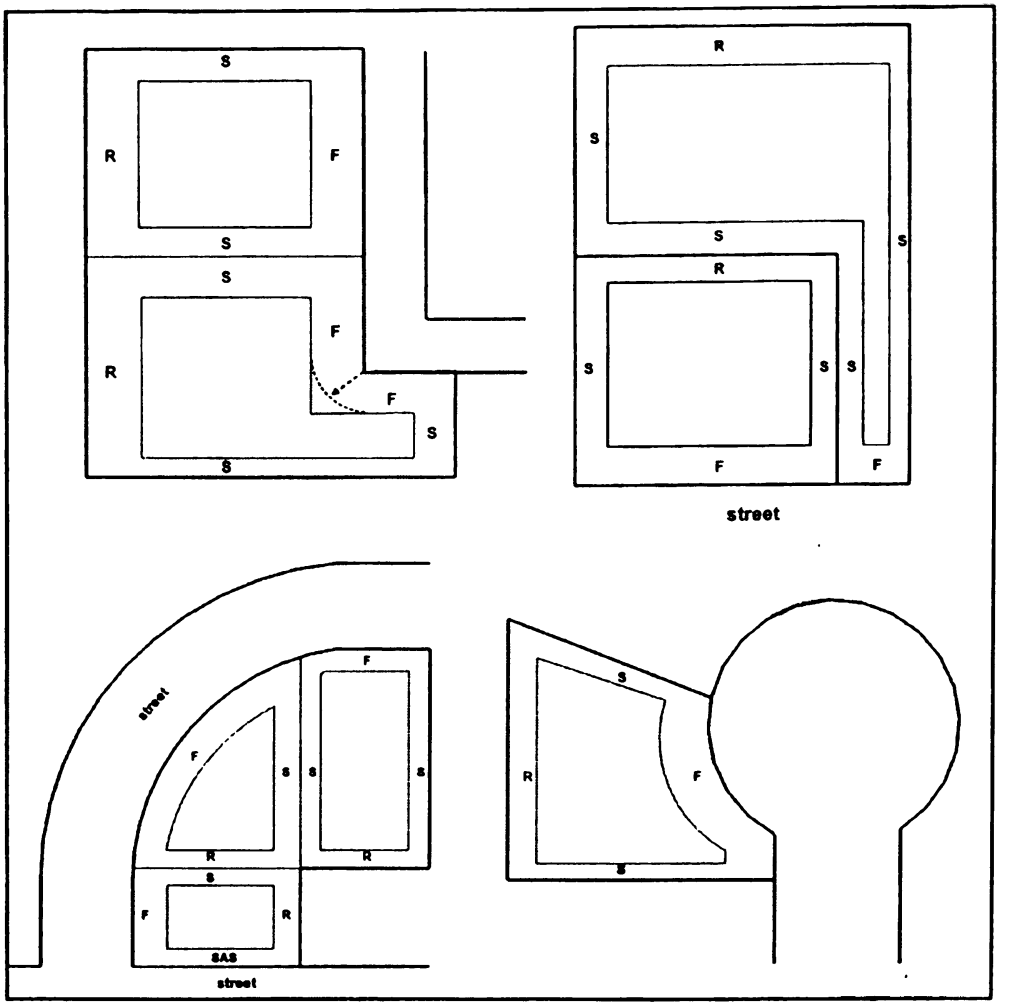

Figure 29: Yards for Irregularly Shaped Lots

To the extent possible, setbacks of irregular lots will match the setbacks of adjacent lots.

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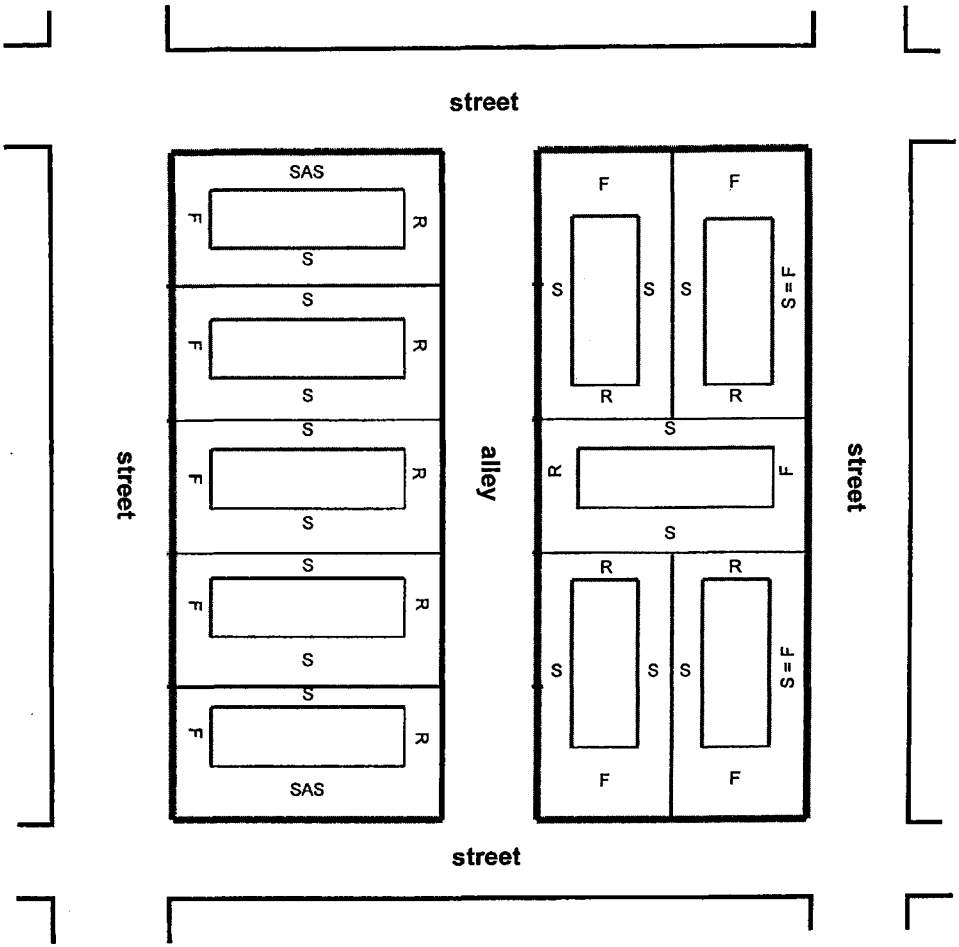


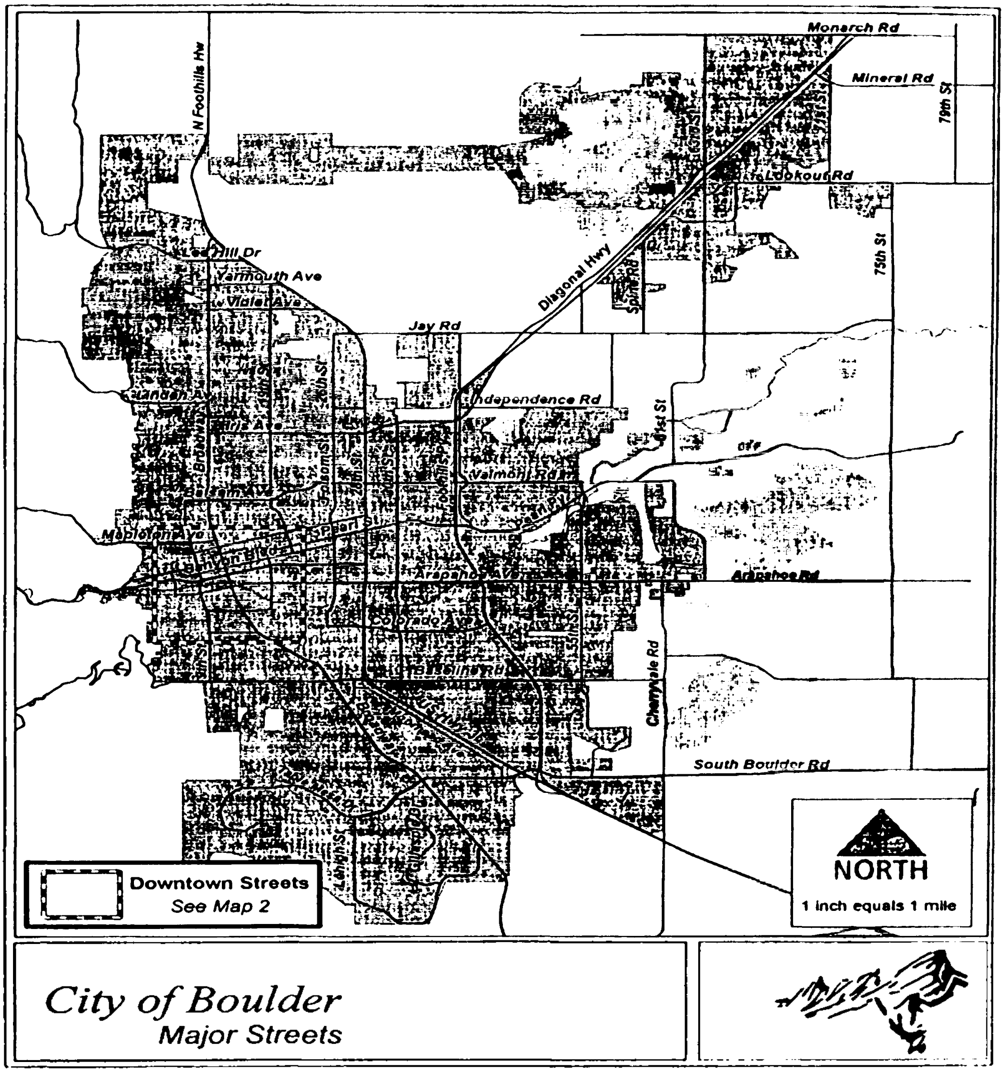
Figure 30: Front, Rear and Side Yards

F: FRONT YARD
R: REAR YARD
S: INTERIOR SIDE YARD
SAS: SIDE ADJACENT STREET
S=F: SIDE EQUALS FRONT

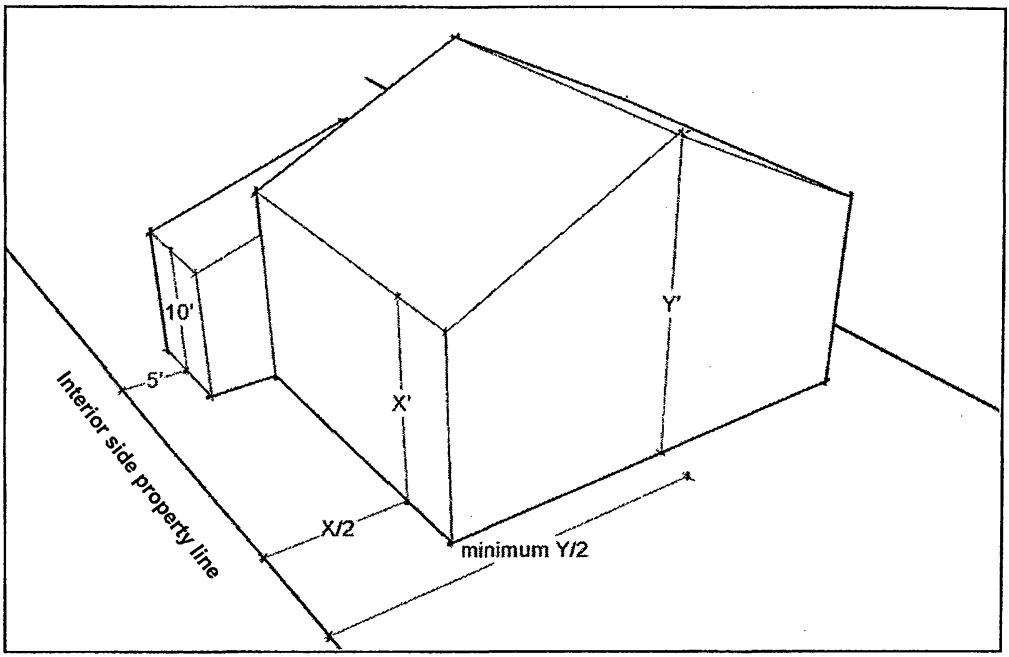
"Zoning map" means the Zoning District Map of the City of Boulder, Colorado, adopted as a part of section 9-5-3, "Zoning Map," B.R.C. 1981, as amended from time to time as provided therein.

Ordinance Nos. 7475 (2006); 7484 (2006); 7522 (2007); 7535 (2007).

APPENDIX A: MAJOR STREETS



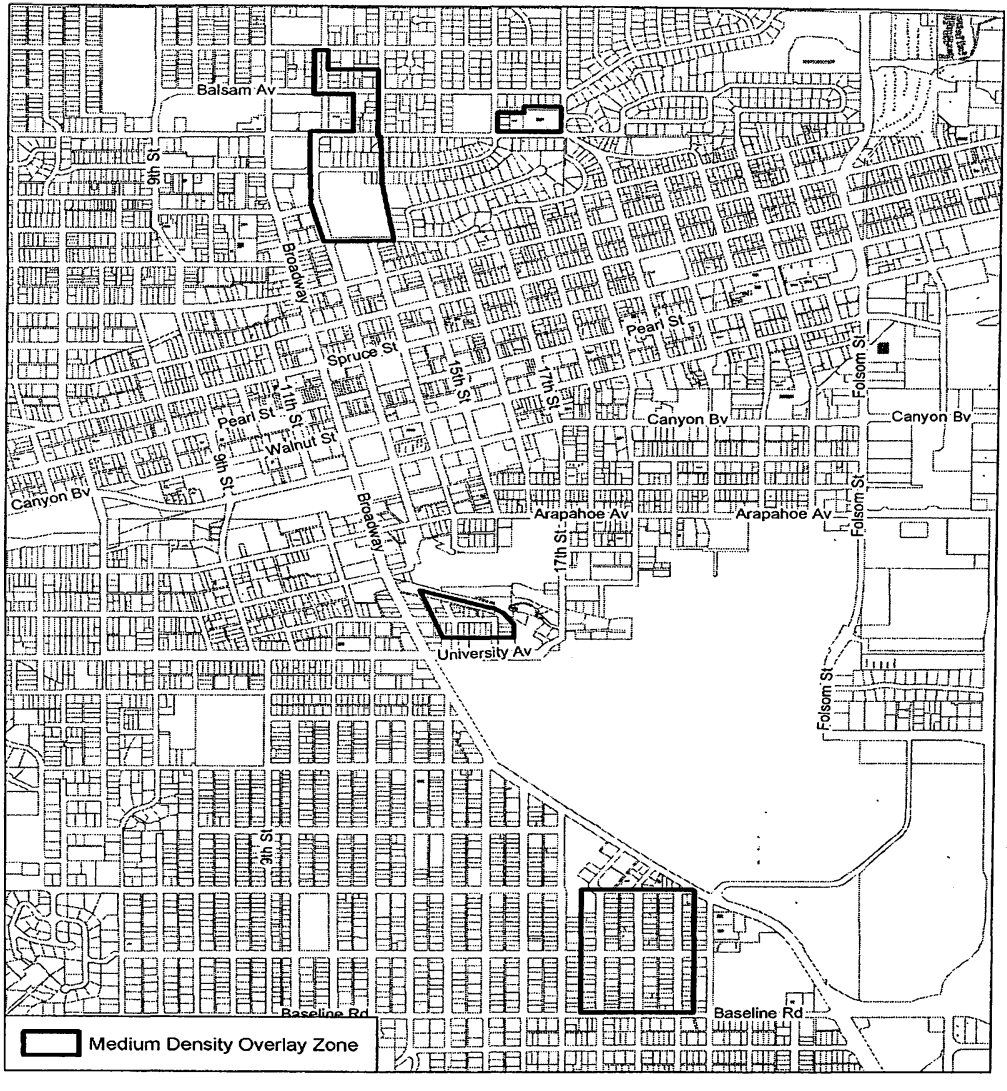
APPENDIX B: SETBACK RELATIVE TO BUILDING HEIGHT



APPENDIX C: HEIGHT RESTRICTIONS FOR NONSTANDARD LOTS

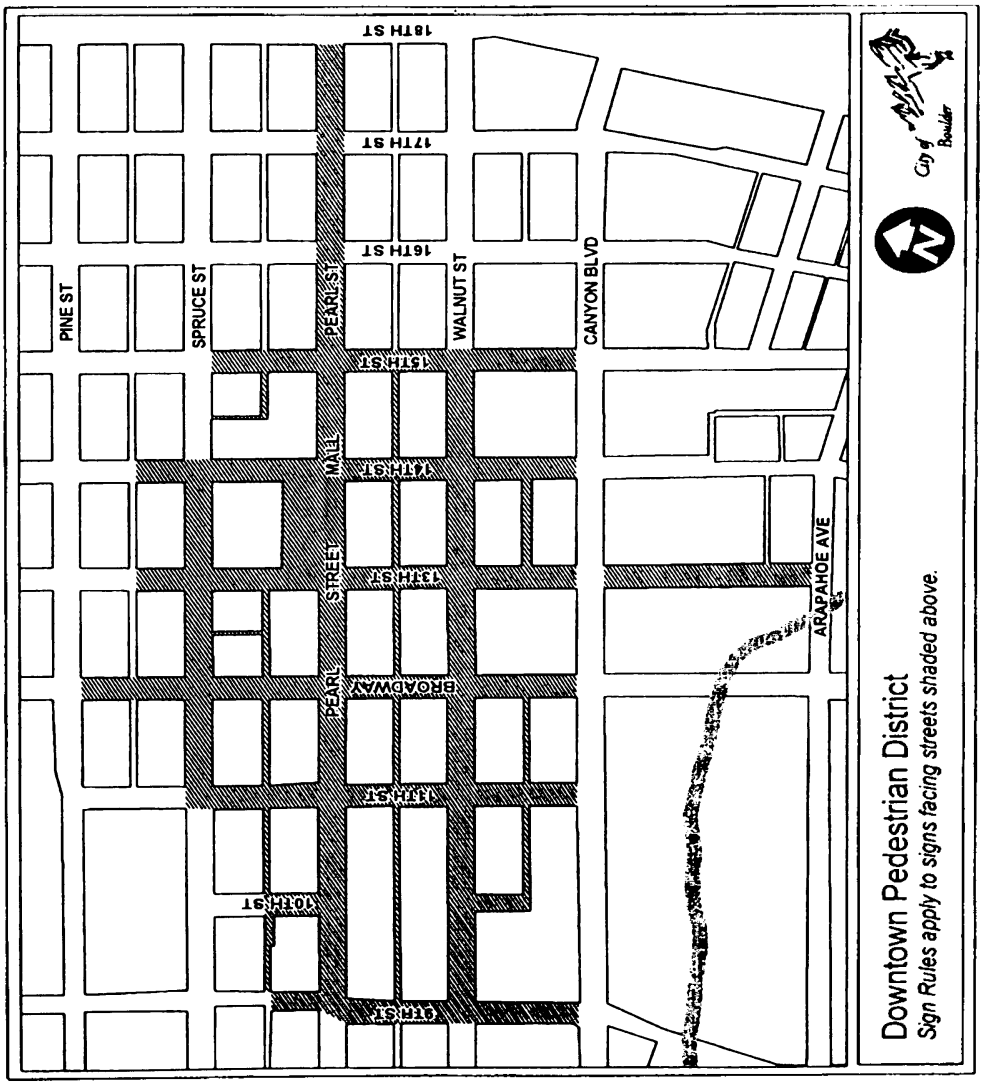
Maximum Height Based On Lot Size				
Building Height	**RMX-1 (6,000 SF)**	**RL-1 (7,000 SF)**	**RE (15,000 SF)**	**RR-1, RR-2 (30,000 SF)**
25	3,000	3,500	7,500	7,500
26	3,300	3,850	8,250	9,750
27	3,600	4,200	9,000	12,000
28	3,900	4,550	9,750	14,250
29	4,200	4,900	10,500	16,500
30	4,500	5,250	11,250	18,750
31	4,800	5,600	12,000	21,000
32	5,100	5,950	12,750	23,250
33	5,400	6,300	13,500	25,500
34	5,700	6,650	14,250	27,750
35	6,000	7,000	15,000	30,000

APPENDIX D: MEDIUM DENSITY OVERLAY ZONE



APPENDIX E: DOWNTOWN PEDESTRIAN DISTRICT

In relation to the standards of section 9-9-21, "Signs," B.R.C. 1981, the following area is defined as the "Downtown Pedestrian District."



APPENDIX F: AVIGATION EASEMENT

WHEREAS, _____, _____, _____, and _____, hereinafter called the "Grantors," are the owners in fee simple of that certain parcel of land situated in the County of Boulder, State of Colorado, described in Attachment A, attached hereto and incorporated herein by this reference, hereinafter called "Grantors' Property;" and

WHEREAS, as a condition to the granting of annexation/a development permit, the City of Boulder has required the dedication of this Avigation Easement, in order to place all subsequent purchasers on notice of the servitude for the passage of aircraft over Grantors' Property now existing and hereinafter established, as set forth herein;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration for the granting of such annexation/development permit, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, hereby grant, bargain, sell, and convey unto the City of Boulder, hereinafter called the "Grantee," its successors and assigns, for the use and benefit of the public, an easement relating to the City of Boulder Airport, for the passage of all aircraft ("aircraft" being defined for the purposes of this instrument as any device now known or hereafter invented, used, or designed for navigation of or flight in the air) in the airspace above Grantors' Property to an infinite height, together with the right to cause such noise, vibrations, fumes, dust, smoke, fuel particles, and all other annoyances and influences that may be caused by the operation of aircraft landing at or taking off from or operating at or on the City of Boulder Airport;

AND Grantors hereby waive, remise, and release any right or cause of action which they now have or which they may in the future possess against Grantee, its successors and assigns, due to such effects;

TO HAVE AND TO HOLD said easement and all rights appertaining thereto unto the Grantee, its successors and assigns, until the City of Boulder Airport shall cease to be used for airport purposes;

AND for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, their personal representatives, successors and assigns, hereby agree that for and during the term of this easement they will not hereafter use or permit or suffer the use of Grantors' Property in such a manner as to create electrical interference with navigational signals or radio communications at the City of Boulder Airport and aircraft, or which mimics airport lights, or which results in glare affecting aircraft using the City of Boulder Airport, or which otherwise endangers the landing, take-off, and passage of aircraft in the vicinity of the Grantors' Property.

It is expressly understood and agreed that all covenants and agreements contained in this Avigation Easement shall run with the land and be fully binding upon all heirs, administrators, executors, successors and assigns of the Grantors.

This avigation easement may be enforced by any party having any interest in its terms, but no liability may be premised on any failure to enforce any term hereof.

This Avigation Easement may be signed in counterpart copies, each of which shall be fully binding on the party or parties executing the same, as if all signatories had signed a single copy.

IN WITNESS WHEREOF, the Grantors have executed this Avigation Easement as of this ___ day of _____, 20___.

GRANTORS:

_____

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing Avigation Easement was acknowledged before me this ___ day of _____, 20___, by _____.

_____
Notary Public

My commission expires:

TITLE 10

STRUCTURES

TITLE 10 STRUCTURES

Chapter 1 Definitions[1]

Section:
10-1-1 Definitions

10-1-1 Definitions.

(a) The following terms used in this title have the following meanings unless the context clearly indicates otherwise:

"Accessible" means, with respect to energy conservation measures, able to be modified to comply with this code at reasonable expense. The city manager shall determine the reasonableness of any expense after submission of evidence by the owner and a request for such determination. In such regard, the manager shall take account of the payback period for the measure, its contribution to the capital value of the dwelling unit, and whether or not the measure can be financed.

"Air infiltration" means the leakage of air through cracks in a building, including, without limitation, cracks associated with doors, windows, baseboards, penetrations for entry of pipes and wires, and places where dissimilar materials meet.

"Approved" means approved by the city manager to serve the purpose for which it is intended to be used.

"Approved semi-rigid tubing connector" means a flexible metal pipe connecting a gas residential dryer or range, if it meets the requirements of and is installed in accordance with the city mechanical code, or, if it is a commercial gas dryer or range, it is a connector supplied with the appliance from the manufacturer, or is an equivalent commercial grade flex connector, and is installed in accordance with the manufacturer's instructions.

"Approved sewer system" means a sewer system authorized by the city manager to be connected to the municipal waste water system or by the Boulder County Health Department to be connected to a properly constructed individual sewage disposal system.

"Approved water system" means a water system authorized by the city manager to be connected to the municipal water system or by the Boulder County Health Department to be connected to a potable water system.

"ASTM" means American Society for Testing Materials.

"Baseline inspection" as used in chapter 10-3, "Rental Licenses," B.R.C. 1981, means a physical inspection of a dwelling unit performed by a licensed rental housing inspector for the purpose of determining compliance with all required items specified on a rental housing inspection checklist developed by the city manager based on the requirements of chapter 10-2, "Housing Code," B.R.C. 1981, and provided by the manager to property owners, tenants, housing inspectors, and the public upon request. The safety inspection is a component of every baseline inspection.

[1]Adopted by Ordinance No. 4587. Amended by Ordinance No. 4623. Derived from Ordinance No. 3908.

10-1-1

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a story as that term is used in chapter 10-2, "Housing Code," B.R.C. 1981.

"Caulk" means material designed to reduce air infiltration and having an estimated effective life exceeding five years.

"Cellar" means that portion of a dwelling that is located partly or wholly below grade and has half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground abutting the exterior walls of the dwelling unit.

"City of Boulder Valuation Data Table" means a table of square foot construction values based on type of construction and use issued by the city manager and effective when published on the city's website with a copy provided to the city clerk. The city manager shall use cost data published by a national organization which compiles and publishes such data, as increased by a factor of 1.15 to adjust national values to reflect values in the city.

"Cleanable" means having a smooth, hard surface that is free from unsealed breaks and impervious to the amount of water that would be used in cleaning.

"Condominium unit" means a form of property ownership of airspace, as defined in section 38-33-103, C.R.S.

"Cooking device" excludes, where cooking devices are prohibited or excluded in this section or in chapter 10-2, "Housing Code," B.R.C. 1981, one microwave oven unit or one microwave oven unit combined with a refrigerator-freezer.

"Door" means an opening in a solid wall for the ingress and egress of persons, including, without limitation, doorways, lintels or headers, casing, frames, sills, and doors with or without glazing.

"Draft diverter" means a device attached to or made part of the vent outlet from an appliance and designed to: insure the ready escape of products of combustion in the event of no draft, back draft, or stoppage in the vent or flue beyond the draft hood; prevent a back draft from entering the appliance; and neutralize the effect of stack action of the flue upon operation of the appliance.

"Dwelling" means any building, structure, or other housing accommodation that is wholly or partly used or intended to be used for living or sleeping by human occupants, but excludes temporary housing.

"Dwelling unit" means one room or rooms connected together for residential occupancy and including bathroom and kitchen facilities. If there is more than one meter for any utility, address to the property, or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units; or if there is a lockable, physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, multiple dwelling units are presumed to exist; but this presumption may be rebutted by evidence that the residents of the dwelling share utilities and keys to all entrances to the property and that they: 1) share a single common bathroom as the primary bathroom, or 2) share a single common kitchen as the primary kitchen.

"Electrical convenience outlet" means a point on the electrical wiring system equipped with one receptacle box that may contain one or more receptacles to receive plugs from which current is taken to supply electrical appliances.

"Elements" means wind, rain, snow, hail, or sleet, or surface run-off water.

10-1-1

"Extermination" means control and elimination of insects, rodents, vermin, or other pests by eliminating their harborage and materials that may serve as their food or by taking recognized, legal methods of eliminating pests, including, without limitation, poisoning, spraying, fumigating, or trapping.

"Garbage" means putrescible animal or vegetable waste resulting from the preparation, cooking, and serving of food or the storage or sale of produce.

"Grade" means the average of the finished ground level at the center of all walls of a building. When walls are parallel to and within five feet of a sidewalk, "grade" means the sidewalk level.

"Habitable room" means a room or enclosed floor space used, intended to be used, or designed to be used for living, sleeping, eating, or cooking and excludes bathrooms, toilet compartments, closets, halls, and storage places.

"Infestation" means the presence of insects, rodents, vermin, or other pests of a kind or in a quantity that endanger health within or around a dwelling.

"Makeshift repairs" means repairs not made in accordance with the requirements of this code, any ordinance of the city, or rule or regulation adopted thereunder; accepted practices; prevailing standards; design of a licensed contractor; or manufacturer's recommendations.

"Occupant" means any person living in, sleeping in, cooking in, or possessing a building or part thereof.

"Operator" means any person who is an owner, is an owner's representative, has charge of, or controls any dwelling or parts thereof.

"Owner" means a person as defined by this code, who, alone, jointly, or severally with others or in a representative capacity (including, without limitation, an authorized agent, executor, or trustee) has legal or equitable title to any property in question.

"Qualified heating maintenance person" means a licensed professional engineer; a licensed mechanical contractor; or an employee of a regulated public utility whose duties include such inspections.

"Readily accessible" means capable of being reached safely and quickly for operation, repair, or inspection without the necessity of climbing over or removing obstacles, or using portable access equipment.

"Rental housing inspector" means a person licensed as a D-9 contractor under chapter 4-4, "Building Contractor License," B.R.C. 1981, to perform inspections under contract to owners or operators of rental housing to determine compliance with chapter 10-2, "Housing Code," B.R.C. 1981, using forms supplied by the city manager, and to certify compliance to the manager as part of the process of licensing rental housing.

"Rental property" means all dwellings, dwelling units, and rooming units located within the city and rented or leased for any valuable consideration, but excludes dwellings owned by the federal government, the state or any of their agencies or political subdivisions and facilities licensed by the state as health care facilities.

"Rooming house" means an establishment where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is offered for one month or more for three or more roomers not related to the family of the heads of the household.

10-1-1

"Rooming unit" means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and study, and that may include a private bath but does not include a sink or any cooking device.

"Safety inspection" means, with respect to any rental housing unit covered by a current rental license, a combined report of the physical and functional condition of all fuel burning appliances and their appurtenances and a tune-up of those appliances made by a qualified heating maintenance person based on the requirements of section 10-2-10, "Mechanical And Heating Standards," B.R.C. 1981, and a report on the condition and location of all smoke detectors required by this title and a trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C. 1981, made and verified by the owner or operator, on a checklist form developed by the city manager based on these requirements and provided by the manager to property owners, tenants, housing inspectors, and the public upon request.

"Sound condition" means freedom from defects that would endanger the health, safety, and welfare of the occupants of the structure, and in good working condition if applicable.

"Stairway" means all stairwells, and includes stair stringers, risers, treads, handrails, banisters, and vertical and horizontal supports.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the top-most floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade for more than fifty percent of the total perimeter or is more than twelve feet above grade at any point, such usable or unused under-floor space shall be considered as a first story.

"Supplied" means paid for, furnished, provided by, or under the control of the owner or operator.

"Temporary housing" means any mobile home, camper, or other structure used for human shelter that is designed to be transportable and is not attached to the ground, to another structure, or to any utilities system.

"Trap" means a fitting or device in a plumbing system designed and constructed to provide, when properly vented, a liquid seal that will prevent the back passage of air without materially affecting the flow of sewage or wastewater through it.

"Vent" means a pipe designed to convey the product of combustion from an appliance to a flue or chimney.

"Ventilation" means not less than one square inch of area of contiguous inside and outside air for every square foot of floor space.

"Water heater insulation" means a thermal insulation blanket with a membrane facing which has a flame spread classification of no more than two hundred for an electric water heater and twenty-five for an oil- and gas-fired water heater when tested in accordance with ASTM E 84-80, or originally installed insulation integral to the water heater which provides equivalent resistance to heat loss.

"Window" means an opening in a solid wall for the interior illumination and ventilation of a structure and includes lintels or headers, casings, sills, frames, and glazing.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined by this chapter.

10-1-1

(c) For the purposes of chapter 10-2, "Housing Code," B.R.C. 1981, a word not defined in this chapter or in chapter 1-2, "Definitions," B.R.C. 1981, but defined in the International Building Code adopted in chapter 10-5, "Building Code," B.R.C. 1981, the International Residential Code adopted in chapter 10-5.5, "Residential Building Code," B.R.C. 1981, the National Electrical Code adopted in chapter 10-6, "Electrical Code," B.R.C. 1981, the codes for energy conservation and insulation adopted in chapter 10-7, "Energy Conservation And Insulation Code," B.R.C. 1981, the International Mechanical Code adopted in chapter 10-9, "Mechanical Code," B.R.C. 1981, the International Fuel Gas Code adopted in chapter 10-9.5, "Fuel Gas Code," B.R.C. 1981, and the International Plumbing Code adopted in chapter 10-10, "Plumbing Code," B.R.C. 1981, has the meaning expressed in such code if it and the housing code provision concern similar subjects.

Ordinance Nos. 4824 (1984); 5182 (1989); 5270 (1990); 5462 (1992); 5798 (1996); 5975 (1998); 7023 (1999); 7024 (1999); 7189 (2002); 7304 (2003); 7416 (2005).

TITLE 10 STRUCTURES

Chapter 2 Housing Code[1]

Section:

10-2-1 Legislative Intent.

The purpose of this chapter is to protect, preserve, and promote the physical and mental health of the residents of the city, control communicable diseases by regulating privately and publicly owned dwellings, promote conservation and efficient use of energy in dwellings, protect safety, and promote the general welfare. This chapter establishes minimum standards for basic equipment and facilities for light, ventilation, and heating; for safety from fire; for the use and amount of space for human occupancy; and for safe and sanitary maintenance of dwellings.

Ordinance Nos. 4824 (1984); 5270 (1990).

10-2-2 Inspection.

(a) The city manager may inspect dwellings and their adjacent premises in order to determine whether they comply with the provisions of this chapter.

(b) Every occupant of a dwelling shall, upon reasonable notice, give the operator, a rental housing inspector hired by the operator, and the city manager access to any part of such

[1]Adopted by Ordinance No. 4587. Amended by Ordinance No. 4623. Derived from Ordinance Nos. 3383, 3390, 3721, 3809, 3908.

dwelling or its adjacent premises at all reasonable times for the purpose of making such inspection, repairs, or alterations as are necessary to effect compliance with the provisions of this chapter and chapter 10-3, "Rental Licenses," B.R.C. 1981.

Ordinance Nos. 5270 (1990); 7023 (1999).

10-2-3 Unfit Dwellings And Vacation Thereof.

(a) Whenever the city manager finds that a dwelling or portion thereof does not conform to the standards established by this chapter and presents an imminent hazard to public health or to the physical safety of the occupants therein, the manager may, without prior notice or hearing, designate such dwelling or portion thereof as unfit for human habitation. The manager shall post any dwelling or portion thereof so designated with a placard of reasonable size on each entry to the premises and shall order all occupants of the dwelling or portion thereof to vacate the premises within the time specified on the placard, which time shall be no fewer than ten days from the date of the posting. If the manager finds that, based on all the attendant circumstances, the violation presents an immediate and substantial hazard to the occupants, the manager may order the occupants to vacate the premises in fewer than ten days.

(b) Within three days after the designation prescribed by subsection (a) of this section, the city manager shall serve a notice of the designation of unfitness as provided in subsection 10-2-4(a), B.R.C. 1981. However, notwithstanding paragraph 10-2-4(a)(3), B.R.C. 1981, the operator shall correct the violation immediately and may have no more than ten days after service of such notice to file an appeal with the building board of appeals. Such an appeal does not stay any order to vacate the premises under subsection (a) of this section, unless the board stays such an order.

(c) No person shall use, occupy, own and allow to be occupied, or let to another for occupancy or for human habitation any dwelling or portion thereof that has been designated as unfit for human habitation contrary to the terms of the placard until:

(1) The building board of appeals, after a hearing, or a court orders the city manager to remove the placard; or

(2) The manager authorizes in writing that the property may be occupied because the hazardous condition has been eliminated.

(d) No person shall destroy, deface, remove, or obscure any placard affixed under the provisions of this chapter, except after the orders set forth in subsection (c) of this section.

Ordinance Nos. 4969 (1986); 5270 (1990).

10-2-4 Enforcement Of The Housing Code.

(a) Except in those instances where section 10-2-3, "Unfit Dwellings And Vacation Thereof," 10-2-19, "Occupant's Responsibilities," or 10-2-20, "Operator's Responsibilities," B.R.C. 1981, applies or if a violation of chapter 10-3, "Rental Licenses," B.R.C. 1981, is alleged, whenever the city manager determines that there is or has been a violation of any provision of this chapter, the manager shall give notice of such determination to the person responsible under this chapter to correct the violation that:

(1) Is in writing;

(2) Describes with reasonable detail the violation alleged to exist or to have been committed so that the alleged violator may properly correct it;

(3) Provides a reasonable time, in no event fewer than thirty days, for the correction of the violation alleged;

(4) Summarizes the appeal procedures in subsection 10-2-5(b), B.R.C. 1981;

(5) Is signed by the manager or a duly authorized representative; and

(6) Is served as follows:

(A) A notice of violation of this chapter, personally upon the operator, any member of the operator's family over eighteen years of age at the operator's home or the stenographer, bookkeeper, or chief clerk at the operator's usual place of business or by first class mail to the operator at the address of record with the office of the Boulder County Assessor; or

(B) A notice of violation issued under chapter 10-3, "Rental Licenses," B.R.C. 1981, personally upon the operator, any member of the operator's family over eighteen years of age at the operator's home or the stenographer, bookkeeper or chief clerk at the operator's usual place of business or by first class mail at the address listed in the rental license application.

(C) Any notice of violation served by mail shall be deemed received three days after its date of mailing.

(b) If the city manager issues a notice of violation, no prosecution shall be filed in municipal court until after the time for correction provided in paragraph (a)(3) of this section. This restriction does not apply to violations of section 10-2-3, "Unfit Dwellings And Vacation Thereof," 10-2-19, "Occupant's Responsibilities," or 10-2-20, "Operator's Responsibilities," B.R.C. 1981.

(c) No person shall fail to make corrections as required by a notice of violation within the time provided in the notice, or as extended by appeal.

(d) If there are practical difficulties involved in carrying out the provisions of this chapter, and if the operator establishes that the relevant portions of an existing building were in compliance with all applicable codes at some prior time, and have not thereafter been illegally modified, the city manager, upon written application, may grant a modification for individual cases, provided the manager shall first find that a special individual reason specific to the building makes the strict letter of this chapter impractical and that the modification is in conformity with the intent and purpose of this chapter and that such modification does not lessen any health or fire protection requirements or any degree of structural, electrical, mechanical, or plumbing integrity. The details of any action granting a modification shall be recorded and entered in the files of the city. Denial of a modification is not appealable except by way of an application for a variance after issuance of a notice of violation.

Ordinance Nos. 5012 (1986); 5270 (1990).

10-2-5 Appeals And Variances.

(a) Any aggrieved person who believes the alleged violation to be factually or legally contrary to this chapter or rules and regulations issued pursuant to this chapter may appeal a notice of violation to the board of building appeals[1] in a manner provided by the board under the

[1]Section 2-3-4, "Board Of Building Appeals", B.R.C. 1981.

10-2-5

procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, or may request that a variance be granted. An appeal and a request for variance may be filed in the alternative. An appellant shall file the appeal, request for variance, or both in the alternative with the board within thirty days from the date of service of the notice of alleged violation. The appellant may request enlargement of time to file if such request is made before the end of the time period. The city manager may extend for a reasonable period the time to file with the board if the applicant shows good cause therefor.

(b) Any operator aggrieved by a decision of the city manager upon a reinspection that any or all of the violations alleged in the notice of violation have not been adequately corrected may appeal such determination by filing a notice of appeal with the board of building appeals within ten days of the date of the reinspection.

(c) The appeal will be conducted under the procedures of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The burden of proof is on the city manager to establish an alleged violation.

(d) If the board of building appeals affirms the determination by the city manager, it shall grant the operator a reasonable period of time to correct the violation appealed. Any subsequent determination by the manager as to whether the violations alleged in the notice of violation have been adequately corrected is final.

(e) Any operator may initiate proceedings for a variance by filing with the board of building appeals and the city manager a pleading setting forth the relevant facts, the applicable law, and the variance requested. The board shall hold a hearing and make a decision thereon.

(f) Except as provided in section 10-3-4, "Reduced Term Rental License," B.R.C. 1981, the board of building appeals has no jurisdiction to hear appeals regarding, nor requests for variances from, the requirements of chapter 10-3, "Rental Licenses," B.R.C. 1981.

(g) The board of building appeals may authorize a variance from the terms of the housing code or the rules and regulations adopted pursuant thereto subject to terms and conditions fixed by the board that the board determines will not adversely affect the public health where, owing to exceptional and extraordinary circumstances, literal enforcement of applicable provisions will result in unnecessary hardship. The burden of proof is upon the applicant to show by clear and convincing evidence exceptional and extraordinary circumstances and unnecessary hardship, and that:

(1) The variance will not substantially or permanently injure the appropriate use of the other portions of the dwelling involved or other property;

(2) The variance will be in harmony with the spirit and purposes of this chapter and the rules and regulations adopted pursuant thereto; and

(3) The variance will protect, preserve, and promote the physical and mental health of the people of the city in the same manner and to the same effect as would literal enforcement of the provisions applicable to each particular case.

(4) The financial resources of the appellant shall not be considered as an exceptional or an extraordinary circumstance or as a hardship for an appeal. However, the cost of the required work may be considered relative to the benefit of compliance with this chapter to the public or occupants in making such a determination.

(h) The fee for filing an appeal or requesting a variance is that prescribed by section 4-20-47, "Zoning Adjustment And Building Appeals Filing Fees," B.R.C. 1981.

(i) An aggrieved person seeking judicial review of a decision of the board of building appeals made under this section shall file a complaint for such review within thirty days after the date of the decision under Colorado Rule of Civil Procedure 106(a)(4).

(j) If no person appeals a notice of violation to the board of building appeals, the provisions of the notice become final when the time for filing an appeal with the board has expired. An order appealed to court is final unless a stay is in effect.

(k) If a person to whom the city manager has issued a notice of violation does not appeal to the board, such person may not raise as a defense to any subsequent prosecution in municipal court for a violation of subsection 10-2-4(c), B.R.C. 1981, that the conditions alleged to be violations in the notice of violation were not in fact or law violations.

Ordinance Nos. 5270 (1990); 7428 (2005).

10-2-6 Minimum Standards For Basic Equipment And Facilities.

No person shall occupy, own and allow to be occupied, or let to another for occupancy any dwelling that does not comply with the requirements in this chapter.

Ordinance No. 5270 (1990).

10-2-7 Plumbing Standards.

(a) Every plumbing fixture and water and waste pipe in a dwelling shall be installed as provided in the city plumbing code[1] and maintained in sanitary and sound condition, free from all sewage leaks and obstructions, and free from potable water leaks that are a constant flow of water. It is a specific defense to a charge of plumbing code nonconformity that the installation was in conformance with the plumbing code in effect at the time of installation and the work was done with a permit and approved, but this specific defense shall not apply to any requirements specifically listed in this section.

(b) Every dwelling unit shall contain a kitchen sink in sound condition and properly connected to an approved water and sewer system.

(1) A kitchen sink shall be of seamless construction and impervious to water and grease. The internal surfaces shall be smooth with rounded internal angles and corners, easily cleanable, free from cracks or breaks that leak or that could cut or injure a person, and impervious to water and grease.

(2) A kitchen sink shall be no smaller than twenty inches by sixteen inches, with a minimum uniform depth of six inches and a maximum uniform depth of twenty inches. Stone, plastic, and concrete laundry tubs, lavatory basins, or bathtubs are not acceptable substitutes for required kitchen sinks.

(c) Every dwelling shall contain a room completely enclosed by partitions, doors, or opaque windows from floor to ceiling and wall to wall that is equipped with a flush water closet in sound condition and properly connected to an approved water and sewer system.

(1) Every flush water closet shall have an integral water-seal trap.

(2) Water closets shall have smooth, impervious, easily cleanable surfaces that are free from cracks or breaks that leak or that could cut or injure a person, and from makeshift repairs

[1]Chapter 10-10, "Plumbing Code," B.R.C. 1981.

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and shall be equipped with seats and flush tank covers constructed of smooth materials that are impervious to water and are free of cracks and breaks that could cut or injure a person.

(d) Every dwelling shall contain a lavatory basin in sound condition and properly connected to an approved water and sewer system and located in the same room as the flush water closet or as near to that room as practicable. If a dwelling contains a flush water closet in more than one room, it shall also contain a lavatory basin in each room with the flush water closet or as near to each such room as practicable.

(1) The lavatory basin shall be designed, intended, and located for use exclusively for ablutionary purposes.

(2) Lavatory basin surfaces shall be smooth, easily cleanable, impervious to water and grease, and free from cracks and breaks that leak or that could cut or injure a person. Stone, plastic, and concrete laundry tubs, sinks used for kitchen purposes, and bathtubs are not acceptable substitutes for lavatory purposes.

(e) Every dwelling shall contain, within a room completely enclosed by partitions, doors, or opaque windows from floor to ceiling and wall to wall, a bathtub or shower in sound condition and properly connected to an approved water and sewer system.

(1) Every bathtub shall have a smooth, impervious, and easily cleanable inner surface free from makeshift repairs and free from cracks and breaks that leak or that could cut or injure a person.

(2) Every shower compartment or cabinet shall have a base with a leak-proof receptor that is made of materials such as precast stone, cement aggregates, plastic, preformed metals or materials of similar characteristics and whose pitch is sufficient to drain completely. The interior walls and ceiling surfaces of the shower cabinet or compartment shall be made of smooth, non-absorbent materials free of sharp edges that could cut or injure a person. Finishes of walls and ceilings that peel readily are not acceptable. The interior of every shower cabinet or compartment shall be watertight, maintained in sound condition, and easily cleanable. Repairs shall be required if more than two square feet of compartment wall is no longer waterproof or more than four linear feet of caulking has failed, or if the leak is causing an unsafe electrical condition.

(3) Built-in bathtubs with overhead showers shall have waterproof joints between the tub and adjacent walls and waterproof walls. Repairs shall be required if more than two square feet of compartment wall is no longer waterproof or more than four linear feet of caulking has failed, or if the leak is causing an unsafe electrical condition.

(f) Every dwelling shall have at least one flush water closet, lavatory basin, and bathtub or shower for each eight occupants thereof or for every family plus two roomers residing therein. To meet the requirement of this subsection for occupants not related by blood, marriage, guardianship, including foster children, or adoption, in dwellings with more than one sleeping room, all facilities shall be accessible to the occupants without passing through any sleeping room. Under no circumstances shall occupants be required to pass through another dwelling unit to reach facilities, and all facilities shall be in the same building and located so that the occupants are not required to go outside the building to reach facilities.

(g) Every kitchen sink, lavatory basin, bathtub, or shower required under this section shall be connected to both hot and cold water lines as provided in the city plumbing code.

(h) Shared toilet and bath facilities shall be located on the same or adjacent floor as the rooming unit that they serve.

(i) Plumbing fixtures, except those having integral traps, shall be separately trapped by a water seal trap that is located as near the fixture outlet as possible and readily accessible for inspection.

But one trap may be installed for a set of not more than three single compartment sinks or laundry trays or three lavatory basins immediately adjacent to each other in the same room, if the waste outlets are not more than thirty inches apart and if the trap is centrally located for the set of sinks.

(j) All exterior openings into the interior of the building, including, without limitation, those in crawl spaces, provided for the passage of piping shall be properly sealed with snug fitting collars of metal or other rat-proof material securely fastened into place.

Ordinance Nos. 5270 (1990); 7416 (2005).

10-2-8 Water Supply And Distribution Standards.

(a) Potable water shall be provided for all dwelling units. When the premises are connected to a private water supply system, the private system shall be tested and approved as a sanitary source of water supply by the County Health Department. The city manager may require additional testing of a private or public water supply, if there is a reason to believe contamination has occurred.

(b) Potable and non-potable water supplies shall be distributed through systems entirely independent of each other. There shall be no actual cross-connections between such supplies.

(c) Materials for water distributing pipes and tubing shall be brass, copper, cast iron, wrought iron, open-hearth iron, steel, or other approved material with fittings meeting the requirements of the city plumbing code.

(d) Water pressure shall at all times be adequate to permit a reasonable and proper flow of water into all plumbing fixtures.

Ordinance Nos. 4824 (1984); 5270 (1990).

10-2-9 Electrical Service Standards.

(a) Every dwelling shall be supplied with electricity and shall meet the following requirements:

(1) Every habitable room shall contain one electrical convenience outlet for each twenty linear feet or major fraction thereof, measured horizontally around the room at the baseboard line, except that in each habitable room, one electric light fixture may be installed in lieu of one of the required electrical convenience outlets, if each habitable room contains at least one electrical convenience outlet.

(2) Every water closet compartment, bathroom, laundry room, furnace room, space containing a heating appliance, stairway, and public hall shall contain at least one ceiling or wall type electric light, except where light is available from a permanent source or an adjacent space providing a minimum of five footcandles.

(3) Every outlet and fixture shall be installed and maintained in sound condition.

(b) Electric heating appliances that are not permanently installed may not be used to meet the heating requirements of subsection 10-2-10(b), B.R.C. 1981.

(c) No person shall install, use, or allow to be installed or used any non-stationary electrical outlets, makeshift outlets, tacked extension cording, or makeshift electric wiring.

(d) Every dwelling unit shall be provided with an electrical service entrance capacity of at least thirty amperes if no electrical appliances exceed one hundred ten volts, or at least forty amperes if no more than one electrical appliance requires two hundred twenty volts, or at least seventy amperes if two or more electrical appliances require two hundred twenty volts. If there is evidence of insufficient or unsafe electrical service or wiring, including, without limitation, flickering lights, hot wires, burnt wire insulation, overloading of circuits, burnt fuses, or oversized fuses, the operator shall furnish, upon request, an analysis and recommendation for repairs by a licensed electrical contractor. The city manager may require repairs as recommended by the electrical contractor.

(e) No person shall have frayed and exposed wiring, wiring unprotected by proper covering, fixtures in disrepair, or makeshift wiring of fixture repair.

(f) When a baseline inspection is required as part of the rental housing licensing program specified in chapter 10-3, "Rental Licenses," B.R.C. 1981, and such inspection is required to be done by a licensed rental housing inspector, that portion of the inspection which covers subsections (c), (d), and (e) of this section shall be done by a licensed rental housing inspector who is also either an American Society of Home Inspectors, Inc., certified rental housing inspector, an International Conference of Building Officials or International Code Council certified combination inspector, or an electrical contractor licensed by the city.

Ordinance Nos. 4824 (1984); 5270 (1990); 7189 (2002).

10-2-10 **Mechanical And Heating Standards.**

(a) Every mechanical fixture and piece of mechanical equipment shall be installed as required by the city mechanical code[1], and maintained in a sound condition. It is a specific defense to a charge of code nonconformity that the installation was in conformance with the mechanical code in effect at the time of installation and the work was done with a permit and approved, but this specific defense shall not apply to any requirements specifically listed in this section.

(b) Every dwelling shall have heating facilities capable of safely and adequately heating all habitable rooms, bathrooms, and water closet compartments located therein to a temperature of at least sixty-eight degrees Fahrenheit at a distance three feet above floor level, when the temperature outside is minus five degrees Fahrenheit. If the city manager is notified that the heating system fails to perform to meet this requirement, the city manager may require the operator to furnish an inspection report and recommendation for corrections, if any, to the heating system by a licensed mechanical contractor. The manager may require that the recommended corrections be done. The following supplemental heating devices shall not be considered "heating facilities" for the purpose of calculating or measuring the heating capacity of a dwelling:

(1) Unvented fuel burning room heaters.

(2) Electric heating appliances that are not permanently installed, or any other heating appliances not permanently installed.

(3) Solid fuel burning devices, as defined in chapter 6-9, "Air Quality," B.R.C. 1981.

(c) Gas-fired equipment shall comply with the city mechanical code.

[1]Chapter 10-9, "Mechanical Code," B.R.C. 1981.

(d) Storage-type water heaters shall be installed so as to maintain that clearance from unprotected or protected combustible materials specified by the manufacturers' installation instructions. Uninsulated tank water heaters and hot water storage tanks shall be insulated. Additional insulation shall be installed on all water heaters and storage tanks located in unheated spaces except if prohibited by manufacturer's installation instructions. Additional tank insulation shall be securely fastened and held clear of pilot lights and vents in an approved manner.

(e) Sufficient clearance shall be maintained to permit cleaning of heating equipment surfaces; replacement of filters, blowers, motors, burners, controls, and vent connections; lubrication of moving parts, where required; and adjustment and cleaning of burners and pilots. A safety inspection and tune-up shall be performed as necessary to provide safe operation at least every four years. But for rental property required to be licensed under chapter 10-3, "Rental Licenses," B.R.C. 1981, a safety inspection and tune-up shall have been performed by a qualified heating maintenance person not more than one year before the date of application for a new rental license, or of the expiration date listed on the last license issued for such property in the case of a renewal of an unexpired license, or within four years after the date of issuance of any rental license with an indefinite term and within every succeeding four-year period. A safety inspection and tune-up consists of inspection and maintenance of all fuel burning appliances, including, without limitation, the furnace and other components of the heating system, as follows:

(1) Check for gas leaks at furnace shutoff valve, furnace, and any joints in between, and correct any leakage found.

(2) Identify gas line material. Replace all copper or other non-complying pipe with approved pipe.

(3) Check for proper drafting of appliance. Correct as necessary until drafting is proper.

(4) Check for readily accessible gas line shutoff valve, which shall be within three feet of the furnace. If not accessible, correct accessibility. If valve is too far away, have mechanical contractor install valve in proper location.

(5) Check to assure vents and draft diverters are in sound condition, securely in place, and of approved material. Secure and replace as necessary.

(6) Check for adequate combustion air for furnace and any other appliance within same mechanical room. Increase combustion air supply as necessary.

(7) Check to assure all single wall vents are a minimum of six inches from combustibles and all B-type vents are a minimum of one inch from combustibles. Correct any clearance deficiencies as necessary.

(8) Check to assure sufficient clearance is maintained for cleaning and repairs to furnace. Correct any clearance deficiencies as necessary.

(9) Check and remove all loose combustible materials from within four feet of mechanical equipment in mechanical rooms.

(10) Check and thoroughly clean all dust and dirt from within and around furnace, blower, motor, burners, and controls.

(11) Lubricate and adjust all moving parts as needed.

(12) Check, adjust, and clean all burners and pilots as needed.

(13) Check, clean if cleanable, or replace all filters.

(14) Check for visible signs of a cracked heat exchanger insofar as this may be accomplished through existing access and inspection ports in the furnace. If cracked, have mechanical contractor replace heat exchanger.

(15) Check to assure limit switches on furnaces and safety valves on boilers are in sound condition. Replace as necessary.

(16) Check to assure boilers, as applicable under the city mechanical code, are equipped with a low-water cutoff. If a cutoff is required but not installed, have mechanical contractor install.

(17) If a state boiler inspection is required, a copy of the site inspection sheet and the certificate from the state inspection is accepted as the tune-up.

(18) Perform a carbon monoxide test on all fuel burning appliances, gas fireplaces and gas fired water heaters using a carbon monoxide detector according to the testing equipment manufacturer's instructions, and note all deficiencies and how they have been corrected. The test shall be performed using equipment approved under a nationally recognized standard for measuring the levels, in parts per million, of carbon monoxide.

(f) Combustion-type heaters shall be provided with down-draft diverters in the vent pipes of such appliances. Vents and vent-fittings shall be constructed of one of the following materials: galvanized or lead-coated iron or steel; stainless steel; monel; aluminum 2-S $^1/_2$ H, none of which shall be less than No. 26 U.S. Standard gauge; copper not less than sixteen ounces per square foot; or any other approved material.

(g) Existing radiant heaters may be used and maintained if there is no evidence of carbon on any of the radiants and there are no broken radiants.

(h) Furnaces shall be installed in accordance with the manufacturer's instructions.

(i) Boilers or furnaces shall be equipped with approved safety devices arranged to limit high steam pressures, water temperatures, or temperatures in warm air furnaces. Each gas-fired boiler shall be equipped with a low water cut-off which conforms with the city mechanical code.

(j) Unvented fuel burning heaters are prohibited except in garages and other group U occupancies as defined in the city building code. Fuel-combustion heating appliances shall be vented to the atmosphere. Down-draft diverters shall be provided in the vents from gas and oil appliances. Vents and vent-fittings shall be either a double-wall Type B flue or constructed of approved non-corrodible material such as galvanized steel or aluminum 2-S $^1/_2$ H, of at least No. 26 U.S. Standard gauge.

(k) A vent pipe shall be installed so as to avoid sharp turns or other constructional features that would create excessive resistance to the flow of the products of combustion. Horizontal runs of gas vents depending on natural draft shall not exceed fifteen feet, but in no case may such horizontal runs exceed seventy-five percent of the vertical height of the flue. On such horizontal runs, vents shall be securely supported by metal straps.

(l) All vent pipe connections to a masonry chimney or flue shall be made with a slip joint; the thimble shall be cemented into the chimney and shall not extend into the chimney beyond the chimney lining.

(m) A reasonably accessible and approved cleanout opening with a tight-fitting cover shall be provided and maintained free of all obstructions and debris at least twelve inches below the lowest vent inlet into any unlined masonry chimney or flue; but no unlined chimney that is a part of and supported by walls and terminates above any floor (a "shelf" or "bracket" chimney) shall be used to vent any gas appliance.

(n) The cross-sectional area of any flue shall not be less than the cross-sectional area of the flue connection outlet of the appliance it serves. When additional vents from other appliances are connected to the flue, the vent area shall be at least the greater of:

(1) The vent area of the appliances having the largest vent, plus an amount equaling fifty percent of the areas of all additional smaller appliance vents, or

(2) Seventy-five percent of the combined areas of all connected appliance vents.

(o) Single-walled metal vents or flues shall be not less than six inches from combustible material and shall not pass through combustible walls, floors, ceilings, or partitions unless they are guarded at point of passage by approved double metal ventilated or insulated thimbles. There shall be one inch of clearance for Type B or double-walled pipe.

(p) A gas appliance vent pipe may be connected to the vent pipe of another gas appliance through a suitable "Y" junction fitting provided the vent size is increased to accommodate the increased volume of flue gases.

(q) All water heaters shall be provided with an approved water pressure and temperature relief valve and drain extension to minimize the possibility of explosions and scalding.

(r) Gas-fired appliances are prohibited in pits or other places subject to flooding by water seepage.

(s) Water heating facilities for dwellings shall provide water at a temperature of at least one hundred twenty degrees Fahrenheit and a recovery capacity of at least twenty gallons per hour for each dwelling unit.

(t) All gas-fired space and central heating equipment, water heaters, and gas dryers shall have approved safety pilot assemblies.

(u) Gas cooking ranges and plates shall not be installed in rooms used for sleeping purposes, and in no case shall such appliances be used for purposes of heating any portion of a dwelling. But permanently installed gas cooking ranges and plates may be installed in sleeping areas which are not in a rooming unit if such ranges or plates have been installed pursuant to a permit, inspection, and approval by the city.

(1) All ranges shall be rigidly connected to the house gas piping outlet with not less than three-fourths inch pipe, except that a maximum of six feet of approved semi-rigid tubing may be used immediately adjacent to such appliance. Such semi-rigid tubing shall not pass through any wall, partition, floor, or ceiling.

(2) Gas cooking ranges, plates, and refrigerators shall be in sound condition. All orifices, burners, and controls shall be kept in sound condition and in no case constructed, installed, or maintained in a manner that would permit carbon monoxide production during operation.

(v) All gas appliances shall be connected to an approved gas supply using approved materials. An approved shutoff valve, in addition to any valve on the appliance, shall be installed outside of each appliance, ahead of its union connection, and within three feet of the appliance.

(w) Gas meters shall be located on the exterior of all dwellings in an approved location and shall have an approved shutoff valve at the gas service entrance.

(x) All unused gas lines shall be terminated in an approved manner.

(y) Gas water heaters, gas furnaces, and decorative gas appliances shall not be located in or be directly accessible from a bedroom or bathroom, unless the city manager has approved such location because there is an adequate physical separation of the makeup air, natural gas, and products of combustion from such rooms, which separation includes, without limitation, a gasket sealed door and outside makeup air, or a direct vent/sealed combustion chamber system.

Ordinance Nos. 5270 (1990); 5798 (1996); 7189 (2002).

10-2-11 **Cooking Devices.**

Every dwelling unit shall have a cooking device installed in an approved manner.

Ordinance Nos. 4824 (1984); 5270 (1990).

10-2-12 **Light, Ventilation, Window And Door Standards.**

(a) Every habitable room in a dwelling shall have at least one window or a skylight facing directly to the outside. The city manager may approve an indirect means of supplying five foot-candles of illumination to such rooms, except for sleeping rooms, without direct opening to the exterior, if ventilation is provided as required by subsection (c) of this section.

(b) Every public hall or stairway in or leading into every multiple dwelling shall have a minimum of five foot-candles of illumination measurable with a standard light meter at floor level in halls and tread levels on stairways, at all times when the structure is occupied. This requirement does not apply when there is a power outage to the building. If an emergency lighting system is required or installed within the building, it must be in sound condition.

(c) Every habitable room within a dwelling shall be provided with at least one window or skylight, openable or vented directly to outside air or other comparable means of mechanical or natural ventilation that is approved by recognized testing laboratories. Such facilities for ventilation shall present an area of contiguous air between the inside of the room and the outdoor space of not less than one square inch for each square foot of floor area for each habitable room.

(d) Every bathroom, shower room, or water closet compartment shall be provided with ventilation to the outside air of at least four square inches cross-sectional area of duct, at least one window openable to the outside exposing at least four square inches of outside air, or another approved mechanical, electrical, or natural means of providing comparable ventilation.

(e) Windows shall be soundly and adequately glazed, free from loose and broken glass and cracks that would cause physical injury to persons, allow the elements to enter the structure, or allow excessive heat loss from within. A single crack in glazing (other than a shower enclosure) which is securely contained in a frame and is not exposed to severe wind hazard may be duct taped or caulked if it has no exposed sharp edges and does not exceed twelve inches in length. All accessible windows shall be weatherstripped to prevent excessive air infiltration. Effective weather-stripping shall be installed and maintained or more extensive treatments such as operable or removable storm windows or double glazing which provide equivalent air infiltration reduction may be substituted.

(f) Exterior doors shall fit doorway openings and be weatherstripped in a manner that prevents excessive air infiltration, heat loss, and the entrance of the elements and vermin. Exterior doors shall be maintained free from cracks or breaks. All doors leading directly into a dwelling unit or rooming unit shall be provided with workable locks; but nothing in this section requires that entrances into common hallways or any other entrance that does not lead directly into a dwelling unit or rooming unit shall be locked.

(g) All basement hatchways, crawl space, or cellar openings shall be constructed so as to prevent the entrance of the elements and vermin and shall be maintained in a state to minimize the danger of physical injury.

Ordinance Nos. 5270 (1990); 5798 (1996).

10-2-13 **Egress Standards.**

(a) Every habitable space shall be provided with an unobstructed exit to the ground level. Every inside and outside stairway, every porch, and every appurtenance thereto shall be maintained and kept in sound condition.

(b) Doors, windows, corridors, stairways, fire escapes, and passageways serving as ordinary or emergency exit routes shall be free of stored or discarded material, and in no case shall such routes be obstructed or locked to persons within the building.

(c) In dwellings containing two or more inhabited floors:

(1) Inhabited second stories shall have two means of egress to ground level if the occupancy load of the second story is ten or more;

(2) Inhabited floors above the second story shall have no fewer than two means of egress to ground level regardless of the number of occupants, if they are rented separately from any lower levels of the structure; and

(3) All means of egress shall be equipped in a manner that obviates the need to jump or drop to the ground.

(d) Dwelling or rooming units located in basements or cellars shall be provided with two separate routes of egress; one of those means of egress may be for emergency use only. There shall be a minimum of ten feet of horizontal separation between each such egress.

(e) If any window is used or intended to be used for emergency egress in meeting the requirements of subsection (c) or (d) of this section, it shall be readily accessible and have minimum unobstructed dimensions of thirty inches in width and twenty-four inches in height or twenty-four inches in width and thirty inches in height, or shall meet the dimensional requirements for escape or rescue windows of the city building code, and shall lead to an open, unobstructed space at grade level.

(1) If any such window has a finished sill height more than forty-four inches above the floor, functional permanent steps shall be provided.

(2) If any such window exits into a window well, and the well is more than forty-four inches below grade level, functional permanent steps shall be provided.

(3) If any such window exits into a window well, the well shall have an unobstructed minimum head room clearance of thirty inches to an open exterior area, such as a yard or street.

(f) The main means of egress from each habitable room in a dwelling shall have an unobstructed height of at least six feet four inches.

Ordinance Nos. 5039 (1987); 5270 (1990).

10-2-14 **Minimum Space, Use, And Location Requirements.**

(a) Every dwelling unit shall contain at least one hundred fifty square feet of floor space for the first occupant thereof and at least one hundred additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area plus non-habitable room area up to a maximum of ten percent of the total required floor space. But this floor space requirement does not apply when the residents of a dwelling unit are members of a family.

(b) Every room occupied for sleeping purposes by one person shall contain at least seventy square feet of floor space and every room occupied for sleeping purposes by more than one person shall contain at least thirty square feet of floor space for each additional occupant thereof. The floor space shall be calculated on the basis of total habitable sleeping room area plus up to twenty-five percent of the area of a closet adjacent to such sleeping room.

(c) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet, and the floor area of the part of any room where the ceiling height is less than five feet shall not be considered as habitable area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(d) No basement or cellar space shall be let as a habitable room and no basement or cellar space shall be used as a dwelling unit or rooming unit unless:

(1) The floor, ceiling, and walls meet the standards as required by section 10-2-15, "Floors, Foundations, Walls And Ceilings," B.R.C. 1981;

(2) The total amount of light provided in each room equals at least the minimum amount of light as required in subsection 10-2-12(a), B.R.C. 1981;

(3) The facilities for ventilation in each room are equal to at least the minimum as required under subsection 10-2-12(c), B.R.C. 1981; and

(4) The floors and walls do not at any time admit any underground or surface run-off water and the floors and walls are finished in a way to eliminate dampness from condensation.

Ordinance Nos. 4824 (1984); 5270 (1990); 7416 (2005).

10-2-15 **Floors, Foundations, Walls And Ceilings.**

(a) Every foundation, floor, roof, ceiling, and exterior and interior wall shall be reasonably weathertight and watertight, kept in sound condition and capable of affording privacy for the occupants. All accessible seams, cracks, and joints where air infiltration may occur shall be caulked. Where it is observed that recent water damage in area has occurred to the interior, the city manager may require an inspection and repair recommendation by a licensed contractor. The city manager may require that recommended repairs, if any, be done. The city manager may accept a written statement from the operator that the leak has been repaired.

(b) Every foundation, roof, floor, exterior and interior wall, ceiling, inside and outside stair, and porch and appurtenance thereto shall be safe to use and capable of supporting the loads that normal use may cause to be placed thereon and shall be kept in sound condition.

(c) Floors, interior walls and ceilings, and all appurtenances thereto shall be secure and free of holes, cracks, breaks, dampness, and loose or peeling plaster that would admit or harbor insects and rodents, cause injury by tripping or cause injury from falling loose building materials.

(d) All holes cut in floor coverings for the passage of plumbing fixtures for pipes shall be sealed to prevent passage of vermin.

(e) Floor coverings that are torn or loose and located on a stairway or within three feet of any door threshold or stairway shall be removed or repaired in an acceptable manner to prevent tripping. Tears in excess of six inches in length and rising one-quarter inch or more above the floor surface in any location present a tripping hazard and shall be repaired.

(f) Floor coverings such as carpeting, tile, linoleum, and similar material shall be repaired or replaced when more than twenty-five percent of the floor covering area is severely deteriorated.

(g) The floor, walls, and ceiling of every bathroom and shower room shall have a smooth, impervious, and easily cleanable surface free from peeling paint for more than ten percent of each surface, breaks, cracks, holes, and makeshift repairs. But carpeting and other approved materials may be installed in a bathroom located within one dwelling unit, if such a bathroom is not shared by any rooming unit. No person shall use carpeting in communal bathrooms located within rooming houses or shared by rooming units.

Ordinance No. 5270 (1990).

10-2-16 **Food Preparation And Food Storage Areas.**

(a) Kitchen sink countertops, food preparation surfaces, cooking devices, and food storage areas shall be easily cleanable and shall be free from holes, breaks or cracks that leak or could cut or injure a person, and dampness that would permit the harborage of insects or promote the growth of bacteria.

(b) Carpeting may be used in kitchens contained within a dwelling unit but shall not be used in communal or shared kitchens located within rooming houses or serving rooming units.

Ordinance No. 5270 (1990).

10-2-17 **Safe Maintenance Of Utilities And Equipment.**

(a) All supplied facilities, pieces of equipment, or utilities in or about the premises of any dwelling unit shall be capable of performing their intended functions, shall not be constructed or installed in such a manner as to create a hazard to persons, and shall be maintained in sound condition. Nothing in this section shall be interpreted to require repair or replacement of dishwashers, compactors, washers, dryers, hot tubs, air conditioners, saunas, or other nonessential appliances that have been safely disconnected.

(b) Required exit doors from individual dwelling units and bedrooms may be provided with a night latch, deadbolt, or security chain, if such devices are openable from the inside without the use of a key or tool.

(c) Safe maintenance shall be provided for fireplaces and wood stoves. Safe maintenance includes, without limitation:

(1) Firebrick and flue maintained in sound condition;

(2) Operable damper;

(3) Chimney and flue chamber is free of defects or blockages;

(4) Where deterioration, such as loose, missing bricks, rusted holes, or serious defects of chimney or flue occurs above the roofline it shall be replaced or repaired to meet the requirements of the city building code; and

(5) Proper drafting to occur at all times when in use.

Ordinance No. 5270 (1990).

10-2-18 **Stairways And Guardrails.**

(a) Stairways used for egress routes for habitable rooms shall have at least six-foot-four-inch headroom, measured vertically from the tread level, and shall be maintained in a sound condition.

(b) Risers and treads shall be of uniform height and width within one-half inch maximum variance throughout any one flight. Except in those stairways leading to unused cellar or attic space, the rise of the steps in a stairway shall not exceed eight inches, and the tread shall not be less than nine inches in width, which may include a one-inch nosing.

(c) Every inside stairway and every outside stairway which contains four or more risers and is attached to or directly abutting a dwelling, except stairways providing access to unused cellar or attic space, shall be provided with one handrail securely fastened to the wall or to a sturdy balustrade. The handrail shall be placed at a uniform height not less than thirty inches nor more than thirty-eight inches above the nosing level.

(d) All unclosed floor and roof openings, open and glazed sides of landings, ramps, stairs, balconies or porches which are more than seven feet above grade or the floor below, and roofs used for other than service of the building, shall be protected by a guardrail. Guardrails shall be not less than twenty-four inches in height and shall be capable of supporting fifty pounds per linear foot applied horizontally to the top of the guardrail. If a guardrail requires more than fifty percent replacement or repair, the replacement or repair must meet the dimensions required by the city building code.

Ordinance No. 5270 (1990).

10-2-19 **Occupant's Responsibilities.**

(a) No occupant of a dwelling or rooming unit shall fail to maintain, and, upon departure, to leave that part of the dwelling and premises thereof, including basement facilities, that the occupant occupies and controls and that is provided for the occupant's use, in a clean and sanitary condition, free of litter, debris, and vermin.

(b) No occupant shall keep any animals or pets in a dwelling or rooming unit or on any premises in such a manner as to create unsanitary conditions, including, without limitation, accumulation of excrement.

(c) No occupant of a dwelling or rooming unit shall fail to dispose of all refuse, garbage, rubbish, and rubble that such occupant generates as required by chapter 6-3, "Trash," B.R.C. 1981.

(d) Subject to the limitation set forth in subsection (c) of this section, no occupant of a structure containing a single dwelling unit shall fail to exterminate any insects, rodents[1], or other pests in the premises over which such occupant has control, and no occupant of a dwelling unit in a structure containing more than one dwelling unit or rooming unit shall fail to perform such extermination whenever such occupant's dwelling unit or rooming unit is the unit primarily infested.

(e) No occupant of any rooming unit shall use or store in the unit any electrical hot plate or other cooking device.

(f) No occupant shall store any combustibles in a furnace or boiler room or water heater compartment.

(g) No occupant of a dwelling or rooming unit shall fail to maintain and keep all plumbing within such occupant's unit free from filth, debris, garbage, litter, decayed organic matter, soil, grease, obstruction to proper flow, or anything that may serve to attract or harbor vermin.

(h) No occupant shall install, use, or permit the installation or use of any makeshift non-stationary electrical outlets, makeshift outlets, tacked electrical extension cording, or makeshift electric wiring.

(i) No occupant shall permit the installation or use of an electrical extension cord from an electrical convenience outlet extending or passing from one room to another room.

(j) No occupant shall permit the installation or use of an electrical extension cord where foot traffic passes directly over it.

(k) No occupant shall permit the installation or use of an electrical extension cord across any doorway or through any wall or partition of any dwelling unit or room therein.

(l) No occupant shall install, use, or fail to remove any unvented fuel burning room heater from a dwelling or rooming unit.

(m) No occupant shall use as habitable space any area not approved for such use.

(n) No occupant of any rooming unit shall use or store in the unit any refrigerator or refrigerator-freezer or combined microwave and refrigerator-freezer unit in excess of three cubic feet of cooling and freezing space and then only if the electrical system of the entire building is adequate for all the electrical loads of the building.

(o) No occupant of any dwelling or rooming unit shall disable or disconnect a smoke detector required by this code.

Ordinance Nos. 5083 (1987); 5270 (1990); 5494 (1992); 5798 (1996); 5975 (1998).

10-2-20 Operator's Responsibilities.

(a) Every operator of a dwelling containing two or more dwelling units is jointly and severally responsible for maintaining the shared or public areas of the dwelling and premises thereof in a clean and sanitary condition and no such person shall fail to maintain such areas.

[1]For rodent control, see chapter 6-5, "Rodent Control," B.R.C. 1981.

(b) Whenever infestation[1] exists in two or more of the dwelling units in any dwelling, or in the shared or public part of any dwelling containing two or more dwelling units, all operators are jointly and severally responsible to exterminate the infestation.

(c) Notwithstanding provisions of subsections (a), (b), and (f) of this section, whenever infestation is caused by failure of an operator to maintain a dwelling in ratproof or reasonably insectproof conditions, all operators are jointly and severally responsible to exterminate the infestation.

(d) No operator shall store or allow to be stored any combustible or inflammable material in any furnace or boiler room or water heater compartment.

(e) No operator shall fail to prevent the use of hot plates or other cooking devices in any rooming unit.

(f) No operator shall fail to provide trash receptacles as required by chapter 6-3, "Trash," B.R.C. 1981.

(g) No operator shall fail to comply with the pre-application pesticide notification provisions of section 6-10-7, "Notification To Tenants And Employees Of Indoor Application," B.R.C. 1981.

(h) No operator shall provide, install, or permit the presence of a refrigerator or refrigerator-freezer or combined microwave and refrigerator-freezer unit larger than three cubic feet of cooling and freezing space in a rooming unit and then only if the electrical system of the entire building is adequate for all the electrical loads of the building.

(i) No operator shall provide, install, or permit the presence of any unvented fuel burning room heater in a dwelling or rooming unit.

(j) No operator of a property that is located in the floodplain shall fail to post on the exterior of the premises at the entrance a sign approved by the city manager stating that the property is subject to flood hazard and containing such further information and posted at such other locations inside the building as the manager may reasonably require.

Ordinance Nos. 5270 (1990); 5798 (1996); 5975 (1998).

10-2-21 **Rooming Houses.**

No person shall own and allow to be occupied or operate a rooming house, or shall occupy or let to another for occupancy any rooming unit, except in compliance with all provisions of this chapter; but subsection 10-2-7(b) and section 10-2-11, "Cooking Devices," B.R.C. 1981, do not apply to rooming houses or rooming units.

Ordinance No. 5270 (1990).

10-2-22 **Smoke Detectors Required In Dwelling Units.**

(a) Every dwelling or rooming unit not regulated under section 10-2-23, "Buildings Containing Multiple Units," B.R.C. 1981, shall have a smoke detector installed within every sleeping room within that dwelling unit. On floors of the unit which do not have a sleeping room, a smoke detector shall be installed in a hallway or in a room connected to a hallway by an opening which cannot be closed.

[1]For rodent control, see chapter 6-5, "Rodent Control," B.R.C. 1981.

(b) Such detectors may be:

(1) Battery operated; or

(2) Receive their primary power from the building wiring.

(c) Smoke detectors shall be located on the ceiling or on the walls of the room in which they are installed as required by the manufacturer's listing. Detectors under this section need not be interconnected.

(d) Smoke detectors required by this section shall be installed within each dwelling or rooming unit prior to issuance of a rental housing license pursuant to chapter 10-3, "Rental Licenses," B.R.C. 1981.

Ordinance No. 7189 (2002).

10-2-23 **Buildings Containing Multiple Units.**

This section applies to buildings containing three or more dwelling or rooming units. In addition to all provisions applicable to such a building, it shall also comply with the following requirements:

(a) Manual Fire Alarms In Larger Buildings:

(1) Manual fire alarms shall be installed in accordance with chapter 10-8, "Fire Prevention Code," B.R.C. 1981, in buildings covered by this section if:

(A) The building is three or more stories high; or

(B) The building contains more than fifteen dwelling units that are served by common corridors or exitways; or

(C) The building is a hotel or motel containing twenty or more guest rooms.

(2) The following buildings are excepted from this manual fire alarm requirement:

(A) A building, all of whose units exit directly to the outside to grade or onto an unenclosed exit balcony leading directly to grade.

(B) A building protected throughout by an automatic sprinkler system as provided for in subsection (l) of this section.

(b) Smoke Detectors In Common Corridors Of Smaller Buildings: Buildings not required by subsection (a) of this section to have manual fire alarms **shall** have smoke detectors and alarms which receive their primary power from the building wiring installed within all common corridors of the building in accordance with the following specifications:

(1) The spacing between detectors shall not exceed thirty feet. The maximum spacing from any exit door or stair shaft enclosure shall not exceed fifteen feet. Ceiling projections and corridor arrangement shall be considered in locating smoke detectors for maximum effectiveness.

(2) When more than one corridor detector is required for any building, the corridor detectors in that building shall be interconnected, and when activated shall sound an alarm throughout all corridors in the building.

(3) Smoke detectors shall be installed without a disconnecting switch other than that required for overcurrent protection.

(4) Smoke detectors shall be installed as described above no later than January 1, 1993.

(c) Smoke Detectors In Units:

(1) Detectors In Rooms: Each dwelling unit, hotel/motel sleeping room, and rooming unit shall have located within it smoke detectors that are:

(A) Battery operated; or

(B) Receive their primary power from the building wiring.

(2) Installation Deadline: Smoke detectors required by this subsection shall be installed within each unit no later than January 1, 1993.

(3) Power For Detectors In Condominium Buildings:

(A) Smoke detectors which receive their primary power from the building wiring shall be installed within each condominium dwelling unit in the building in accordance with subparagraph (c)(4)(A) of this section, no later than January 1, 1997.

(B) Apartment buildings converting to condominium ownership shall have smoke detectors which receive their primary power from the building wiring installed in accordance with subparagraph (c)(4)(A) of this section, within thirty days of conversion.

(4) Location Of Smoke Detectors:

(A) Location Within Dwelling Units: Smoke detectors shall be located on the ceiling or on the walls of the unit as required by the manufacturer's listing and shall be audible from all sleeping rooms within the unit. Detectors installed within dwelling units under this paragraph need not be interconnected.

(B) Location Within Hotel/Motel Sleeping Rooms, Rooming Units, Or Efficiency Dwelling Units: Detectors shall be located on the ceiling or wall as required by the manufacturer's listing within the bedrooms.

(5) Inspection And Record-Keeping For Non-Condominium Buildings: Inspections are required to be conducted by the property owner or agent as follows:

(A) Battery-powered smoke detectors shall be tested for proper function on a semiannual basis. Batteries shall be replaced once each year. A record-keeping log book shall be maintained by the owner or agent indicating location of detector, date and result of inspection, and date of battery installation.

(B) Smoke detectors which receive their primary power from the building wiring shall be checked for good operating condition once each year.

(6) Log Book Made Available For Inspection:

(A) The city manager may inspect the required log books at any reasonable time to ensure owner compliance. If the certificates or log books are maintained off the premises, they shall be made available at the premises at the time of a rental inspection or at any other time on reasonable notice.

(B) If the city manager determines that the log books for battery-powered smoke detectors have been falsified, not maintained or not made available at time of inspection, the manager may, in a correction notice to the owner or agent, require the installation of smoke detectors which receive their primary power from the building wiring. The operator and any affected person may appeal the manager's determination to the board of building and fire code appeals within thirty days in the same manner as appeals may be taken for a notice of violation.

(d) Exit Signs: Exit signs in common corridors shall be provided in buildings with more than one required exit. Letters on signs shall be in block letters, six inches in height, with a stroke of not less than three-quarters of an inch.

(e) Emergency Battery Pack Lighting: Every public space, hallway, stairway, and other means of egress shall be illuminated by means of emergency lighting in buildings with more than twelve dwelling units or greater than three stories in height. Dwelling units with a direct exit to the outside to grade or onto an unenclosed exit balcony leading directly to grade shall not be counted in determining the number of units under this subsection.

(f) Portable Fire Extinguisher: One portable fire extinguisher of a minimum size and rating of "2A-10BC" shall be provided in each common boiler and furnace room, and within each common kitchen used by the tenants.

(g) Common Corridors:

(1) Walls And Ceiling Construction: Interior public exit corridors serving five or more dwelling units shall have corridor walls free of holes or penetrations except for door openings. Ceilings shall be free of holes or penetrations other than those needed for existing lighting.

(2) Doors Within Corridors: Doors opening onto interior public exit corridors but not regulated by subsection (h) of this section shall have a fire protection rating of not less than twenty minutes or be a one-and-three-quarter-inch thick solid core door. Glazed openings in doors shall be of fixed wired glass supported on all sides. Doors shall be self-closing and equipped with self-latching devices for keeping doors tightly closed.

(3) Requirements: The requirements of this subsection do not apply to buildings protected throughout by an automatic sprinkler system, designed and installed in accordance with chapter 10-8, "Fire Prevention Code," B.R.C. 1981, or as provided in subsection (l) of this section.

(h) Vertical Openings, Construction, And Protection:

(1) Stair Shafts: Stair shafts and other openings extending vertically through floors shall be enclosed in a shaft of fire-resistive construction with at least a one hour rating. Such enclosure is not required for openings which serve only one adjacent floor and are not connected with openings serving other floors, or are within individual dwelling units.

(2) Opening Protection: Every opening into a shaft enclosure shall be protected by self-closing fire doors and assemblies having a fire protection rating of one hour.

(3) Requirements: The requirements of this subsection do not apply to buildings protected throughout by an automatic sprinkler system, designed and installed in accordance with chapter 10-8, "Fire Prevention Code," B.R.C. 1981, except when the vertical enclosure is already in existence as described above, the enclosure's fire rated integrity shall continue to be maintained as previously installed and approved, or as provided for in subsection (l) of this section.

(i) Hazardous Areas: Common boiler, furnace, and water heater rooms, laundries, and repair or maintenance shops shall comply with one of the following:

(1) Have a fire resistance rating of at least one hour, and openings shall be protected by self-closing and self-latching fire doors with a fire protection rating of at least three-quarters of an hour;

(2) Be protected by automatic sprinklers designed and installed in accordance with chapter 10-8, "Fire Prevention Code," B.R.C. 1981, or as provided for in subsection (l) of this section; or

(3) Have heat detectors whose rating does not exceed one hundred thirty-five degrees Fahrenheit installed within each such room above the appliance with the highest heating capacity, or if there is no heating appliance then centrally located within the room, interconnected to an audible alarm in every common corridor in the building. If no common corridor exists then the audible alarm shall be located in each unit abutting the hazardous area.

(j) Sprinkler Systems: Sprinkler systems, if provided or required to be provided by any provision of this code, shall be fully operational at all times. Such systems shall not be compromised, shut off or tampered with without first notifying, and receiving approval from, the city manager. Approval shall only be given for repairs, remodelling, testing, or maintenance, and then only for a reasonable period of time.

(k) Interior Finish: Wood, carpet, and materials of Class III flame-spread rating are prohibited as a covering on walls and ceilings of interior public corridors serving five or more dwelling units and vertical stair shafts serving these corridors. The requirements of this subsection do not apply if the building is protected throughout by an automatic sprinkler system, or as provided for in subsection (l) of this section, or capable of being protected by the application of intumescent covering material or finish.

(l) Exceptions: Buildings in the process of installing a sprinkler system at the time of a rental license inspection or within the term of the new rental licensing period need not comply with the provisions in subsections (a), (g), (h), (i), and (k) of this section, if the owner provides the city manager with a written statement that identifies the date of completion of the sprinkler system installation as being within the new license period. The city manager shall evaluate the reasonableness of the proposed date of completion of the sprinkler system installation based upon the size of the structure or complexity of proposed installation, and either approve the date proposed or specify an earlier date. A requirement of an earlier date of completion may be appealed to the board of appeals. Failure to have the sprinklers installed by the approved date, or the expiration of the rental license, whichever comes first, requires the owner to comply with the original correction notice within thirty days.

(m) Historic Structures: Individually landmarked structures and contributing structures in designated historic districts under chapter 10-13, "Historic Preservation," B.R.C. 1981, need not comply with subsections (g), (h) and (k) of this section if a sprinkler system complying with the coverage requirements of the International Building Code, as adopted in this title, has been installed throughout the building. But for individual dwelling or rooming units, such system need only provide coverage by a single sprinkler head placed immediately inside a door to such unit which exits into a common area. Nothing in this section permits a reduction in fire resistance in such structures, or reduces requirements found in other sections of this code.

Ordinance Nos. 5494 (1992); 5798 (1996); 7189 (2002).

10-2-24 **Manager May Record Notices With Clerk And Recorder.**

(a) When the city manager finds that there is a violation of this chapter, the manager may record a notice to that effect with the Boulder County Clerk and Recorder against the title of the land upon which the dwelling is built. When the condition upon which the notice described in the record was based has been corrected, the manager, upon demand of an interested person, shall provide a written release.

(b) If the city manager determines, after inspection, notice of violation, and opportunity for appeal under this chapter, that a room in a dwelling does not meet the requirements of this chapter for a habitable room and that the location or design of the room might lead a reasonable person to believe that the room was habitable under this chapter, the manager may record a notice that such room is not habitable with the Boulder County Clerk and Recorder against the title of the land upon which the dwelling is built.

Ordinance Nos. 5270 (1990); 7189 (2002).

10-2-25 **Authority To Issue Rules.**

The city manager may adopt reasonable rules to implement the provisions of this chapter.

Ordinance Nos. 5270 (1990); 7189 (2002).

10-2-26 **Penalty.**

The penalty for violation of any provision of this chapter is a fine of $2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

Ordinance Nos. 5494 (1992); 5798 (1996); 7189 (2002).

TITLE 10 STRUCTURES

Chapter 2.5 Abatement Of Public Nuisances[1]

Section:

10-2.5-1 Legislative Findings And Statement Of Purpose.

The city council of the City of Boulder, Colorado, hereby makes the following legislative findings and determinations of fact:

(a) The Boulder Revised Code presently contains various provisions enacted under the police power of the city which are intended to maintain order and promote the health, safety and welfare of the residents of the city.

(b) Existing code provisions are directed towards the conduct of persons on private property, and are intended to ensure that neither the conduct of such persons, nor the physical condition of such properties, constitutes a nuisance to other residents in the vicinity of the properties or passers-by on the public rights-of-way.

(c) Various code provisions, including those pertaining to unreasonable noise, trash, litter, assault, brawling and harassment, are enforced by the filing of criminal prosecutions against the persons immediately responsible for violations of the same.

(d) Notwithstanding these enforcement efforts, recurring code violations on parcels of property in the city can result in the creation of public nuisances on such properties which seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city.

(e) Public nuisance laws exist under the state statutes, but such laws are enforceable only in the state courts and not in the municipal court.

(f) Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public nuisances.

[1]Adopted by Ordinance No. 7156.

(g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.

(h) It is necessary and desirable in the public interest to enact a local public nuisance law in order to: eliminate local public nuisances by removing parcels of real property in the city from a condition that consistently and repeatedly violates municipal law; make property owners vigilant in preventing public nuisances on or in their property; make property owners responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and otherwise deter public nuisances.

(i) The purpose of this chapter is to enact such a local public nuisance law.

(j) Premises governed by the *Colorado Beer Code* and *Colorado Liquor Code* need not be regulated by the provisions of this chapter, because regulations promulgated under articles 46, 47 and 48 of title 12 of the Colorado Revised Statutes establish adequate local remedies to address recurring disturbances or other activities occurring on such premises which are offensive to the residents of the neighborhood in which such licensed establishments are located.

10-2.5-2 **Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Abate" means to bring to a halt, eliminate, or, where that is not possible or feasible, to suppress, reduce and minimize.

"Leasehold interest" means a lessor's or lessee's interest in real property under a verbal or written lease agreement.

"Legal or equitable interest" means every legal and equitable interest, title, estate, tenancy and right of possession recognized by law or equity, including, but not limited to, freeholds, life estates, future interests, condominium rights, timeshare rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.

"Notice of violation" means a written notice advising the owner and tenant or occupant of a parcel that the parcel, such persons, and other affected persons may be subject to proceedings under this chapter if the remaining number of separate violations needed to declare the parcel a public nuisance under this chapter occur in or on the parcel within the required period of time. Such written notice shall be deemed sufficient if sent by first class mail or certified mail to the parcel, addressed to the owner by name and to all tenants and occupants and to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Each notice of violation shall be limited to one separate date or range of dates of violation. Although each notice of violation may list a number of specific code violations on a particular date or range of dates, it shall count as notice of a single violation for the purpose of establishing the separate violations needed to declare the parcel a public nuisance.

"Ownership interest" means a fee interest in title to real property.

"Parcel" means any lot or other unit of real property, including, without limitation, individual apartment units, or any combination of contiguous lots or units owned by the same person or persons.

"Public nuisance" means the condition or use of any parcel on or in which two or more separate violations have occurred within the preceding twelve-month period between August 1 and continuing through July 31 of each year or three or more separate violations have occurred within any period of twenty-four consecutive months, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or of passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel. However, this definition of "public nuisance" is subject to the defenses set forth in paragraph 10-2.5-8(a)(2), B.R.C. 1981. Also, a public nuisance is not established when the only person annoyed is a law enforcement officer engaged in carrying out official duties.

"Relative" means an individual related as a member of a "family" as "family" is defined in section 1-2-1, "Definitions," B.R.C. 1981.

"Separate violation" means any act or omission that constitutes a violation of the Boulder Revised Code, or state criminal law with the exception of traffic offenses and offenses in which the resident of the parcel is a crime victim, provided that: an ongoing and uninterrupted violation shall be deemed to have been committed only on the last day during which all the necessary elements of the violation existed; multiple violations committed within any twenty-four-hour period of time on or in the same parcel shall be considered a single separate violation, irrespective of whether the violations are otherwise related to each other by some underlying unity of purpose or scheme; and violations that are first reported to a city police or code enforcement officer by a person having an ownership or leasehold interest in any parcel, or having a contractual obligation to manage such parcel, or occupying such parcel shall not be deemed violations under this chapter. It is not necessary that a criminal prosecution has been initiated in order to establish that a violation has occurred.

Ordinance Nos. 7416 (2005); 7428 (2005); 7515[1] (2007).

10-2.5-3 **Nature Of Remedies.**

The remedies provided in this chapter shall be civil and remedial in nature except that, if any person knowingly fails or refuses to abide by a temporary or permanent abatement order issued by the municipal court under the provisions of this chapter, such person shall be guilty of a misdemeanor.

10-2.5-4 **Nuisance Prohibited.**

No person having an ownership or leasehold interest in any parcel, or having a contractual obligation to manage such parcel, or occupying such parcel, shall commit, conduct, promote, facilitate, permit, fail to prevent or otherwise let happen, any public nuisance in or on such parcel. Such persons shall abate any public nuisance upon the parcel and prevent any public nuisance from occurring on the parcel.

10-2.5-5 **Procedures In General.**

(a) The municipal court is vested with the jurisdiction, duties and powers to hear and decide all causes arising under this chapter, and to provide the remedies specified herein.

(b) Any civil action commenced pursuant to the provisions of this chapter shall be in the nature of a special statutory proceeding. All issues of fact and law in such civil actions shall be tried to the court without a jury. No equitable defenses may be set up or maintained in any such

[1]This ordinance shall be of no further force and effect on April 30, 2009, unless action is taken by the city council to extend or make permanent the amendments enacted by this ordinance.

action except as provided specifically in this chapter. Injunctive remedies under this chapter may be directed toward the parcel or toward a particular person.

(c) Public nuisances as defined by this chapter shall be strict liability violations. No culpable mental state shall be required to establish a public nuisance under this chapter or to obtain court approval for remedies provided by this chapter. However, if a separate violation is used by the city to establish the existence of a public nuisance that has not been previously adjudicated, all of the elements of such separate violation, including any culpable mental state required for the commission of such separate violation, must be established by the city by a preponderance of the evidence at the trial on the merits of any civil action commenced pursuant to the provisions of this chapter.

(d) Proceedings pursuant to the provisions of this chapter shall generally be governed by the Colorado Rules of County Court Civil Procedure unless this chapter provides a more specific rule, provided, however, that with respect to the rules related to injunctions, Rule 65 of the Colorado Rules of Civil Procedure shall control rather than Rule 365 of the Colorado Rules of County Court Civil Procedure. Where this chapter, the Colorado Rules of Civil Procedure, or the Colorado Rules of County Court Civil Procedure fail to state a rule of decision, the court shall first look to the Public Nuisance Abatement Act, section 16-13-301 et seq., C.R.S., and the cases decided thereunder.

(e) Actions pursuant to the provisions of this chapter shall be filed by the office of the city attorney for the city or by such other legal council as the city attorney may designate to represent the city.

(f) In the event that the city pursues any criminal penalties provided in any other section of this code, any other civil remedies, or the remedies of any administrative action, the remedies in this chapter shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action initiated pursuant to this chapter agree otherwise.

(g) An action brought pursuant to the provisions of this chapter may be consolidated with another civil action brought pursuant to the provisions of this chapter that involves the same parcel of real property. However, such actions shall not be consolidated with any other civil or criminal action except upon the stipulation of all parties. No party may file any counter-claim, cross-claim, third-party claim or setoff of any kind in any action pursuant to the provisions of this chapter.

10-2.5-6 **Required Procedures Prior To Commencement Of Public Nuisance Action.**

(a) No action shall be brought pursuant to the provisions of this chapter until the following procedures have been utilized:

(1) Following the first violation that serves as the basis for a nuisance abatement action, written notice of violation shall be given by the city manager to the owner of the parcel at which the nuisance conditions occurred.

(A) The notice shall be personally served upon the owner or served by certified mail to the parcel, addressed to the owner by name, mailed to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Personal service or service by mail shall be given no later than thirty days following the date of the violation.

(B) The notice shall specify the nature of the nuisance, the date or dates of the nuisance, and the provision of the Boulder Revised Code that was violated. When a nuisance occurred

at a multi-unit building, the city manager shall identify the unit or units involved in the problem.

(C) The city manager shall also send copies of the notice to tenants or others if, in the judgment of the city manager, notice to such additional persons will assist in abatement of nuisance conditions.

(D) The notice may be accompanied by educational materials which, in the judgment of the city manager, will be of assistance to responsible parties in abating and avoiding nuisance conditions.

(E) No notice shall be given pursuant to this provision, nor shall any event be utilized as a "first incident" for the purpose of bringing a nuisance abatement action, unless the city manager determines that such incident properly could serve as the basis of the filing of a criminal case in municipal court.

(2) Following a second violation within a twelve-month period, or a third violation within a twenty-four-month period, but prior to the filing of a nuisance abatement action based upon those violations, the city manager shall schedule a settlement meeting involving all persons who will be named as party-defendants in any nuisance abatement proceeding based upon those incidents.

(A) No meeting shall be set up based upon any incident unless the city manager, in the exercise of due diligence, determines that there is reasonable cause to believe that a violation or problem that could trigger the nuisance abatement process has occurred.

(B) Notice of the meeting may be given by personal service, by first class mail confirmed by a telephonic communication with the person to whom notice is provided, or by any other means so long as it can be established that notice of the meeting was actually received by the party to whom such notice was provided. Notice shall be provided within thirty days of the date of the final violation that serves as the basis for the meeting.

(C) Landlords, tenants, residents and others whose corrective action is deemed necessary by the city manager in order to resolve nuisance conditions will be asked to attend the settlement meeting. Owners of rental properties may participate in such meetings through representatives legally authorized to enter into voluntary compliance agreements on behalf of those owners.

(D) Neighbors, victims and others may also be invited to attend such meetings. However, attendance of such persons will not be required. When victims and impacted neighbors do not choose to attend such meetings, the city manager will attempt to determine the impact of nuisance conditions upon such persons and present that information at the meeting.

(E) The scheduling, location and format of settlement meetings will be determined by the city manager in a manner that the city manager believes will be best suited resolving the problem. The city manager may utilize mediators, facilitators, and other experts (including community volunteers) to assist in the resolution of the problem.

(F) The desired outcome of the settlement meeting will be to obtain a voluntary compliance agreement, in which relevant parties agree to take corrective action to abate and avoid nuisance conditions.

(G) If no voluntary compliance agreement is achieved or, if such agreement is achieved and thereafter the city manager determines that a party has failed to comply with the terms of such agreement to the city manager's sole satisfaction, or if an owner fails to attend a

scheduled settlement meeting to which they have been invited, the matter may be referred to the city attorney for evaluation and potential filing of a nuisance abatement action. Proof of violation of the voluntary compliance agreement shall not be required to establish the existence of a public nuisance.

(b) Upon receipt of a referral for nuisance abatement, the city attorney shall evaluate the case and determine whether or not to initiate a court action. In evaluating such a case, the city attorney may consider, without limitation, the following factors:

(1) The level of cooperation of potential parties in attempting to resolve issues;

(2) The level of disturbance associated with the violations and the impact of those violations upon neighbors or other victims;

(3) The degree to which potential parties to the nuisance abatement action have taken reasonable steps to try and resolve the problem;

(4) The existence or non-existence of prior cases or incidents in which potential parties to a nuisance abatement action have been involved and the nature of that involvement;

(5) The percentage of units in a multi-unit housing context in which problems have occurred;

(6) The existence or non-existence, within a multi-unit housing context, of a condominium association or other internal governing body or management structure that might provide an avenue for relief of the problem and the probability that such governing body or management structure will be able to resolve the problem;

(7) The existence of any equitable, factual, legal, ethical, or other consideration of the type that would normally be considered by an attorney when deciding whether or not to file a civil action;

(8) The availability of resources required for the prosecution of the potential case;

(9) The availability of any other enforcement tools that might be better suited to resolution of the particular problem; and

(10) The probability of prevailing at a trial on the matter.

(c) Notwithstanding the settlement meeting and case evaluation procedures described in paragraph (a)(2) and subsection (b) of this section, the city manager may request that the city attorney file a nuisance abatement action immediately if, in the city manager's judgment, facts exist to support a sworn statement that a public nuisance posing an immediate threat to the public safety is in existence as a result of the condition or use of parcel in question. The city attorney shall file such an action only if he or she concurs with the city manager's request. The city manager and the city attorney may consult with the city council on such actions. For the purposes of this subsection (c), "threat to the public safety" shall include only those violations that involve actual or threatened physical violence directed at persons or animals, substantial property damage, or other specific acts that harm or threaten to harm human health or human safety.

Ordinance No. 7515[1] (2007).

[1]This ordinance shall be of no further force and effect on April 30, 2009, unless action is taken by the city council to extend or make permanent the amendments enacted by this ordinance.

10-2.5-7 **Commencement Of Public Nuisance Actions; Prior Notification.**

(a) Notification is required before filing civil actions pursuant to the provisions of this chapter as follows:

(1) At least ten calendar days before filing a civil action pursuant to the provisions of this chapter, a notice to the owner and occupants of the parcel shall be posted at some prominent place on the parcel. A notice shall also be mailed to the owner of the parcel. The mailing of the notice shall be deemed sufficient if mailed by certified mail to the owner at the address shown of record relating to the parcel for such owner in the records of the Boulder County Assessor. The posted and mailed notices shall state that the parcel has been identified as the location of an alleged public nuisance and that a civil action pursuant to the provisions of this chapter may be filed.

(2) Agents of the city are authorized to enter upon the parcel for the purpose of posting these notices and to affix the notice in any reasonable manner to buildings and structures.

(3) The city shall not be required to post or mail any notice specified herein before filing a civil action if it determines that any of the following conditions exist; however, the city will provide such notice as soon as reasonably possible after filing a civil action, and, if notice has not been provided earlier, shall provide such notice before any fine or other liability is imposed:

(A) The public nuisance poses an immediate threat to public safety;

(B) Notice would jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or

(C) Any other emergency circumstance exists.

(b) An action pursuant to the provisions of this chapter shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit, which may be accompanied by a motion for a temporary abatement order, through and in the name of the city attorney. Any complaint filed pursuant to subsection 10-2.5-6(c), B.R.C. 1981, without a settlement meeting or case evaluation shall include an affidavit or declaration attesting under penalty of perjury to the facts establishing the immediate threat to public safety.

(1) The parties-defendant to an action commenced under the provisions of this chapter and the persons liable for the remedies provided by this chapter may include the parcel of real property itself, any person owning or claiming any ownership or leasehold interest in the parcel, all tenants and occupants of the parcel, all managers and agents for any person claiming an ownership or leasehold interest in the parcel, any person committing, conducting, promoting, facilitating or aiding in the commission of a public nuisance, and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders. None of these parties shall be deemed necessary or indispensable parties. Any person holding any legal or equitable interest in the parcel who has not been named as a party-defendant may intervene as a party-defendant. No other person may intervene.

(2) The parties-defendant shall be served as provided in the Colorado Rules of Civil Procedure for other civil actions except as otherwise provided in this chapter.

(3) The summons, complaint and, if applicable, temporary abatement order shall be served upon the real property itself by posting copies of the same in some prominent place on the parcel.

Ordinance No. 7515[1] (2007).

10-2.5-8 Effect Of Abatement Efforts; Defense To Action.

(a) If a person named as a party-defendant is the owner of a parcel of real property and is leasing the parcel to one or more tenants, or the person named has been hired by the owner of the parcel to manage and lease the parcel, and the separate violations which constitute the alleged public nuisance were committed by one or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter that said person has:

(1) Evicted, or attempted to evict by commencing and pursuing with due diligence appropriate court proceedings, all of the tenants and occupants of the parcel that committed each of the separate violations that constitute the alleged public nuisance; and

(2) Has, considering the nature and extent of the separate violations, undertaken and pursued with due diligence, reasonable means to avoid a recurrence of similar violations on the parcel by the present and future tenants or occupants of the parcel.

(b) The defenses set forth in subsection (a) of this section shall not be available to any person who fails to attend a settlement meeting set up by the city manager prior to the filing of a nuisance abatement action.

(c) If, in the judgment of the city manager, a person who has received a notice of violation has established sufficient grounds to assert a defense to an action under subsection (a) of this section, the separate violation which was the subject of the notice of violation shall no longer be considered a separate violation within the meaning of this chapter. Nothing herein shall be construed to prohibit the introduction of evidence of said separate violation at a subsequent court proceeding, if a public nuisance action is commenced on the basis of additional separate violations, for the purpose of determining whether the defendants named in such action have undertaken and pursued with due diligence reasonable means to avoid a recurrence of similar violations on the parcel of real property by the present and future tenants or occupants of the parcel.

(d) Except as provided in subsection (a) of this section, the fact that a defendant took steps to abate the public nuisance after receiving the notice of its existence does not constitute a defense to an action brought pursuant to the provisions of this chapter.

10-2.5-9 Court Directed Settlement Procedure.

(a) After a nuisance abatement action is filed pursuant to the provisions of this chapter, any party may file with the court clerk and serve a request for a court settlement conference, together with a notice for setting of such request. The court shall grant such request if, in its judgment, a settlement conference is appropriate under the particular circumstances. The court shall not grant any such request over the objection of the city attorney if the action is filed pursuant to subsection 10-2.5-6(c), B.R.C. 1981, due to the city manager's determination of an immediate threat to public safety.

(b) At any time prior to trial, the court may, without a request of the parties, order that a settlement conference be held.

[1]This ordinance shall be of no further force and effect on April 30, 2009, unless action is taken by the city council to extend or make permanent the amendments enacted by this ordinance, with the exception of the amendments to paragraphs 10-2.5-7(a)(1) and (a)(3), B.R.C. 1981, pertaining to enhanced notice.

(c) Any settlement conference held pursuant to the provisions of subsection (a) or (b) of this section shall be conducted as follows:

(1) The court settlement conference shall, if the request is granted, be conducted by any available judge other than the judge assigned to handle a trial in the matter, or by such other settlement officer, referee or mediator as may be selected by the court for such purpose.

(2) All discussions at the settlement conference shall remain confidential and shall not be disclosed to the judge who presides at trial.

(3) Statements at the settlement conference shall not be admissible evidence for any purpose at the trial of the matter or in any other proceeding.

(d) Settlement conferences, when held, shall be provided without special costs to the parties except in the following circumstances:

(1) With court approval, the parties may agree to retain the services of a particular mediator or settlement officer to assist with settlement discussions. In this event, the parties must agree to pay for the services of such outside settlement facilitator and must agree about the terms of such payment.

(2) In the event that any party failed to participate in a pre-filing settlement meeting pursuant to the provisions of paragraph 10-2.5-6(a)(2), B.R.C. 1981, the court may order such party to pay up to one-half of the reasonable costs or value of court-ordered settlement procedures.

Ordinance No. 7515[1] (2007).

10-2.5-10 **Abatement Orders.**

(a) Issuance And Effect Of Temporary And Permanent Abatement Orders: The issuance of temporary or permanent abatement orders under this chapter shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders, preliminary injunctions, and permanent injunctions, except to the extent of any inconsistency with the provisions of this chapter, in which event the provisions of this chapter shall prevail. Temporary abatement orders provided for in this chapter shall go into effect immediately when served upon the property or party against whom they are directed. Permanent abatement orders shall go into effect as determined by the court. No bond or other security shall be required of the city.

(b) Form And Scope Of Abatement Orders: Every abatement order under this chapter shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in

(see following page for continuation of Section 10-2.5-10)

[1]This ordinance shall be of no further force and effect on April 30, 2009, unless action is taken by the city council to extend or make permanent the amendments enacted by this ordinance.

reasonable detail the acts and conditions authorized, required or prohibited; and shall be binding upon the parcel, the parties to the action, their attorneys, agents and employees, and any other person named as a party-defendant in the public nuisance action and served with a copy of the order.

(c) Substance Of Abatement Orders: Temporary or permanent abatement orders entered pursuant to the provisions of this chapter shall be narrowly tailored to address the particular kinds of separate violations that form the basis of the alleged public nuisance. Such orders may include:

(1) Requiring any parties-defendant to take steps to abate the public nuisance;

(2) Authorizing the city manager to take reasonable steps to abate the public nuisance activity and prevent it from recurring, considering the nature and extent of the separate violations;

(3) Requiring certain named individuals to stay away from the parcel at all times or for some specific period of time;

(4) Issuing any order that is reasonably necessary to access, maintain or safeguard the parcel; and

(5) Issuing any order that is reasonably necessary for the purposes of abating the public nuisance or preventing the public nuisance from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to, or the temporary or permanent closure of, a parcel, or the appointment of a special receiver to protect, possess, maintain, or operate a parcel.

(d) Temporary Abatement Orders:

(1) The purpose of a temporary abatement order shall be to abate temporarily an alleged public nuisance pending the final determination of a public nuisance. A temporary abatement order may be issued by the court pursuant to the provisions of this section even if the effect of such order is to change, rather than preserve, the status quo.

(2) At any hearing on a motion for a temporary abatement order, the city shall have the burden of proving that there are reasonable grounds to believe that a public nuisance occurred in or on the parcel and, in the case of a temporary order granted without notice to the party-defendants, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the court may consider whether an affirmative defense may exist under any of the provisions of this chapter.

(3) At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the court shall temper the rules of evidence and admit hearsay evidence unless the court finds that such evidence is not reasonably reliable and trustworthy. The court may also consider the facts alleged in the verified complaint or in any affidavit submitted in support of the complaint or motion for temporary abatement order.

(e) Permanent Abatement Orders:

(1) At the trial on the merits of a civil action commenced under this chapter, the city shall have the burden of proving by a preponderance of the evidence that a public nuisance occurred on or in the parcel identified in the complaint. At such trial, the city must also prove, by a preponderance of the evidence, any separate violations asserted as grounds for

the public nuisance action that have not been previously adjudicated. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

(2) Where the existence of a public nuisance is established in a civil action pursuant to the provisions of this chapter after a trial on the merits, the court shall enter a permanent abatement order requiring the parties-defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring or recurring on the parcel or in using the parcel.

(f) Violation Of An Abatement Order:

(1) No person shall fail to comply with any abatement order issued pursuant to the provisions of this chapter. Each day that a person is in violation of any such abatement order shall constitute a separate violation of these provisions.

(2) Whether or not a prosecution is brought pursuant to paragraph (1) of this subsection, the municipal court shall retain full authority to enforce its abatement orders by the use of its contempt powers. In a contempt proceeding brought as a result of violation of an abatement order issued pursuant to this chapter, the municipal court may, in its discretion, treat each day during which a party is in violation of an abatement order as a separate act of contempt.

10-2.5-11 **Attorney's Fees.**

(a) Other than as specifically provided by this section, attorney's fees shall not be awarded to any party in a nuisance abatement proceeding brought pursuant to the provisions of this chapter.

(b) Attorney's fees may be awarded at the discretion of the court under the following circumstances:

(1) Where there has been a judicial finding of the existence of a nuisance, as defined by the provisions of this chapter, whether such finding is made at trial or as part of a settlement in advance of a trial; and

(2) When the party found to be responsible for the nuisance failed to attend a settlement meeting set up by the city manager pursuant to paragraph 10-2.5-6(a)(2), B.R.C. 1981.

10-2.5-12 **Motion To Vacate Or Modify Temporary Abatement Orders.**

(a) Timing Of Motion To Vacate Temporary Order: At any time a temporary abatement order is in effect, any party-defendant or any person holding any legal or equitable interest in any parcel governed by such an order may file a motion to vacate or modify said order. Any motion filed under this subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

(b) Standard Of Proof For Vacation Of Temporary Order: The court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance was committed in or on the parcel. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the separate violations.

(c) Continuance Of Hearing: The court shall not grant a continuance of any hearing set under this section unless all the parties so stipulate.

(d) Consolidation Of Hearing With Other Proceedings: If all parties consent, the court may order the trial on the merits to be advanced and tried with the hearing on these motions.

10-2.5-13 Civil Judgment.

In any case in which a public nuisance is established, in addition to a permanent abatement order, the court may impose a separate civil judgment on every party-defendant who committed, conducted, promoted, facilitated, permitted, failed to prevent, or otherwise let happen any public nuisance in or on the parcel that is the subject of the public nuisance action. This civil judgment shall be for the purpose of compensating the city for the costs it incurs in pursuing the remedies pursuant to the provisions of this chapter, and shall not be punitive in nature. For the purpose of this section, costs include expenses of the type detailed in section 13-16-122, C.R.S.

10-2.5-14 Supplementary Remedies For Public Nuisances.

In any action filed under the provisions of this chapter, in the event that any one of the parties fails, neglects or refuses to comply with an order of the court, the court may, upon the motion of the city, in addition to or in the alternative to the remedy of contempt and the possibility of criminal prosecution, permit the city to enter upon the parcel of real property and abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts required of the defendants in the court's orders.

10-2.5-15 Stipulated Alternative Remedies.

(a) The city and any party-defendant to an action pursuant to the provisions of this chapter may voluntarily stipulate to orders and remedies, temporary or permanent, that are different from those provided in this chapter.

(b) The court shall make such stipulations for alternative remedies an order of the court and they shall be enforceable as an order of the court.

10-2.5-16 Remedies Under Other Laws Unaffected.

Nothing in this chapter shall be construed as limiting or forbidding the city or any other person from pursuing any other remedies available at law or in equity, or requiring that evidence or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this chapter.

10-2.5-17 Limitation Of Actions.

Actions pursuant to the provisions of this chapter shall be filed no later than one year after the final public nuisance incident that serves as the basis for the bringing of an action pursuant to this chapter. This limitation shall not be construed to limit the introduction of evidence of any other separate violations that occurred more than one year before the filing of the complaint for the purpose of establishing the existence of a public nuisance or when relevant for any other purpose.

10-2.5-18

10-2.5-18 **Effect Of Property Conveyance.**

When title to a parcel is conveyed from one person to another, any separate violation existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance exists with respect to such parcel, shall not be so used unless a reason for the conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions of this chapter. It shall be a rebuttable presumption that a reason for the conveyance of the parcel was to avoid the parcel from being declared a public nuisance pursuant to the provisions of this chapter if: a) the parcel was conveyed for less than fair market value; b) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person conveying the parcel; or c) the parcel was conveyed to a relative of the person conveying the parcel.

TITLE 10 STRUCTURES

Chapter 3 Rental Licenses[1]

Section:

10-3-1 Legislative Intent.

This chapter provides for comprehensive enforcement of chapter 10-2, "Housing Code," B.R.C. 1981, by establishing a system of rental licenses for all dwelling and rooming accommodations in the city that are rented to tenants.

Ordinance No. 5798 (1996).

10-3-2 Rental License Required Prior To Occupancy And License Exemptions.

(a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.

(b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.

(1) Any dwelling unit occupied by the owner, or members of the owner's family and housing no more than two roomers who are unrelated to the owner or the owner's family.

(2) A dwelling unit meeting all of the following conditions:

(A) The dwelling unit constitutes the owner's principal residence;

(B) The dwelling unit is temporarily rented by the owner for a period of time no greater than twelve consecutive months in any twenty-four-month period;

[1]Adopted by Ordinance No. 5798. Derived from Ordinance Nos. 3888, 4587, 4623, 5007, 5012, 5039, 5270, 5494, 5660.

(C) The dwelling unit was occupied by the owner immediately prior to its rental;

(D) The owner of the dwelling unit is temporarily living outside of Boulder County; and

(E) The owner intends to re-occupy the dwelling unit upon termination of the temporary rental period identified in subparagraph (b)(2)(B) of this section.

(3) Commercial hotel and motel occupancies which offer lodging accommodations primarily for periods of time less than thirty days, but bed and breakfast facilities are not excluded from rental license requirements.

(4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.

Ordinance Nos. 5798 (1996); 7416 (2005).

10-3-3 **Terms Of Rental Licenses.**

(a) License terms shall be as follows:

(1) Rental licenses, other than reduced term licenses issued pursuant to section 10-3-4, "Reduced Term Rental License," B.R.C. 1981, temporary licenses issued pursuant to section 10-3-9, "Temporary Rental License Appeals," B.R.C. 1981, or accessory dwelling unit or owner's accessory unit licenses governed by paragraph (a)(2) of this section, shall be valid until the licensed property is sold unless:

(A) The license is revoked; or

(B) The licensee fails to submit to the city manager a completed safety inspection report, on forms provided by the city, within four years from the date of initial license issuance and within each successive four-year period thereafter. The safety inspection report shall:

(i) In the section of the report concerning fuel burning appliances, be executed by a qualified heating maintenance person certifying compliance with those portions of subsection 10-2-10(e), B.R.C. 1981, for which the report form requires inspection and certification.

(ii) In the section of the report concerning smoke detectors, is executed by the operator certifying that the operator inspected the smoke detectors in the licensed property and that they complied with the requirements of chapter 10-2, "Housing Code," B.R.C. 1981.

(iii) In the section of the report concerning trash removal, is executed by the operator certifying that the operator has a current valid contract with a commercial trash hauler for removal of accumulated trash from the licensed property in accordance with subsection 6-3-3(b), B.R.C. 1981.

(2) Accessory dwelling units, as defined in section 9-16-1, "General Definitions," B.R.C. 1981, and owner's accessory units pursuant to subsection 9-8-5(b), B.R.C. 1981: twelve months from the date of license application for newly constructed units or from the date of prior license expiration for units for which the operator is renewing an unexpired rental license.

(b) The city manager shall issue separate rental licenses for individual buildings. Such licenses shall cover all dwelling units and rooming units within such buildings. In a building containing attached but individually owned dwelling units, or any other dwelling units which may be separately conveyed, the city manager shall issue separate rental licenses for each

dwelling unit. A structure, or group of structures, shall be considered to be a single building if it has been assigned a single street address by the city. If a complex of buildings on one property is under common ownership, and this owner is willing to have a common expiration date for the rental licenses for all dwelling and rooming units, the city manager may consider the whole complex to be the equivalent of a single building for the purposes of licensing and the fee schedule in section 4-20-18, "Rental License Fee," B.R.C. 1981.

(c) Whenever an existing rental license is being renewed, the renewal license shall be effective from the date of expiration of the last rental license, unless the operator provides documentation satisfactory to the city manager, or an affidavit subject to the law against perjury, that no portion of the subject property was rented during any of the time between expiration of the old rental license and issuance of the new rental license, in which case the renewal license shall be effective as of the date of issuance.

Ordinance Nos. 5798 (1996); 5952 (1997); 7023 (1999); 7189 (2002).

10-3-4 **Reduced Term Rental License.**

(a) The city manager shall issue a reduced term rental license whenever the city manager determines that violations of chapter 10-2, "Housing Code," B.R.C. 1981, revealed during an inspection, individually or in combination, demonstrate a failure to maintain the rental property in a safe, sanitary, and clean condition so that the dwelling endangers the health and safety of the occupants, including, without limitation, violations of section 10-2-3, "Unfit Dwellings And Vacation Thereof," B.R.C. 1981, involving property unfit for human habitation, and subsections 10-2-7(a), B.R.C. 1981, involving open sewage, 10-2-7(b), B.R.C. 1981, involving use of a lavatory as a kitchen sink, 10-2-17(c), B.R.C. 1981, involving blocked chimney flues, and 10-2-20(b), B.R.C. 1981, involving cockroaches, or if the city manager determines that there is or has been a violation of a limitation on numbers of occupants or numbers of dwelling units found in title 9, "Land Use Code," B.R.C. 1981, which demonstrates a failure to maintain the rental property in compliance with that title.

(1) For violations of chapter 10-2, "Housing Code," B.R.C. 1981, the rental license term shall be reduced to twenty four months.

(2) For violations of title 9, "Land Use Code," B.R.C. 1981, the rental license term shall be reduced to twelve months.

(b) If a person disagrees with the decision of the city manager to issue a reduced term rental license under subsection (a) of this section, such person may appeal the city manager's decision within thirty days after the issuance of the reduced term license, as follows:

(1) For reduced term licenses issued as a result of violations of the provisions of chapter 10-2, "Housing Code," B.R.C. 1981, the appeal shall be made as provided in section 10-2-5, "Appeals And Variances," B.R.C. 1981.

(2) For reduced term licenses issued as a result of violations of the provisions of title 9, "Land Use Code," B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although the fee amount shall be as specified for an appeal to the board of building appeals.

Ordinance No. 5798 (1996).

10-3-5 Rental License Procedure For Newly Constructed Rental Property.

Inspections to determine compliance with the provisions of chapter 10-2, "Housing Code," B.R.C. 1981, are not required prior to issuance of the first rental license for newly constructed rental property if a rental license application is submitted no later than sixty days from the date of issuance of the first certificate of occupancy or temporary certificate of occupancy, in which case payment of license fees is not required.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-6 Rental License Application Procedure For Buildings Being Converted To Rental Property.

Every operator of a property who is converting the property to rental property shall follow the procedures in this section for procuring a rental license:

(a) Submit a written application for a rental license to the city, on official city forms provided for that purpose, at least thirty days prior to rental of the property.

(b) Pay all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, at the time of submittal of the rental license application.

(c) Cause an inspection of the property to be conducted at the operator's expense by a rental housing inspector licensed by the city for such work, and cause the inspector to return to the city manager, in the form provided by the manager, a certification of inspection showing compliance with chapter 10-2, "Housing Code," B.R.C. 1981.

(d) Take all reasonable steps to notify any occupants of the property of the date of the housing code inspection. The operator, or an agent of the operator other than the inspector or any tenant of the unit, shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-7 Rental License Renewal Procedure For Buildings Occupied As Rental Property.

Every operator of a rental property shall follow the procedures in this section when renewing an unexpired rental license:

(a) Pay all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, prior to the expiration of the existing license.

(b) Cause an inspection of the property to be conducted at the operator's expense by a rental housing inspector licensed by the city for such work, and cause the inspector to return to the city manager, in the form provided by the manager, a certification of inspection showing compliance with chapter 10-2, "Housing Code," B.R.C. 1981, as of a date no more than sixty nor less than fifteen days before the date of expiration of the existing license.

(c) Take all reasonable steps to notify all tenants of the rental property of the date and time of the scheduled housing code inspection. The operator, or an agent of the operator other than the inspector or any tenant of the unit, shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-8 Temporary Rental License.

If the inspection by the rental housing inspector shows that there are violations of chapter 10-2, "Housing Code," B.R.C. 1981, in the building, and the operator cannot correct the deficiencies before the housing is to be occupied (in the case of new rental property) or the existing license expires (in the case of a renewal), the operator may apply, on forms specified by the city manager, to the city for a temporary rental license. If the manager finds, based on the number and severity of violations, that such a temporary license would not create or continue an imminent health or safety hazard to the public or the occupants, the manager may issue a temporary rental license. The manager shall specify the duration of the temporary license, which shall be for a period reasonably necessary to make the needed repairs and changes. Upon submission to the manager by the operator of an additional certificate of inspection, on forms supplied by the manager, performed by a rental housing inspector, showing that the deficiencies have been corrected, and accompanied by an additional rental housing license fee, the manager shall issue the rental housing license.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-9 Temporary Rental License Appeals.

Any operator denied a temporary rental license, or aggrieved by the period of time allowed for correction, may appeal the denial or the period of time for correction, or both, to the board of building appeals within thirty days as provided in section 10-2-5, "Appeals And Variances," B.R.C. 1981. As to an appeal of the time reasonably required to correct a violation, the board shall either affirm the city manager's originally prescribed time period or grant a longer time period to correct the alleged violation.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-10 Time Of Rental License Expiration.

Every rental license expires upon the earliest of the following dates:

(a) The expiration date on the rental license unless temporary authority to rent is allowed under the provisions of section 10-3-8, "Temporary Rental License," B.R.C. 1981, of this chapter;

(b) Thirty days after the date upon which transfer of ownership of the rental property occurs;

(c) The effective date of any order or notice to vacate the rental property issued under any provision of law;

(d) The expiration of the temporary certificate of occupancy for the rental property if a permanent certificate of occupancy has not been issued; or

(e) The revocation of the certificate of occupancy for the rental property.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-11 Change Of Rental Property Ownership, Agent, And Rental License Transfer.

(a) Upon transfer of ownership of the property for which a rental license has been issued and is still current and valid at time of transfer, the new operator of the property shall apply for a

rental license within thirty days after the date of transfer of ownership of the rental property. The new operator shall:

(1) Submit all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, with the application.

(2) Cause a baseline inspection of the property to be conducted at the operator's expense by a rental housing inspector licensed by the city for such work, and cause the inspector to return to the city manager, in the form provided by the manager, a certification of inspection showing compliance with chapter 10-2, "Housing Code," B.R.C. 1981, as of a date no more than sixty days before the date of expiration of the existing license[1].

(3) Take all reasonable steps to notify all tenants of the rental property of the date and time of the scheduled housing code inspection. The operator, or an agent of the operator other than the inspector or any tenant of the unit, shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

(b) No operator shall transfer the ownership, or change the local agent, of a rental property for which a rental license is required, without notifying the city manager of the identity and mailing address of the buyer or new local agent within fifteen days after the transfer of the property or change of agent.

Ordinance Nos. 5798 (1996); 7189 (2002).

10-3-12 **Rental License Fees.**

(a) Applicants for any rental housing license, and operators who are renewing an existing rental housing license, shall pay the license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, upon submission of any rental housing license application.

(b) If an operator of rental property legally changes the use of a structure by adding units for which such operator receives a rental license under this chapter separate from the rental license for the remainder of the rental property, the operator shall apply for a single rental license to cover the entire property no later than thirty days before the expiration date of the rental license that first expires. There shall be no additional fee assessed for the dwelling units or rooming units that were added to the structure at the time the separate rental licenses are consolidated.

(c) If an operator of rental property reduces the number of dwelling units or rooming units within a rental property, the operator is not entitled to a refund of any fee previously paid.

(d) The city manager shall charge no license fee for the following rental dwelling units, so long as such units have also been individually certified to the city manager as low income rental property by the housing authority of the City of Boulder, and such certification is valid at the time the fee would otherwise be due:

(1) Units owned by or leased and operated by the housing authority of the City of Boulder;

(2) Units owned by or leased and operated by an entity which has a current valid tax status determination by the United States Internal Revenue Service as a section 501(c)(3) tax exempt organization and such units are permanently affordable, as that term is defined in chapter 9-14, "Residential Growth Management System," B.R.C. 1981; or

[1]That portion of the inspection which covers subsections (c), (d), and (e) of section 10-2-9, "Electrical Service Standards," B.R.C. 1981, shall be done by a licensed rental housing inspector who is also an ASHI certified rental housing inspector, an ICBO or ICC certified combination inspector, or an electrical contractor licensed by the city.

(3) Units covered by an assistance payment contract pursuant to 49 U.S.C. 1437(b), "Lower-income housing assistance - authorization for contracts for assistance payments for existing dwellings."

(4) If a housing complex under common ownership operates a fixed number or percentage of units as qualifying units under this subsection, but the individual units occupied by low income tenants vary over time, the license and fee waiver allowed by this subsection shall be applied pro rata to the total amount.

Ordinance Nos. 5798 (1996); 7023 (1999).

10-3-13 **Posting Of Rental License.**

No operator who holds a rental license shall fail to post the license, or a true copy thereof, conspicuously upon the premises for which such license has been issued.

Ordinance No. 5798 (1996).

10-3-14 **Local Agent Required.**

Whenever any rental property is required to be licensed under this chapter, and neither the owner nor the operator is a natural person domiciled within Boulder County, Colorado, the owner shall appoint a natural person who is domiciled within Boulder County, Colorado, to serve as the local agent of the owner and the operator for service of such notices as are specified in sections 10-2-3, "Unfit Dwellings And Vacation Thereof," 10-2-4, "Enforcement Of The Housing Code," 10-3-15, "City Manager May Order Premises Vacated," and 10-3-16, "Administrative Remedy," B.R.C. 1981, and notices given to the local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the city manager in writing of the appointment within five days of being required to make such an appointment, and shall thereafter notify the city manager of any change of local agent within fifteen days of such change.

Ordinance No. 5798 (1996).

10-3-15 **City Manager May Order Premises Vacated.**

(a) Whenever the city manager determines that any rental housing is in violation of this chapter or of chapter 10-2, "Housing Code," B.R.C. 1981, and has caused a summons and complaint requiring the operator to appear in municipal court to answer the charge of violation to issue, and the summons cannot be served upon the operator despite reasonable efforts to do so, or, having been served, the operator has failed to appear in the municipal court to answer the charges or at any other stage in the proceedings, or, having been convicted or entered a plea of guilty or no contest, the operator has failed to satisfy the judgment of the court or any condition of a deferred judgment, then the city manager may, after thirty days' notice and an opportunity for a hearing to the tenants and the operator, require that the premises be vacated, and not be reoccupied until all of the requirements of the housing code and the rental licenses code have been satisfied and a rental housing license is in effect. No person shall occupy any premises as a tenant after that person receives actual or constructive notice that the premises have been vacated under this section.

(b) Any notice required by this section to be given to an operator is sufficient if sent by first class or certified mail to the address of the last known owner of the property as shown on the records of the Boulder County Assessor as of the date of mailing. Any notice required by this

section to be given to a tenant is sufficient if sent by first class or certified mail to or delivered to any occupant at the address of the premises and directed to "All Tenants."

(c) The remedy provided in this section is cumulative and is in addition to any other action the city manager is authorized to take.

Ordinance No. 5798 (1996).

10-3-16 **Administrative Remedy.**

(a) If the city manager finds that a violation of any provision of this chapter or chapter 10-2, "Housing Code," B.R.C. 1981, exists, the manager, after notice to the operator and an opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

(1) Impose a civil penalty according to the following schedule:

(A) For the first violation of the provision, $150.00;

(B) For the second violation of the same provision, $300.00; and

(C) For the third violation of the same provision, $1,000.00;

(2) Revoke the rental license; and

(3) Issue any order reasonably calculated to ensure compliance with the provisions of this chapter and chapter 10-2, "Housing Code," B.R.C. 1981.

(b) If notice is given to the city manager by the operator at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the building. If the manager finds that the violation has been corrected, the manager may cancel the hearing.

(c) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.

(d) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance No. 5798 (1996).

10-3-17 **Penalty.**

The penalty for violation of any provision of this chapter is a fine of not more than $2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

Ordinance No. 5798 (1996).

TITLE 10 STRUCTURES

Chapter 4 Condominium Conversions[1]

Section:

10-4-1 Legislative Intent.

The purpose of this chapter is to protect the tenants of dwellings whose owners contemplate converting the dwelling into condominiums for sale by providing such tenants with notice of that intent.

10-4-2 Condominium Conversion.

Condominium conversion means the transfer of ownership of less than the total number of dwelling units in a multiple dwelling unit structure, where any ownership interest created by the transfer of ownership is in a number of dwelling units that is less than the total number of units in the structure in which the seller had an interest prior to the sale or, with respect to a mobile home park, the transfer of ownership of the mobile home park property so that it is jointly and severally owned by the owners of the mobile homes upon such property.

10-4-3 Notice Of Condominium Conversion.

(a) No person with an ownership interest in more than ten dwelling units in one multiple dwelling unit structure, no owner of a mobile home park, and no officer or employee or agent of any such person shall transfer or contract to transfer the ownership of any such dwelling units or mobile home park for the purpose of converting an existing dwelling unit into a condominium unit or a mobile home park into condominium ownership where said dwelling unit or mobile home park is occupied by a tenant, until the tenant thereof and the housing authority of the City of Boulder have been given at least one hundred twenty days' prior written notice of the intent to sell said dwelling unit or mobile home park. If a tenant voluntarily vacates a dwelling unit after receiving said notice within the one hundred twenty day period, a transfer of title to that individual vacated unit may occur immediately upon the vacation. However, vacation of a dwelling unit after a rental increase or a request to vacate shall not be deemed to be a voluntary vacation.

(b) The written notice to the tenant required by subsection (a) of this section shall also contain the following language:

> *If you are sixty-two or over or have a low total household income, you may be qualified to receive assistance from the housing authority of the City of Boulder to remain in your apartment or mobile home. You may notify the housing authority within thirty days of this notice if you are interested in applying for assistance. The housing authority can be contacted at 441-3157, by mail at P.O. Box 791, Boulder, Colorado 80306, or in person at 1101 Arapahoe Avenue, Boulder, Colorado.*

Ordinance No. 5271 (1990).

[1]Adopted by Ordinance No. 4587. Amended by Ordinance Nos. 4623, 4716. Derived from Ordinance Nos. 4399, 4490.

TITLE 10 STRUCTURES

Chapter 5 Building Code[1]

Section:

10-5-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating the construction, alteration, repair, wrecking, and moving of structures in the city. The city council hereby adopts the 2003 edition of the International Building Code and the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings with certain amendments and deletions thereto found to be in the best interests of the residents of the city.

Ordinance Nos. 4984 (1986); 5177 (1989); 5493 (1992); 5781 (1996).

10-5-2 Adoption Of International Building Code With Modifications.

(a) The 2003 edition of the International Building Code of the International Code Council is hereby adopted by reference as the City of Boulder Building Code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) The appendix chapters I, "Patio Covers" and J, "Grading," and sections contained therein are adopted.

(c) Section 101.1, "Title," is repealed and reenacted to read:

101.1 Title. These regulations shall be known as the Building Code of the City of Boulder or building code, hereinafter referred to as "this code." Where other codes are referenced in this code those code provisions shall not apply unless otherwise adopted by the City of Boulder. Where reference is made anywhere in this code to the "Department" or "Department of Building Safety" it shall have the same meaning as the "Division of Building Safety."

(d) Section 101.4, "Referenced Codes," is repealed and reenacted to read:

Chapter 1, "Administration," in this code shall also apply and serve as Chapter 1, "Administration," in the following codes adopted by reference in this title: Chapter 10-5.5, International Residential Code; Chapter 10-9, International Mechanical Code; Chapter 10-9.5, International Fuel Gas Code; and Chapter 10-10, International Plumbing Code, B.R.C. 1981. Chapter 1, "Administration," in this code shall also apply and serve as Article 80 of the National Electrical Code (NFPA 70) adopted by reference in Chapter 10-6, B.R.C. 1981. Where administrative provisions are expressly adopted, or adopted in an altered form, for use in those chapters, they shall supersede any conflicting provisions of the administrative provisions of this chapter.

[1]Adopted by Ordinance No. 4636. Amended by Ordinance Nos. 4722, 6015, 7304. Derived from Ordinance Nos. 4322, 4500.

The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered as part of the requirements of this code as applicable.

(e) Section 101.4.1, "Electrical," is repealed and reenacted to read:

101.4.1 Electrical. The provisions of the National Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings, and appurtenances thereto.

(f) Section 101.4.5, "Property Maintenance," is repealed.

(g) Section 103, "Department Of Building Safety," is repealed and reenacted to read:

Section 103

"Division of Building Safety" means the administrative unit established by the city manager or the manager's delegates, and the personnel assigned to the unit by the manager.

(h) 104.8, "Liability," is repealed and reenacted to read:

Liability

No employee of the city who enforces, attempts to enforce, or is authorized to enforce this code renders him or herself or the city liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or non-enforcement of this code. The city assumes no duty of care by virtue of the adoption of this code. No person is justified in relying upon the approval of a plan, the results of an inspection, or the issuance of a certificate of inspection or occupancy, and such approvals, inspections, and certificates are not a guarantee that the plan or work so approved, inspected, or certificated in fact complies with all the requirements of this code. It is the duty of the person owning, controlling, or constructing any building or structure to insure that the work is done in accordance with the requirements of this code, and it is such persons and not the city who are responsible for damages caused by negligent breach of such duty.

(i) Section 105.2, "Work Exempt From Permit," is repealed and reenacted to read:

105.2 Work Exempt from permit. Exemptions from the building permit requirements of this code do not grant authorization for any work to be done in violation of the requirements of this code or any other laws or ordinances of the city. Building permits shall not be required for the following:

General:

1. One story detached non-conditioned buildings accessory to a residential structure and not more than 80 square feet in area or ten feet in height and not being served by any electrical, mechanical or plumbing fixtures or systems.

2. Fences not over three feet high.

3. Retaining walls which are not over 3 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or III-A liquids.

4. Sidewalks and driveways not more than thirty inches above grade and not over any basement or story below and which are not part of an accessible route.

5. Painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work.

6. Temporary motion picture, television, and theater stage sets and scenery.

7. Prefabricated swimming pools accessory to a Group R-3 occupancy which are less than 24 inches deep, do not exceed 5,000 gallons, and are installed entirely above ground.

8. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.

9. Swings and other playground equipment accessory to detached one- and two-family dwellings.

10. Window awnings in Group R and Group U occupancies supported entirely by an exterior wall and which do not project more than 54 inches from the exterior wall.

11. Moveable cases, counters and partitions not over 5 feet 9 inches in height.

Electrical:

Minor repair and maintenance work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles, radio and television transmitting stations, temporary testing systems for the testing or servicing of electrical systems or apparatus and those items in Article 90.2 (B) of the electrical code.

Gas:

1. Portable heating appliances.

2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance, portable cooling unit, portable evaporative cooler or portable ventilation equipment.

2. Steam, hot, or chilled water piping within any heating or cooling equipment regulated by this code.

3. Replacement of any part which does not alter an approval or listing or make any appliance or equipment unsafe.

4. Self contained refrigeration system containing ten pounds (4.54 kg) or less of refrigerant and actuated by motors of one horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste, or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures, and the replacement of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves or pipes.

(j) A paragraph is added to section 105.3.1, "Action On Application," to read:

No building permit shall be issued until approved by every department of the city or Boulder County that has applicable regulations, including, without limitation, the following departments: building, flood control, utilities, wastewater, health, fire, engineering, zoning, planning, parks, and city clerk.

(k) Section 105.3.2, "Time Limitation Of Application," is repealed and reenacted to read:

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned one hundred eighty days after the date of filing unless the permit has been issued; except that the building official is authorized to grant not more than two extensions of time for additional periods not exceeding ninety days each. The extension shall be requested in writing before the expiration date and justifiable cause demonstrated.

(l) Section 105.5, "Expiration," is repealed and reenacted to read:

Section 105.5 Expiration. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not completed and approved for occupancy within three years from the date the permit was issued. Separate permits granting authorization to install, repair, energize, or use any electrical, mechanical or plumbing fixture, system or equipment shall expire twelve months after issuance, at which time a new permit will be required. In order to renew an expired permit, the applicant shall submit a new permit application with the required submittal documents demonstrating compliance to the code in effect at the time the new application is received. Work that was authorized, completed and approved under the previous permit may be considered as meeting current codes if the expiration period is not more than one year and all systems, equipment and structural elements have been adequately protected from the weather. The permit fee may be prorated based on the amount of work completed and approved under the previous permit. The plan review fee shall be paid in full based on the current fee schedule.

(m) Section 106.1, "Submittal Documents," is repealed and reenacted to read:

106.1 Submittal Documents. An applicant for a building permit shall submit a minimum of two sets of plans and specifications with each application when required by the building official for enforcement of any provisions of this code.

(1) An architect registered in the State of Colorado shall prepare the plans and specifications for and observe the construction of all buildings except for the following:

(a) Detached dwellings intended solely for private use, occupancy, or resale, including accessory buildings commonly associated with the same;

(b) Farm buildings and buildings for the marketing, storage, or processing of farm products;

(c) Minor additions, alterations, or repairs to the foregoing buildings that do not cause the completed buildings to exceed the applicable limitations herein set forth; or

(d) Non-structural alterations of any nature to any building, if such alterations do not affect the safety of the building.

(2) Drawings and specifications for footings and foundations shall bear the seal and signature of a professional engineer or architect registered in Colorado and be designed as specified in chapter 18 of the building code for all occupancies except those classified as R-3 and U, which shall be designed as specified in Chapter 4 of the residential code.

Exceptions:

(a) Detached structures not intended for human occupancy;

(b) Additions to existing detached dwellings not exceeding 150 square feet.

(n) Section 108.3, "Building Permit Valuations," is repealed and reenacted to read:

108.3 Building permit valuation. Fees for permits shall be as set forth in Chapter 4-20, B.R.C. 1981, and the valuation for buildings shall be determined by the City of Boulder Valuation Data Table for Building Permit fees.

(o) Section 112, "Board Of Appeals," is repealed and reenacted to read:

Section 112 Appeals and Advisory Opinions.

(a) A person refused a building permit or refused approval of work done under a permit on the grounds that the proposed or completed construction fails to comply with this code or any other city building code other than the fire code may appeal the decision to the board of zoning adjustment and building appeals on the ground that:

1. The denial was based on an erroneous interpretation of such code by the city manager;

2. The city manager has erroneously failed to approve an alternate material or method pursuant to Section 104.11 prior to its installation or use. In determining such an appeal the board shall apply the standards of Section 104.11, but the board shall have no jurisdiction to consider if a material or method expressly prohibited by this code is an acceptable alternative; or

3. The city manager has erroneously failed to grant a modification pursuant to Section 104.10 prior to its installation. In determining such an appeal the board shall apply the standards of Section 104.10.

The city manager has the burden of proof under paragraph 1. The appellant has the burden of proof on appeals brought pursuant to paragraphs 2 and 3. The board shall determine the appeal and decide whether the city manager's interpretation or application of such code was correct or in error at a hearing under the procedures described by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(b) Any person whose building permit has been suspended or revoked may appeal such action by the city manager to the board of building appeals on the ground that the suspension or revocation was based on an error in fact or an erroneous application of this code to the facts. The city manager has the burden of proving the facts upon which the manager relies at such a hearing.

(c) An applicant for an appeal to the board of appeals shall pay the fee prescribed by Section 4-20-47, "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981.

(d) The city manager may apply to the board of appeals, without fee, for an advisory opinion concerning alternative methods, applicability of specific requirements, approval of equipment and materials, and granting of special permission as contemplated in Sections 104.10 or 104.11 of the Building Code.

(e) The board of building appeals has no authority to interpret Chapter 1 (the administrative requirements) and Chapter 34 of this code except as expressly provided in this section, nor, because this code sets minimum standards, to waive any requirement of this code.

(p) Section 113, "Violations," is repealed and reenacted to read:

Violations

Section 113. No person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the city or cause or permit the same to be done, contrary to or in violation of any of the provisions of the building code. Violations of the building code are punishable as provided in Section 5-2-4, "General Penalties," B.R.C. 1981.

(q) The definition of "Building official" in section 202 is repealed and reenacted to read:

BUILDING OFFICIAL is the city manager.

(r) Section 202, "Definitions," is amended by the addition of the following new definition:

PERMIT ISSUANCE is the date that the approved building permit is paid for and received back from the city manager by the applicant or a representative of the applicant.

(s) A paragraph is added to section (F) 903.2, "Where Required," to read:

The maximum fire area without an automatic sprinkler system shall be determined by Section 903.1 of the fire code.

(t) Section 1009.5.2, "Outdoor Conditions," is repealed and reenacted to read:

1009.5.2 Outdoor conditions. Outdoor stairways and outdoor approaches to stairways shall be designed so that water will not accumulate on walking surfaces. In other than group R-3 and U Occupancies, treads, platforms and landings that are part of exterior stairway serving as the only means of egress from the building or occupancy shall be protected to prevent the accumulation of snow or ice. The building official may approve a snow and ice management plan where other protective measures are not feasible.

(u) Section 1505.1, "General," is repealed and reenacted to read:

1505.1 General. All roof assemblies and roof coverings required to be listed by this section shall be tested in accordance with ASTM Standard E 108 or UL Standard 790. Class A roofs and the exceptions noted in 1505.3 for class B roofs as described in this chapter 15 are the only roof assemblies and roof coverings allowed to be installed on any new or existing building within the city of Boulder. Wood shakes, wood shingles and wood roof covering materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, for certain minimal repairs.

(v) Section 1608.1, "General," is repealed and reenacted to read:

1608.1 General. The minimum roof snow load shall be thirty pounds per square foot, but the design roof load shall not be less than that determined by Section 1607.

(w) Section 1609.3.1, "Wind Speed Conversion," is repealed and reenacted to read:

1609.3.1 Wind velocities. In Table 1609.3.1, the three second gust wind speed for the city shall be 110 miles per hour.

(x) Sections 1612.3, 1612.4, and 1612.5 are repealed.

(y) A new section 3020, "Safety Code For Elevators And Conveying Systems," is added to chapter 30, "Elevators And Conveying Systems," of the building code, to read:

Section 3020.

(a) The city manager may grant variances to specific requirements of the Safety Code for Elevators and Escalators which cannot be met without altering the design of the device if the manager finds all of the following facts:

(1) The device has passed its safety test;

(2) The device is properly maintained and in good working condition;

(3) The device functions at least as safely as its original design permits;

(4) For devices installed after March 1, 1985, and not altered or modified thereafter, the device meets all of the requirements of the ANSI/ASME Safety Code for Elevators and Escalators in effect at the time of installation; and

(5) Undue hardship and unreasonable interference with the normal use and occupancy of the building would result from strict enforcement, this burden outweighs the gains in safety from full compliance, and the device has a demonstrated record of safety.

(b) Permits required. No person shall install any elevator, moving walk, escalator, dumbwaiter, material lift, wheelchair lift, or stairway lift, or make a major alteration to any existing elevator, moving walk, escalator, dumbwaiter, material lift, wheelchair lift, or stairway lift without first obtaining a permit for such installation or alteration from the city manager and paying the building permit fee set forth in Section 4-20-4, "Building Contractor License and Building Permit Fees," B.R.C. 1981. Permits are not required for maintenance.

(c) Certificates of Inspection required. No person shall operate any elevator, moving walk, escalator, dumbwaiter, material lift, wheelchair lift, or stairway lift without a current Certificate of Inspection issued by the city manager. Such certificate shall be issued upon payment of the fee prescribed in Section 4-20-48, "Elevator, Dumbwaiter, Materials Lift, Escalator, Moving Walk, Wheelchair Lift, and Stairway Lift Certificate Fees," B.R.C. 1981, and the presentation of a valid inspection report indicating that the conveyance is safe and that the inspections and tests have been performed in accordance with the ANSI code. The certificate is valid for one year after issuance. No certificate may be issued if the conveyance is posted as unsafe pursuant to subsection (e) below.

Exception: Certificates of inspection are not required for conveyances within an individual dwelling unit.

(d) (1) General. The owner shall be responsible for the safe operation and maintenance of each conveyance device as described above and shall cause periodic inspections, tests and maintenance to be made on such conveyances as required in this section;

(2) Periodic Inspections and Test. Routine and periodic inspections and tests shall be made as required by Part X of the ANSI code;

(3) Alterations, Repairs and Maintenance. Alterations, repairs and maintenance shall be made as required by Part XII of the ANSI code;

(4) Inspection Costs. All costs of such inspections and tests shall be paid by the owner; and

(5) Inspection Reports. After each required inspection, a full and correct report of such inspection shall be filed with the building official.

(e) When an inspection reveals an unsafe condition, the inspector shall immediately file with the owner and building official a full and true report of such inspection and such unsafe condition. If the building official finds that the unsafe condition endangers human life, the building official shall cause to be placed on such conveyance device, in a conspicuous place, a notice stating that such conveyance is unsafe. The owner shall see to it that such notice of unsafe condition is legibly maintained where placed by the building official. The building official shall also issue an order in writing to the owner requiring the repairs or alterations to be made to such conveyance which are necessary to render it safe and may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed. A posted notice of unsafe conditions shall be removed only by the building official when satisfied that the unsafe conditions have been corrected.

(f) Rule 302.3h, "Installation Below Ground," is repealed and reenacted to read:

Rule 302.3h Installation Below Ground

Cylinders installed below ground shall be provided with protection from corrosion by a protective casing immune to galvanic or electrolytic action, salt water, and other known underground conditions, completely surrounding the exterior surfaces of the cylinder. If the space between the protective casing and cylinder is empty, the casing must be designed to withstand a static head of water from ground level to the bottom of the casing based on manufacture's ratings of the material used.

(z) The effective date for use of the performance based provisions of section 3410, "Compliance Alternatives," is January 1, 1959.

(aa) New chapters 97 and 98 are added to the Building Code to read:

CHAPTER 97. EARTHEN MASONRY UNITS.

Section 9701. General.

9701.1. Purpose. The purpose of this chapter is to establish minimum prescriptive standards for the construction of structures using earthen masonry units commonly known as adobe or hydraulic pressed earth units, and engineered performance standards for rammed earth units.

Section 9701.2. Scope. The use of earthen masonry units shall be limited to buildings of Group R, Division 3 and Group U occupancies of no more than one story, a maximum of

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sixteen feet in height, with a maximum roof span of thirty-two feet between bearing walls, unless design and structural calculations are submitted by a registered architect or a professional engineer licensed to practice in the state and approved by the building official. The use of rammed earth construction shall be limited to buildings of Group R, Division 3 and Group U occupancies of no more than one story which has been designed by a registered architect or a professional engineer licensed to practice in the state.

Section 9701.3. Definitions. For the purpose of this chapter, certain terms are defined as follows:

ADOBE is a wet molded earthen unit which is air dried to form a masonry unit which is laid into the structure after the unit is dried.

HYDRAULIC PRESSED UNIT is a compacted earthen unit which is molded under pressure and air dried to form a masonry unit which is then laid into the structure.

RAMMED EARTH is an earthen construction which utilizes forms, that are placed and secured, and damp earth is loaded into them and tampered to total compaction. Once compaction is complete, the forms are removed.

STABILIZATION is the process of modifying the reaction of earthen materials to water through the introduction of agents.

STABILIZED EARTHEN MASONRY are those units which meets the absorption specifications of Section 9703.4.

Section 9702. Materials Characteristics.

Section 9702.1. Soil. The soil used shall contain not less than twenty-five percent and not more than forty-five percent of material passing a No. 200-mesh sieve. The soil shall contain sufficient clay to bind the particles together and shall not contain more than 0.2 percent of water soluble salts.

Section 9702.3. Mortar. The use of earthen mortar is allowed if earthen mortar material is of the same type as the earthen masonry units. Conventional lime/sand/cement mortars of types M, S, and N as specified in Chapter 21, are also allowed.

Section 9702.4. Stabilizers. When required, stabilizing agents shall be emulsified asphalt, Portland cement, lime or other approved additives. The stabilizing agent shall be uniformly mixed with the soil in amounts sufficient to provide the required resistance to absorption.

Section 9703. Sampling and Testing. Each of the tests prescribed in this Chapter shall be applied to five sample units selected at random from each 5000 units or fraction thereof.

Section 9703.1. Identification. Each specimen shall be so marked that it may be identified at any time. Marking shall not cover more than five percent of the superficial area of the specimen.

Section 9703.2. Moisture Content. The moisture content of unstabilized units shall be not more than four percent by weight. Moisture content shall be determined by using the following procedure:

1. Obtain weight of each specimen immediately upon receiving.

2. Dry all specimens to constant weight in a ventilated oven at 212°F. to 239°F. (100°C. to 115°C.) and obtain dry weight.

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3. Calculate moisture content as a percentage of the initial dry weight.

Section 9703.4. Absorption. A dried four-inch cube cut from a sample unit shall absorb not more than two and one-half percent moisture by weight when placed upon a constantly water-saturated porous surface for seven days. A unit which meets this specification shall be considered "stabilized." Absorption shall be determined by using the following procedures:

1. Dry specimen to a constant weight in a ventilated oven at 212°F. to 239°F. (100°C. to 115°C.).

2. Place specimen on a constantly water-saturated porous surface for seven days. Weigh specimen.

3. Calculate absorption as a percentage of the initial dry weight.

Section 9703.5. Shrinkage Cracks. No units shall contain more than three shrinkage cracks, and no shrinkage crack shall exceed three inches in length or one-eighth inch width.

Section 9703.6. Compressive Strength. The units shall have an average compressive strength of three hundred pounds per square inch. One sample out of five may have a compressive strength of not less than two hundred fifty pounds per square inch. The units shall be tested according to the following procedure:

1. Dry the specimens at a temperature of 85°F.±15°F.(29°C.±9°C.) in an atmosphere having a relative humidity of not more than fifty percent. Weigh the specimens at one-day intervals until constant weight is attained.

2. Test the specimens in the position in which the earthen masonry unit is designed to be used, and bed on and cap with a felt pad not less than one-eighth inch (3.2 mm) nor more than one-quarter inch (6.4 mm) in thickness.

3. The specimens may be suitably capped with calcined gypsum mortar or the bearing surfaces of the tile may be planed or rubbed smooth and true. When calcined gypsum is used for capping, conduct the test after the capping has set and the specimen has been dried to constant weight in accordance with Item 1 of this section.

4. The loading head shall completely cover the bearing area of the specimen and the applied load shall be transmitted through a spherical bearing block of proper design. The speed of the moving head of the testing machine shall not be more than 0.05 inch (1.27 mm) per minute.

5. Calculate the average compressive strength of the specimens tested and report this as the compressive strength of the block.

Section 9703.7. Modulus of Rupture. The units shall average fifty pounds per square inch in MODULUS of rupture when tested according to the following procedure:

1. A cured unit shall be laid over (cylindrical) supports two inches in diameter, two inches from each end, and extending across the full width of the unit.

2. A cylinder two inches in diameter shall be laid midway between and parallel to the supports.

3. Load shall be applied to the cylinder at the rate of five hundred pounds per minute until rupture occurs.

4. The modulus of rupture is equal to $\frac{3WL}{2Bd^2}$

W = Load of rupture
L = Distance between supports
B = Width of brick
d = Thickness of brick

Section 9704. Construction.

Section 9704.1. Footings and Foundations. All footings and foundations shall be designed as required by Chapter 18, and shall bear the seal and signature of a professional engineer registered in the state when required by Section 106.3.2. Earthen masonry units shall not be used for footings, foundations, or basement walls. All foundation walls shall extend to an elevation not less than six inches above the finish grade. Foundation walls shall be at least as thick as the wall they support. Where perimeter insulation is used, the width of the foundation wall may be up to two inches smaller than the width of the earthen masonry wall it supports, if the earthen masonry wall is at least ten inches thick.

Section 9704.2. Walls. No adobe shall be laid in the wall until fully cured. Nor shall earthen masonry units be laid in a wall until all required tests have been performed and approved.

Mortar "bedding" joints shall be full slush type, with no open "head" joints. All joints shall be bonded (overlapped) a minimum of four inches.

Use of unstabilized earthen masonry units is prohibited within four inches above finished floor grade, within twelve inches of exterior ground level, at the top four inches of unenclosed walls and parapets, and around roof drains or other areas where the probability of moisture is significant.

Section 9704.3. Wall Reinforcing. Walls shall be reinforced with galvanized nine gauge truss type reinforcement spaced not more than sixteen inches vertically for the full height of the wall. Side rods of reinforcing shall maintain one inch clearance from each face of wall.

Section 9704.4. Wall Heights. Maximum height of wall to width ratio shall be determined from Tables 97-A and 97-B.

Section 9704.5. Bracing. All earthen masonry walls shall be laterally supported with intersecting walls or partitions located not more than twenty-four feet apart. Intersecting walls or partitions shall be designed in accordance with one of the following or approved equivalents:

A. One section of the earthen masonry wall or partition shall be without openings for the length of not less than one and one-half times the height.

B. One section of the earthen masonry wall or partition shall be without openings for the length of not less than the height of the wall, and galvanized nine gauge truss type horizontal reinforcing shall be provided at each course for the full height of the wall. Side rods of reinforcing shall maintain one inch clearance from each face of wall.

C. Wood framed walls and partitions built in accordance with Chapter 23 and braced with wood structural panels as required by Section 2326.11.3 Item 3 or Section 2326.11.4.

Section 9704.6. Piers. A minimum twenty-eight inch wall section shall be required between openings and openings shall not be placed within twenty-eight inches of exterior corners.

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Section 9704.7. Partitions. Partitions of other materials shall be constructed as specified in the appropriate chapters of the code. Wood partitions shall be nailed to nailing blocks laid up in the earthen masonry or bolted through the adobe wall the height of the partition with one-half inch diameter bolts at twenty-four inch on center spacing with large washers or plates, or other approved methods.

Section 9704.8. Bond Beams. All bearing and exterior walls shall be topped with a continuous concrete bond beam. The bond beam shall be a minimum of five and one-half inches thick by the width of the top of the wall. A bond beam centered to cover two-thirds of the wall shall be allowed for walls wider than ten inches. All concrete bond beams shall be reinforced with a minimum two #4 rebar, one installed at each face. All bond beam construction shall be in accordance with accepted engineering practices.

Section 9704.9. Bolts. Bolt values shall not exceed those set forth in Table 97-C.

Section 9704.10. Lintels. Members supporting earthen masonry units shall be reinforced concrete, reinforced masonry, or galvanized or epoxy-coated steel. Treated wood members may be used as lintels subject to the criteria outlined in Table 97-D. Wood not meeting the specifications for lintels as outlined in Table 97-D shall be for decorative purposes only unless designed by a registered architect or a professional engineer licensed by the state. All lintels shall have a minimum twelve inch bearing. The wall may overhang the lintel a maximum of two inches on each side.

Section 9704.11. Roofs. Roofs shall be designed, constructed, and anchored as required by Chapters 15, 16, 23, and other appropriate chapters of this code.

Section 9704.12. Plastering. All unstabilized earthen masonry units shall have all exterior walls plastered on the outside with Portland cement plaster, minimum thickness three-quarter inches in accordance with Chapter 25. Protective coatings other than plaster are allowed, providing such coating is equivalent to Portland cement plaster in protecting against deterioration and/or loss of strength due to water. Metal wire mesh shall be securely attached to the exterior wall surface by nails or staples with minimum spacing of sixteen inches from each other and having a minimum penetration of one and one-half inches. All exposed wood surfaces shall be treated with an approved wood preservative before the application of wire mesh. Alternative plastering systems shall be approved by the building official.

Section 9704.13. Electrical. All wiring within or on earthen masonry walls shall meet all provisions of the National Electrical Code adopted by this jurisdiction. Type UF cable may be directly imbedded within earthen masonry mortar, or wiring may be run in metallic or non-metallic conduit systems.

Section 9705. Floor Area. Allowable floor area shall not exceed that specified under Occupancy. Earthen masonry construction shall be allowed the same area as given in Type V-N construction.

Section 9706. Energy Requirement. All methods of wall insulation shall comply with the manufacturer's recommendations. The building shall meet all applicable energy codes. Exception: A vapor barrier shall not be allowed to cover the wall.

Section 9707. Fire Rating. Walls with a minimum thickness of eight inches shall be deemed to have a fire resistive rating of one hour.

Section 9708. Rammed Earth. In addition to the applicable requirements of this chapter, rammed earth construction shall be governed by the following additional provisions: The design and structural calculations by the licensed professional shall be submitted to the

building official for review and approval before issuance of the building permit. Testing shall be in accordance with standards and a schedule approved by the building official, and the owner shall have a professional engineer licensed to practice in this state and approved by the building official conduct special inspections and soil compaction tests on the site during the construction of the rammed earth walls as called for in the approved testing schedule. Soils used shall meet the requirements of Section 9702.1. Moisture content of rammed earth walls shall be suitable for proper compaction. Suitable forms shall be used. Uncompacted damp soil shall be compacted in lifts not to exceed 6" until suitable compressive strength is achieved. The building official may allow continuous construction of rammed earth prior to the full curing process, provided proper compaction methods are followed.

Table 97-A

Maximum allowable height to width ratio for exposed unbraced earthen masonry walls supported at base only	
Interior[1]	Exterior[2]
5:1	2.5:1

[1]Includes guard rails, short walls, room dividers, etc. Guard rails shall have a minimum thickness of twelve inches.
[2]Includes parapets, patio walls, etc.

Table 97-B

Maximum allowable height to width ratio for exposed earthen masonry walls laterally supported at top and bottom			
Interior		Exterior	
Bearing	Non-Bearing	Bearing	Non-Bearing
12:1	10:1	8:1	8:1

Table 97-C
ALLOWABLE SHEAR ON BOLTS FOR EARTHEN MASONRY UNITS

Diameter of Bolts (inches)	Embedments (inches)	Shear (pounds)
x 25.4 for mm		x 4.45 for N
1/2	9	100
5/8	12	200
3/4	15	300
7/8	18	400
1	21	500
1 1/8	24	600

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Table 97-D
MAXIMUM ALLOWABLE OPENING IN EARTHEN MASONRY
BEARING WALLS CONTAINING TREATED WOOD LINTELS

Wall Thickness (inches)	Wall Height (feet)	Lintel Size (flatwise)	Maximum Opening
8	8	6 x 8	3'4"
10	10	6 x 10	3'7"
12	12	6 x 12	3'10"
16	16	6 x 16	3'11"
18	18	6 x 18	3'10"

CHAPTER 98. STRAW-BALE STRUCTURES.

Section 9801. Purpose. The purpose of this chapter is to establish minimum prescriptive standards of safety for the construction of structures which use baled straw as a load bearing or non-load bearing material.

Section 9802. Scope. The use of baled straw shall be limited to buildings of Group R, Division 3 and Group U occupancies of no more than one story in height, with a maximum roof span of thirty-two feet between bearing walls, unless design and structural calculations are submitted by a registered architect or a professional engineer licensed to practice in the state and approved by the building official.

Section 9803. Definitions. For the purpose of this chapter, certain terms are defined as follows:

STRAW is the dry stems of cereal grains left after the seed heads have been removed.

BALES are rectangular compressed blocks of straw, bound by strings or wire.

FLAKES are slabs of straw removed from an untied bale. Flakes are used to fill small gaps between the ends of stacked bales.

LAID FLAT refers to stacking bales so that the sides with the largest cross-sectional area are horizontal and the longest dimension of this area is parallel with the wall plane.

LAID ON-EDGE refers to stacking bales so that the sides with the largest cross-sectional area are vertical and the longest dimension of this area is horizontal and parallel with the wall plane.

Section 9804. Materials.

Section 9804.1. Specifications for Bales.

Section 9804.1.1. Type of Straw. Bales of various types of straw, including, but not limited to, wheat, rice, rye, barley, oats and similar plants, shall be acceptable if they meet the minimum requirements for density, shape, moisture content, and ties.

Section 9804.1.2. Shape. Bales shall be rectangular in shape.

Section 9804.1.3. Dimensions. Bales used within a continuous wall shall be of consistent height and width to ensure even distribution of loads within wall systems.

Section 9804.1.4. Ties. Bales shall be bound with ties of either polypropylene string or baling wire. Bales with broken or loose ties shall not be used unless the broken or loose ties are replaced with ties which restore the original degrees of compaction of the bale.

Section 9804.1.5. Moisture Content. Moisture content of bales, at time of installation, shall not exceed twenty percent of the total weight of the bale. Moisture content of bales shall be determined by one of the following:

Section 9804.1.5.1. Field Method. A suitable moisture meter, designed for use with baled straw or hay, and equipped with a probe of sufficient length to reach the center of the bale, shall be used to determine the average moisture content of five bales randomly selected from each five hundred bales or fraction thereof.

Section 9804.1.5.2. Laboratory Method. A total of five samples, taken from the center of each of five bales randomly selected from each of five hundred bales or fraction thereof to be used, shall be tested for moisture content by a recognized testing lab.

Section 9804.1.6. Density. Bales shall have a minimum calculated dry density of seven pounds per cubic foot. The calculated dry density shall be determined after reducing the actual bale weight by the weight of the moisture content, as determined in Section 9804.1.5. The calculated dry density shall be determined by dividing the calculated dry weight of the bale by the volume of the bale.

Section 9804.1.7. Custom Size Bales. Where custom-made partial bales are used, they shall be of the same density, same string or wire tension, and, where possible, use the same number of ties as the standard size bales.

Section 9805. Construction and General Requirements.

Section 9805.1. General. Bale walls, when laid flat and covered with plaster, drywall or stucco shall be deemed to have the equivalent fire resistive rating as wood frame construction with the same wall-finishing system.

Section 9805.2. Storage. All bale and loose hay shall be stored in accordance with the Fire Code. Bales and loose hay shall be properly protected from moisture while being transported, stored, and during construction.

Section 9805.3. Wall Thickness. Nominal minimum bale wall thickness shall be fourteen inches.

Section 9805.4. Wall Height. Bale walls shall not exceed one story in height and the bale portion shall not exceed a height to width ratio of 5.6:1 (for example, the maximum height for the bale portion of a twenty-three inch thick wall would be ten feet eight inches), unless the structure is designed by a registered architect or a professional engineer licensed by the state to practice as such, and approved by the building official.

Exception: In the non-load bearing exterior end walls of structures with gable or shed roofs, an approved continuous assembly shall be required at the roof bearing assembly level.

Section 9805.5. Unsupported Wall Length. The ratio of unsupported wall length to thickness, for bale walls, shall not exceed 13:1 (for a twenty-three inch thick wall, the maximum unsupported length allowed is twenty-five feet), unless the structure is designed by a

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registered architect or a professional engineer licensed by the state to practice as such, and approved by the building official.

Section 9805.6. Allowable Loads. The allowable vertical load (live and dead load) on the top of load-bearing bale walls shall not exceed four hundred pounds per square foot, based on walls with bales laid flat, and the resultant load shall act at the center of the wall. Bale structures shall be designed to withstand all vertical and horizontal loads as specified in Chapter 16.

Section 9805.7. Footings and Foundations. All footings and foundations shall be designed as required by Chapter 18, and shall bear the seal and signature of a professional engineer registered in the State of Colorado when required by Section 106.3.2. Foundations shall be sized to accommodate the thickness of the bale wall and the load created by the wall and roof live and dead loads. Foundation (stem) walls which support bale walls shall extend to an elevation of not less than six inches above adjacent ground at all points.

Section 9805.8. Wall and Roof Bearing Assembly Anchorage.

Section 9805.8.1. General. Vertical rebar with a minimum diameter of one-half inch shall be embedded in the foundation a minimum depth of six inches, and shall extend above foundation a minimum of twelve inches. The vertical bars shall be located along the centerline of the bale wall, spaced not more than two feet apart. A vertical bar shall also be located within one foot of any opening or corner, except at locations occupied by anchor bolts.

Section 9805.8.2. Intersecting Walls. Walls of other materials intersecting bale walls shall be attached to the bale wall by means of one or more of the following methods or an acceptable equivalent:

1. Wooden dowels at least five-eighths inch in diameter of sufficient length to provide twelve inches of penetration into the bale, driven through holes bored in the abutting stud, and spaced to provide one dowel connection per bale.

2. Pointed wooden stakes, at least twelve inches in length and one and one-half inch by three and one-half inches at the exposed end, fully driven into each course of bales, as anchorage points.

3. Bolted or threaded rod connection of the abutting wall, through the bale wall, to a steel nut and steel or plywood plate washer, a minimum of six inches square and a minimum thickness of three-sixteenth inch for steel and one-half inch for plywood, in at least three locations.

Section 9805.8.3. Anchor Bolts. All exterior and load bearing bale walls shall be anchored to the foundation by one-half inch diameter steel anchor bolts embedded at least seven inches in the foundation at intervals of four feet or less. A minimum of two anchor bolts per wall shall be provided with one bolt located within twenty-four inches of each end of each wall. Sections of one-half inch diameter threaded rod shall be connected to the anchor bolts, and to each other, by means of threaded coupling nuts and shall extend through the roof bearing assembly and be fastened with a steel washer and nut. Bale walls and roof bearing assemblies may be anchored to the foundation by means of other methods which are adequate to resist uplift forces resulting from the design wind load and approved by the building official. There shall be a minimum of two points of anchorage per wall, spaced not more than four feet apart, with one located within twenty-four inches of each end of each wall.

The dead load of the roof and ceiling systems will produce vertical compression of the bales. Regardless of the anchoring system used to attach the roof bearing assembly to the founda-

tion, prior to installation of wall finish materials, bolts or straps shall be re-tightened to compensate for this compression.

Section 9805.8.4. Moisture Protection. All weather-exposed bale walls shall be protected from water damage. An approved building moisture barrier shall be used to protect at least the bottom course of bales, but not more than the lower one-third of the vertical exterior wall surface, in order to allow natural transpiration of moisture from the bales. The moisture barrier shall have its upper edge inserted at least six inches into the horizontal joint between two courses of bales, and shall extend at least three inches below the top of the foundation. Bale walls shall have special moisture protection provided at all window sills. Unless protected by a roof, the tops of walls shall also be protected. This moisture protection shall consist of a waterproof membrane, such as asphalt-impregnated felt paper, polyethylene sheeting, or other acceptable moisture barrier, installed in such manner as to prevent water from entering the wall system at window sills or at the tops of walls.

Section 9805.8.5. Moisture Barrier. A moisture barrier shall be used between the top of the foundation and the bottom of the bale wall to prevent moisture from migrating through the foundation into the bottom course of bales. This barrier shall consist of one of the following:

1. Cementitious waterproof coating;

2. Type 30 asphalt felt over asphalt emulsion;

3. Sheet metal flashing, sealed at joints;

4. Other approved building moisture barrier. All penetrations through the moisture barrier, as well as all joints in the barrier, must be sealed with asphalt, caulking or an approved sealant.

Section 9805.8.6. Stacking and Pinning. Bales in all exterior and load-bearing walls shall be laid flat and stacked in running bond with each bale overlapping the two bales beneath it. Bales in non-load-bearing interior walls may be laid either flat or on-edge and stacked in running bond. Overlaps shall be a minimum of twelve inches. Gaps between the ends of bales which are less than six inches in width can be filled by a tightly fitted untied flake.

The first course of bales shall be laid by impaling the bales on the vertical bars or threaded rods, extending from the foundation. When the fourth course has been laid, #4 rebar pins, or an acceptable equivalent, long enough to extend through all four courses, shall be driven down through the bales, two in each bale, located so that they do not pass within six inches of, or through the space between the ends of any two bales. The layout of these pins shall approximate the layout of the vertical bars extending from the foundation. As each subsequent course is laid, two such pins, long enough to extend through the course being laid and the three courses immediately below it, shall be driven down through each bale. This pinning method shall be continued to the top of the wall. In walls seven or eight courses high, pinning at the fifth course may be eliminated.

Only full-length bales shall be used at corners of load-bearing walls, unless exceptions are designed by a professional engineer licensed by the state to practice as such, and approved by the building official.

Vertical #4 rebar pins, or an acceptable alternative, shall be located within one foot of all corners or door openings.

Staples, made of #3 or larger rebar formed in a "U" shape, at least eighteen inches long with two six inch legs, shall be used at all corners of every course, driven with one leg into the top

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of each abutting corner bale. In lieu of staples, corner bales may be tied together by a method approved by the building official.

Section 9805.8.6.1. Alternative Pinning Method. When the third course has been laid, vertical #4 rebar pins, or an acceptable equivalent, long enough to extend through all three courses, shall be driven down through the bales, two in each bale, located so that they do not pass within six inches of, or through, the space between the ends of any two bales. The layout of these rebar pins shall approximate the layout of the rebar pins extending from the foundation. As each subsequent course is laid, two such pins, long enough to extend through that course and the two courses immediately below it, shall be driven down through each bale. This pinning method shall be continued to the top of the wall.

Section 9805.8.7. Roof and Roof Bearing Assembly. Load-bearing bale walls shall have a roof bearing assembly at the top of the wall to bear the roof load and to provide a means of connecting the roof structure to the foundation. The roof bearing assembly shall be continuous along the tops of structural walls. Roofs shall be designed, constructed, and anchored as required by Chapters 15, 16, 23, and other appropriate chapters of this code. An acceptable roof bearing assembly option consisting of two double two inch by six inch, or larger, horizontal top plates, one located at the inner edge of the wall and the other at the outer edge. Connecting the two doubled top plates and located horizontally and perpendicular to the length of the wall shall be two inch by six inch cross members spaced no more than forty-eight inches center to center, and as required to align with the threaded rods extending from the anchor bolts in the foundation. The double two inch by six inch top plates shall be face nailed with 16d nails staggered at sixteen inches on center, with laps and intersections face nailed with four 16d nails. The cross members shall be face nailed to the top plates with four 16d nails at each end. Corner connections shall include overlaps nailed as above or an acceptable equivalent such as plywood gussets or metal plates. Alternatives to this roof bearing assembly option must provide equal or greater vertical rigidity and provide horizontal rigidity equivalent to a continuous double two inch by six inch top plate and approved by the building official.

Section 9805.8.8. Openings and Lintels. All openings in load-bearing bale walls shall be a minimum of one full bale length from any outside corner, unless designed by a registered architect or a professional engineer licensed by the state to practice as such, and approved by the building official.

Section 9805.8.8.1. Openings. Openings in exterior bale walls shall not exceed fifty percent of the total wall area, based on interior dimensions, where the wall is providing resistance to lateral loads, unless the structure is designed by a registered architect or a professional engineer licensed by the state to practice as such, and approved by the building official.

Section 9805.8.8.2. Lintels. Wall and/or roof load present above any opening shall be carried, or transferred to the bales below by one of the following:

1. A structural frame,

2. A lintel (such as an angle-iron cradle, wooden beam, wooden box beam). Lintels shall be at least twice as long as the opening is wide and extend at least twenty-four inches beyond either side of the opening. Lintels shall be centered over openings, and shall not exceed the load limitations of Section 9805.6.

Section 9805.8.9. Wall Finishes. Interior and exterior surfaces of bale walls shall be protected from mechanical damage, flame, animals, and prolonged exposure to water. Bale walls adjacent to bath and shower enclosures shall be protected by a moisture barrier.

Cement stucco shall be installed as required by the Building Code.

Where bales abut other materials the plaster/stucco shall be reinforced with galvanized expanded metal lath, or an acceptable equivalent, extending a minimum of six inches onto the bales.

Earthen and lime-based plasters may be applied directly onto the exterior and interior surface of bale walls without reinforcement, except where applied over materials other than straw. Weather-exposed earthen plasters shall be stabilized using a method approved by the building official.

Lime-based plasters may be applied directly onto the exterior surface of bale walls without reinforcement, except where applied over materials other than straw.

Section 9805.8.10. Electrical. All wiring within or on bale walls shall meet all provisions of the National Electrical Code adopted by this jurisdiction. Type NM or UF cable may be used, or wiring may be run in metallic or non-metallic conduit systems. Electrical boxes shall be securely attached to wooden stakes driven a minimum of twelve inches into the bales, or an acceptable equivalent.

Section 9805.8.11. Plumbing. Water pipes within bale walls shall be encased in a continuous pipe sleeve to prevent leakage within the wall. Where water pipes are mounted on bale walls, they shall be isolated from the bales by a moisture barrier. Gas piping shall not be encased within bale walls without prior approval from the building official.

Section 9805.8.12. Insulation. All straw bale buildings shall be constructed to comply with the adopted energy code.

Exception: A vapor barrier shall not be installed over the exterior walls. Flat laid walls shall have an assumed R-value of 2.4 per inch of thickness.

(bb) A new chapter 99 is added to the Building Code to read:

CHAPTER 99. FENCES AND WALLS.

Section 9901. Definitions.

(1) As used herein, the term "wall" means a free standing structure such as a fence or retaining wall.

(2) As used herein and in Section 9-9-15, "Fences and Walls," B.R.C. 1981, the term "finished grade" means the top surfaces of lawns, walks, drives, or other improved surfaces after completion of construction or grading operations, but not including vegetation growing on the surface.

(3) For purposes of determining the maximum height allowable for any fence or wall other than wind load height as specified in subsection (4) of this section, refer to Section 9-9-15, "Fences and Walls," B.R.C. 1981, and the diagram below.

(see following page for continuation of Section 10-5-2)

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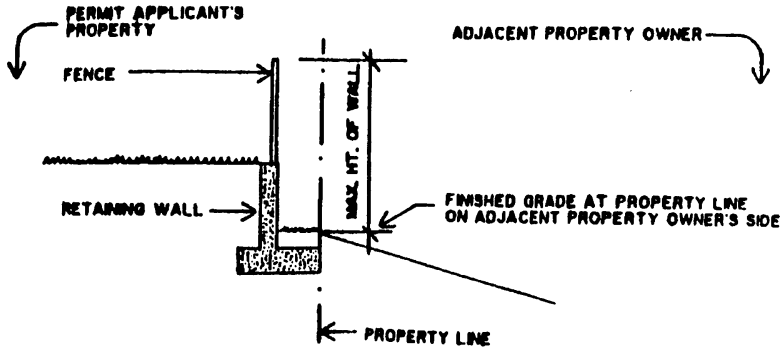
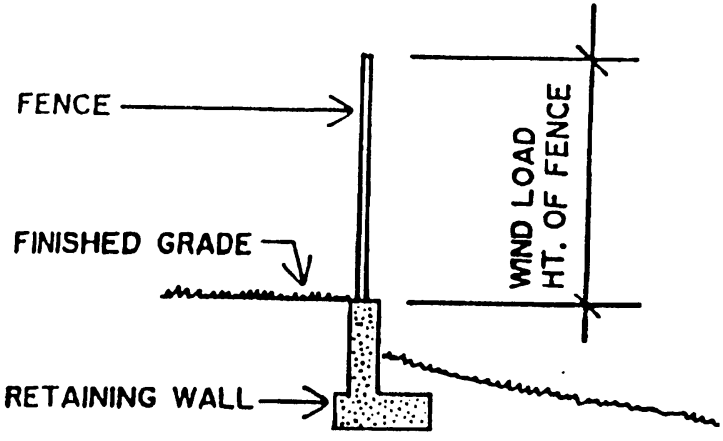


(4) For purposes of determining wind load design in the case of a fence erected above a retaining wall, the height of such fence means the distance from the top of the retaining wall to the top of the fence, as illustrated in the figure below:



(5) Nothing in this section is intended to prohibit the installation of a guardrail for safety purposes which otherwise conforms to the requirements of this code.

Section 9902. All fences and walls hereafter installed in the city shall comply with Section 9-9-15, "Fences and Walls," B.R.C. 1981, and the following provisions:

(1) All fences and walls thirty-six inches high and lower shall have a wind load design of ten pounds per square foot or shall conform to paragraph (3) of this section.

(2) All fences and walls thirty-seven through eighty-four inches high shall have a wind load design of twenty pounds per square foot or shall conform to paragraph (3) of this section.

(3) As an alternative to the requirements of paragraphs (1) or (2), a wood fence that does not exceed seven feet in height may be installed if the following requirements are met:

(a) All posts shall be at least four inch by four inch timber or two inch Schedule 40 pipe and shall be set at least twenty-four inches in the ground in concrete;

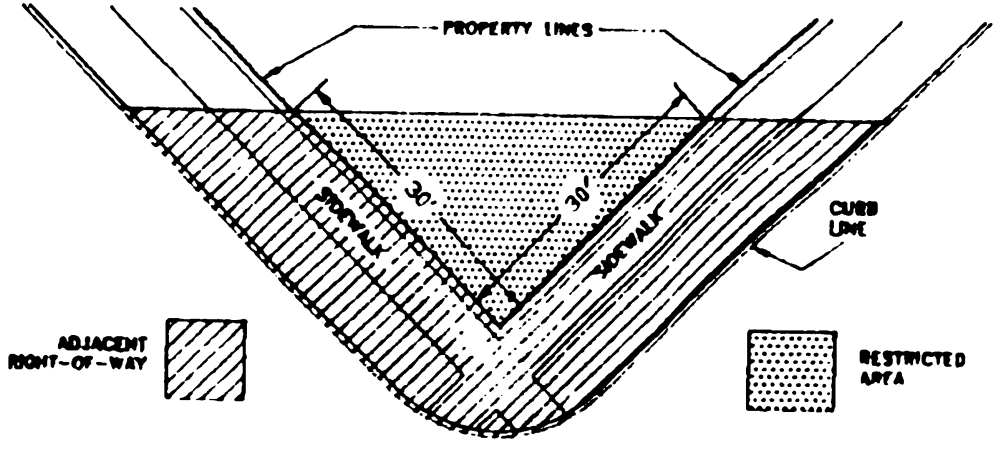
(b) All wood below grade shall be cedar, redwood, or penta pressure treated fir;

(c) Post spacing shall be arranged so that the area of the fence between posts does not exceed 30 square feet;

(d) Wood fencing more than fifty percent open may exceed the 30 square foot post spacing requirements if designed for a ten pound wind load.

(4) Chain link fences. On all chain link fences, the fence posts shall be at least one and one-half inch diameter pipe, and shall be set at least twenty-four inches in the ground in concrete.

(5) For the purpose of minimizing traffic hazards at street intersections by improving visibility for converging vehicles, obstructions higher than thirty inches above the adjacent top or curb elevation are not permitted to be planted, placed, or erected on any corner lot within the triangular portion of land designated as "Restricted Area" in the figure below or on the adjacent right of way:



(6) Where permitted, fences exceeding seven feet in height shall conform to the zoning requirements for accessory structures.

Ordinance Nos. 4984 (1986); 5125 (1988); 5177 (1989); 5493 (1992); 5562 (1993); 5572 (1993); 5645 (1994); 5781 (1996); 5891 (1997); 6053 (1999); 7141 (2001).

10-5-3 Adoption Of Uniform Code For Abatement Of Dangerous Buildings With Modifications.

The 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings of the International Conference of Building Officials is hereby adopted by reference as the City of Boulder's Abatement Code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this section set forth below:

(a) Section 201.3, "Right Of Entry," is repealed and reenacted to read:

Section 201.3 Right of Entry.

(1) Whenever the city manager has probable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous, or hazardous, and the manager determines that an inspection of the property is necessary to discover the extent of the hazard and to order the appropriate corrections, the manager shall request entry from the occupants or, if the building is unoccupied, from the owner or any other person having charge or control over the building or premises. If entry is refused, or if the manager is unable, after making reasonable efforts, to locate a person responsible for an unoccupied building, or such person does not respond to the manager's request, the manager shall apply to a judge of the municipal court for an inspection warrant pursuant to Subsection 2-6-3(e), B.R.C. 1981.

(2) In cases of emergency where there is imminent danger of injury to any person or of damage to property of another, the manager may enter any property to make any necessary inspections under this code or to take any other action authorized by this code without permission or warrant.

(b) Section 203, "Violations," is repealed and reenacted to read:

Violations

Section 203. (1) No person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of the Code for Abatement of Dangerous Buildings. (2) No owner and no person having charge or control over any building or premises shall fail to comply with any order issued to such person under the Code for Abatement of Dangerous Buildings.

(c) Section 205.1, "Board Of Appeals," is repealed and reenacted to read:

Appeals

Section 205.1.

(a) The record owner of a building or the owner's authorized agent or any person with any other legal interest in the building may appeal any order issued pursuant to Section 401.2 to the board of building appeals on the ground that such order was based on an erroneous interpretation or application of this or any other city code by the city manager. The city manager has the burden of proof in such an appeal. The board shall determine whether the city manager's interpretation or application of such code was correct or in error at a hearing under the procedures described by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(b) An applicant for an appeal to the board of building appeals shall pay the fee prescribed by Section 4-20-47, "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981.

(c) The board of building appeals has no authority to interpret the administrative provisions of this code nor may the board waive any requirement of this code.

(d) The definition of "Housing code" in section 301, "General," is repealed and reenacted to read:

HOUSING CODE means Chapter 10-2, "Housing Code," B.R.C. 1981.

(e) The introductory paragraph of section 302, "Dangerous Building," is repealed and reenacted to read:

For the purposes of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building.

(f) Paragraphs 4 and 5 of section 401.2, "Notice And Order," and sections 401.4 and 401.5 are repealed and reenacted to read:

4. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the city manager:

(I) will order the building vacated and posted to prevent further occupancy until the work is completed;

(II) may proceed to cause the work to be done and charge the costs thereof against the property or its owner pursuant to Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981; and

(III) may cause a summons and complaint to be served upon the property owner or any person having charge or control over the building or premises for failure to make required repairs or demolition within the time specified.

5. Statements advising:

(I) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the city manager to the board of building appeals, provided the appeal is made in writing as provided in this code and filed with the city manager within ten days from the date of service of such notice and order; and

(II) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

401.4 The method of service shall be as prescribed in Section 1-3-3, "Notice of Agency Action," B.R.C. 1981.

(g) The final paragraph of section 501.1 is repealed.

(h) Chapter 6, "Procedure For Conduct Of Hearing Appeals," is repealed and reenacted to read:

Chapter 6.

Appeal Procedure. Appeals shall be heard pursuant to Section 1-3-5, "Hearings and Determinations," B.R.C. 1981.

(I) Section 801.2, "Costs," is repealed and reenacted to read:

The cost of such work plus twenty percent for administrative overhead shall be billed to the record owner of the property, and if not paid within thirty days of billing may be

collected pursuant to Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

(i) Chapter 9, "Recovery Of Cost Of Repair Or Demolition," is repealed.

Ordinance Nos. 5177 (1989); 5493 (1992); 5676 (1994); 5781 (1996).

10-5-4 **Building Permit Fees.**

Building permit fees are those prescribed by subsection 4-20-4(c), B.R.C. 1981. Fees for other permits issued pursuant to this chapter and charges for services are those prescribed by subsection 4-20-4(d), B.R.C. 1981.

Ordinance Nos. 4984 (1986); 5493 (1992); 5781 (1996).

10-5-5 **Wood Roof Covering Materials Prohibited.**

(a) No person shall install or cause to be installed any wood roof covering materials, including, without limitation, wood shakes or wood shingles. This prohibition includes wood roof covering materials with fire retardant treatments of any kind.

(b) It shall be a specific defense to a charge of violation of subsection (a) of this section that the wood roof covering materials were installed before January 1, 2014, to repair portions of an existing wood roof, that the repair wood roof covering materials were factory pressure treated so as to be fire retardant and are approved as meeting Class B standards in accordance with section 1501.1 of the building code, and that the wood roof covering materials were installed in a quantity not exceeding fifty percent of the roof surface in any three-hundred-sixty-five-day period.

(c) No person owning a building with wood roof covering materials shall fail to remove or cause to be removed from the building all wood roof covering materials before January 1, 2014, and to replace the removed roofing with approved roof covering materials which conform to the International Building Code as adopted, and no person shall thereafter take possession or ownership of a building with wood roof covering materials.

(d) The following additional definition applies to this section and to chapter 15 of the building code:

"Wood roof covering material" means an exterior surface material used as a top covering and made of wood. "Wood," for the purposes of this definition, means any natural or composite material containing at least fifty percent wood by volume.

Ordinance Nos. 5645 (1994); 5693 (1995); 5781 (1996).

TITLE 10 STRUCTURES

Chapter 5.5 Residential Building Code[1]

Section:

10-5.5-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating the construction, alteration, repair, wrecking, and moving of residential structures in the city. The city council hereby adopts the 2003 edition of the International Residential Code with certain amendments thereto found to be in the best interests of the city.

10-5.5-2 Adoption Of The International Residential Code With Modifications.

(a) The 2003 edition of the International Residential Code of the International Code Council is hereby adopted by reference as the City of Boulder Residential Building Code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) The appendix chapters D, E, G, H, J and K and sections contained therein are adopted.

(c) Section R101.1, "Title," is repealed and reenacted to read:

R101.1 Title. These provisions shall be known as the Residential Code of the City of Boulder or residential code and shall be cited as such and will be referred to herein as "this code".

(d) The exception to section R101.2, "Scope," is repealed.

(e) Sections R102 through R114 are repealed. This code shall be administered in accordance with chapter 1, "Administration," of the International Building Code as adopted, with amendments, by section 10-5-2, "Adoption Of International Building Code With Modifications," B.R.C. 1981.

(f) The climatic and geographic design criteria applicable to table R301.2.1 are:

Roof Snow Load = thirty pounds per square foot
Three second wind gust velocity = 110 MPH
Seismic Design Category = B
Weathering = severe
Frost line depth = 32 inches
Termite = slight
Decay = none to slight
Winter Design Temp = 2 degrees Fahrenheit
Ice shield underlayment = NO

[1]Adopted by Ordinance No. 7304.

(g) Section R902.1, "Roof Covering Materials," is repealed and reenacted to read:

R902.1. Roof covering materials. All roof covering materials shall be listed as Class A or B as tested in accordance with UL Standard 790 or ASTM Standard E 108. Roof assemblies with covering of brick, masonry, slate, clay or concrete roof tile, exposed concrete roof deck, ferrous or copper shingles or sheets and metal sheets and shingles, shall be considered Class A roof coverings.

(h) Section R905.7, "Wood Shingles," is repealed and reenacted to read:

R905.7. Wood shingles. Wood shakes, wood shingles and wood roof covering materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, for certain minimal repairs.

(i) Section R905.8, "Wood Shakes," is repealed and reenacted to read:

R905.8. Wood shakes. Wood shakes, wood shingles and wood roof covering materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, for certain minimal repairs.

(j) Chapter 11, "Energy Efficiency," is repealed.

(k) Section M1411.3, "Condensate Disposal," is amended by adding "category IV condensing appliances" to the first sentence to read:

Condensate from all cooling coils, evaporators or category IV condensing appliances shall be conveyed from the drain pan outlet to an approved place of disposal.

(l) A new section is added to chapter 15, "Exhaust Systems," to read:

Section M1500. Outdoor discharge. The air removed by every mechanical exhaust system shall be discharged to the outdoors at a point where it will not create a nuisance. Air shall not be exhausted into an attic, soffit, ridge vent or crawl space.

Exception: Whole-house ventilation-type attic fans that discharge into the attic space of dwelling units having private attics are not prohibited.

(m) A new sentence is added to item 2 of section M1601.1.1, "Above-Ground Duct Systems," to read:

Flexible air duct shall not exceed 7 feet in length and flexible connectors are limited to toilet rooms and bathroom exhaust systems only.

(n) A new sentence is added to section M1602.1, "Return Air," to read:

Within individual dwelling units there shall be at least one return air opening on each floor.

(o) Exceptions 2, 3, and 4 to section G2406.2, "Prohibited Locations," are repealed.

(p) A new sentence is added to section G2407.6, "Outdoor Combustion Air," to read:

The room in which the appliances are receiving outdoor combustion air must be thermally isolated from the conditioned space of the dwelling unit or such outdoor air must be conditioned prior to entering the dwelling unit or room in which the appliance served, is located.

(q) Section G2415.9, "Minimum Burial Depth," is repealed and reenacted to read:

G2415.9 Minimum burial depth. Underground piping systems shall be installed at a minimum depth of 12 inches below grade for metallic piping and a minimum depth of 18 inches for non-metallic piping. Where such depths cannot be obtained, equivalent protection must be provided by other means approved by the building official.

(r) Section G2417.4.1, "Test Pressure," is repealed and reenacted to read:

G2417.4.1. Test pressure. The test pressure to be used shall be no less than $1^1/_2$ times the proposed maximum working pressure, but not less than 10 psig.

(s) Section G2432.1, "Decorative Appliances For Installation In Fireplaces," is amended by adding a new item 2432.1.2 to read:

G2432.1.2. Within a vented fireplace the damper must be removed or welded open and glass doors installed over the fireplace opening.

(t) Section G2434.1, "Vented Gas Fireplaces," is amended by adding a new item G2434.1.1 to read:

G2434.1.1. Vented gas fireplaces shall be provided with outside combustion air.

(u) Section G2435.1, "Vented Gas Fireplace Heaters," is amended by adding a new item G2435.1.1 to read:

G2435.1.1. Vented gas fireplace heaters shall be provided with outside combustion air.

(v) Section G2445.4, "Prohibited Locations," is repealed and reenacted to read:

These appliances shall not be used in bedrooms or rooms readily used for sleeping purposes.

(w) Section AK102.1, "Airborne Sound," is amended to read:

Airborne sound insulations for wall and floor-ceiling assemblies shall meet a Sound Transmission Class rating 50 when tested in accordance with ASTM Standard E 90.

(x) Section AK103.1, "Structural-Borne Sound," is amended to read:

Floor/ceiling assemblies between dwelling units or between a dwelling unit and a public or service area within a structure shall have an impact insulation class (IIC) rating of not less than 50 when tested in accordance with ASTM Standard E 492.

(y) Resource Conservation - Green Points:

(1) Purpose: The purpose of these standards is to encourage cost-effective and sustainable residential building methods to conserve fossil fuels, water and other natural resources, to promote the reuse and recycling of construction materials, reduce solid waste, and to promote enhanced indoor air quality. These standards apply to new residential construction, additions which add residential floor area to existing buildings and to interior remodels according to the table below.

(2) Schedule For Green Points: Residential building permit applicants are required to earn Green Points according to the following schedule:

Project Description	Points Required	Thresholds
New construction	50 points	Up to 1,500 square feet
New construction	65 points	Between 1,501 and 2,500 square feet
New construction, each additional 50 square feet	1 point, up to the maximum points that may be accumulated pursuant to the provisions of this chapter	2,501 square feet or greater
Interior remodel	10 points	500 - 1,000 square feet
Interior remodel	15 points	1,001 - 2,000 square feet
Interior remodel	25 points	2,001 square feet or greater
Additions	25 points	500 - 1,000 square feet
Additions	50 points	Between 1,001 and 2,500 square feet
Additions, each additional 50 square feet	1 point, up to the maximum points that may be accumulated pursuant to the provisions of this chapter	2,501 square feet or greater

For detailed compliance information on each measure please refer to the Green Points regulation guidebook.

(3) Construction/Demolition And Use Of Recycled Materials:

(A) 3 points - Deconstruction Plan Submitted with permit application (additions, remodels, or scrape-offs only).

(B) 5 points - Deconstructed materials donated to a reseller.

(C) 5 points - Use reclaimed lumber.

(D) 5 points - Construction debris recycled.

(E) 2 points - Recycled content carpeting.

(F) 2 points - Recycled plastic in deck material.

(G) 1 point - Recycled content sheathing.

(H) 3 points - Recycled content or fiber cement siding.

(I) 3 points - Recycled content roofing.

(4) Land Use And Water Conservation:

(A) 1 - 3 points - Keep footprint simple for cost-effectiveness.

(i) 3 points - Simple rectangle.

(ii) 2 points - One "L."

(iii) 1 point - Rectangle with one rectangle protrusion.

(B) Xeriscape landscaping.

(i) 3 points - Reduction of turf areas to a minimum.

(ii) 1 point - All planting beds mulched at time of final inspection.

(iii) 2 points - Appropriate use of low water demanding plants.

(iv) 3 points - Zoned irrigation system separating turf from shrub areas and low water demand areas from high water demand areas that includes drip irrigation zones.

(C) Up to 6 points will be awarded for items not included in the water conservation options by a performance procedure: 1 point will be awarded for every ten thousand gallons of annual water savings per dwelling unit.

(D) 3 points - Use of engineered swales to filter storm water runoff (these points are awarded only if swale is not required by site plan conditions).

(E) 3 points - For planting two trees beyond required street trees (see guidelines for siting and approved species) plus 1.5 points for each additional tree to a maximum of 9 total points (six trees).

(5) Framing:

(A) 3 points - Incorporate optimal value engineering (OVE) framing techniques.

(B) 2 points - Oriented strand board (OSB) subfloors.

(C) 2 points - Oriented strand board (OSB) wall sheathing.

(D) 2 points - Finger-jointed studs used for wall framing.

(E) 5 points - Forest Stewardship Council (FSC) certified sustainably harvested lumber used for framing.

(F) 5 points - Engineered lumber used (floors).

(G) 2 points - Engineered lumber used to replace 2 x 10s or 2 x 12s for structural applications.

(H) 5 points - Structural alternatives to wood.

(I) 4 points - Structural insulated panels used for exterior walls.

(6) Energy Code Measures: Chapter 10-7, "Energy Conservation And Insulation Code," B.R.C. 1981, requires certain minimum measures of energy conservation for new buildings,

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additions, and remodels. These can be calculated using prescriptive methods for each assembly or item, or performance standards for the overall structure, or a combination. This paragraph specifies how points are to be awarded under this subsection for incremental increase in energy efficiency above the required minima in each of the categories specified in the table. The applicant shall complete a form approved by the city manager to calculate the points awarded for such incremental increases. For each category the form shall provide a space for the points for the actual measure which is planned to be installed, less the points which would be awarded for the minimum measure which would satisfy the energy code for that category as part of the overall energy calculation, with the resultant positive difference being the points which are counted toward the total points required under paragraph (y)(2) of this section.

Chapter 10-7 Measures	**Points**
Glass R / U Value (as determined by the National Fenestration Rating Council)	
2 / 0.5	0
2.2 / 0.45	2
2.5 / 0.4	4
2.8 / 0.35	6
3.3 / 0.3	8
U-0.25 or less	10
Wall Insulation	
R-11	0
R-13	1
R-15	2
R-19	3
R-24	4
R-25 or greater	5
Ceiling Insulation	
R-30	0
R-34	1
R-38	2
R-42	3
R-43 or greater	5
Floor Insulation	
R-15	0
R-19	1

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Chapter 10-7 Measures	Points
R-24	2
R-25 or greater	3
Basement Insulation	
R-10	0
R-13	1
R-19	2
R-24	3
R-25 or greater	4
Slab Insulation	
R-5	0
R-7	1
R-10	2
R-15	3
Crawl Space Insulation	
R-15	0
R-19	1
R-24	2
Heating Equipment	
Furnaces and boilers	
78% AFUE	0
84% AFUE	2
90% AFUE	4
94% AFUE	6
Air Conditioning	
11 SEER	0
12 SEER	2
13 SEER	4
14 SEER	6
15 SEER or greater	8

(7) Plumbing:

(A) 2 points - Tankless domestic hot water heaters.

(B) 3 points - "On-demand" hot water switch.

(8) Electrical:

(A) Efficient appliances.

(i) 1 point - Energy saving dishwasher installed.

(ii) 1 point - Energy saving clothes washer installed.

(iii) 1 point - Energy saving refrigerator installed.

(iv) 1 point - Energy saving freezer installed.

(B) 1 point - Clothesline installed.

(C) 1–3 points - 1 point for every four compact fluorescent bulbs installed, up to a maximum of 3 points.

(D) 2 points - Install energy efficient lighting controls.

(9) Insulation:

(A) 2 points - Wall insulation is eighty percent recycled material.

(B) 2 points - Ceiling insulation is eighty percent recycled material.

(C) 2 points - Wet-spray insulation in walls.

(D) 2 points - Wet-spray insulation in ceiling.

(E) 0.5 points - per window for additions and remodels: Single-pane windows changed out for double pane (up to a maximum of 10 points).

(F) 1 point - per window for additions and remodels: Single-pane windows changed out for low emissivity window (up to a maximum of 10 points).

(G) 1.5 points - per window for additions and remodels: Single-pane windows changed out with argon/HM windows (up to a maximum of 10 points).

(H) 5 points for additions and remodels: Existing ceiling insulated to R-38 (or to capacity for fixed space).

(I) 7 points for additions and remodels: Existing walls insulated to capacity or rigid insulation added to exterior.

(J) 2 points - Install recycled-content, formaldehyde-free fiberglass insulation.

(K) 2 points - No metal windows used in basements.

(10) Heating, Ventilation And Air Conditioning (HVAC):

(A) 1 point - Air destratification systems.

(B) 5 points - Natural cooling.

(C) 6 points - Evaporative cooling installed.

(D) Air infiltration rate below.

(i) 2 points - 0.45 air changes per hour.

(ii) 4 points - 0.40 air changes per hour.

(iii) 6 points - 0.35 air changes per hour.

(iv) 8 points - Less than 0.35 air changes per hour.

Note: Less than 0.35 air changes per hour requires mechanical ventilation.

(E) 2 points - Vapor permeable infiltration barrier.

(F) 2 points - Whole house fan.

(G) 10 points for additions and remodels: Convert electric heat to gas heat.

(H) 4 points for additions and remodels: Replace electric water heater with gas water heater.

(I) 3 points - Hydronic baseboard heat.

(J) 3 points - Radiant floor heat.

(K) 8 points - Air to air heat exchanger (heat recovery ventilation).

(11) Solar:

(A) 2 points - Solar access beyond that provided by section 9-9-17, "Solar Access," B.R.C. 1981, is guaranteed through legally binding agreements.

(B) Passive solar potential preservation and solar space heating.

(i) 5 points - [These subparagraph (y)(11)(B)(i) points are available only in Solar Access Area II or Solar Access Area III, as defined in subsection 9-9-17(c), B.R.C. 1981.]

a. A wall surface is provided equal to ten percent of the unit's floor area or one hundred fifty square feet, whichever is greater.

b. Which is located on the more southerly side of the unit.

c. Which is oriented within thirty degrees of a true east-west direction.

d. Which is immediately adjacent to a heated space.

e. Which is not shaded between 10:00 a.m. and 2:00 p.m. on the winter solstice; and is totally shaded between 10:00 a.m. and 2:00 p.m. on the summer solstice.

f. Which has unimpeded solar access under either the provisions of section 9-9-17, "Solar Access," B.R.C. 1981, or through easements, covenants, or other private agreements among affected landowners, that the city manager finds are adequate to protect continued solar access for such wall surface.

(ii) 6 points - Glazing of the protected south wall surface adequate to provide at least twenty percent passive solar heating fraction of the building.

(iii) 12 points - Glazing of the protected south wall surface adequate to provide at least a forty percent passive solar heating fraction of the building, but only if designed in conjunction with an appropriately sized thermal mass so as not to affect adversely cooling loads.

(iv) 20 points - Glazing of the protected south wall surface adequate to provide at least a sixty percent passive solar heating fraction of the building, but only if designed in conjunction with an appropriately sized thermal mass so as not to affect adversely cooling loads.

(C) 10 points - Solar hot water heating with a savings fraction of at least 0.50.

(D) Active solar space heating with a savings fraction of at least:

(i) 8 points - 0.3.

(ii) 12 points - 0.4.

(iii) 16 points - 0.5.

(iv) 20 points - 0.6.

(E) 2 points - Active solar pre-plumbing.

(F) 20 points - Solar-generated electricity with a savings fraction of at least 0.25.

(12) Indoor Air Quality:

(A) 1 point - Interior use of low volatile organic compound (VOC) paint.

(B) 2 points - Solvent-free adhesives used.

(C) 3 points - High efficiency particulate air (HEPA) filter on furnace.

(D) 3 points - Rough-in for radon mitigation.

(E) 5 points - Radon mitigation installed (if points are taken for this section then no points can be awarded for rough-in).

(F) 3 points - Low toxic, water-based floor finish used.

(G) 3 points - Carbon monoxide detector installed.

(H) 5 points - Sealed combustion for gas water heater combined with sealed combustion for gas furnace or gas boiler.

(I) 5 points - Exhaust fan in garage with timer.

(J) 5 points - Elimination of all particleboard inside envelope of house.

(K) 3 points - Elimination of all medium density fiberboard made with urea-formaldehyde used inside envelope of house.

(L) 2 points - All exposed particleboard (cabinets, counter tops, stair treads, shelving) sealed with three coats of low VOC, latex paint.

(M) 3 points - Alternative no-formaldehyde products substituted for particleboard.

(N) 5 points - Install infrastructure to support current or future alternative fuel vehicle use (see guidelines for required documentation).

(13) Innovation Points:

(A) Up to 10 points - Innovative product or design points (to be awarded based on demonstrated energy or resource conservation savings).

(14) Regulations: The city manager may make reasonable interpretive and administrative regulations to aid in applying this subsection under the procedures of chapter 1-4, "Rulemaking," B.R.C. 1981.

(15) Interpretations And Variances:

(A) Interpretation: A person having an interest in an interpretation by the city manager of this subsection may file an application, on a form provided by the city manager and containing the information required by such form, for review of that interpretation by the Board of Building Appeals. The Board of Building Appeals shall hear the interpretation review at a public hearing, for which notice shall be published at least ten days in advance in a newspaper of general circulation in the city.

(B) Variance: A person having an interest in property for which a building permit for an addition is denied on the basis of noncompliance with this subsection may file an application for a variance, on a form provided by the city manager and containing the information required by such form, for review of that variance request by the Board of Building Appeals. The Board of Building Appeals shall hear a request for a variance at a public hearing, for which notice shall be published at least ten days in advance in a newspaper of general circulation in the city. The hearing will be conducted under the procedures of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The burden of proof is on the applicant to show by clear and convincing evidence that all of the criteria for a variance have been met.

(C) Criteria For Variances: The Board of Building Appeals may grant a variance only if it finds that there are unusual physical circumstances or conditions of the building being added to which are not present in other additions of similar size and scope, that such physical circumstances or conditions were not created by the applicant, and that literal enforcement of the applicable provisions of this subsection will result in undue hardship.

The financial resources of the applicant shall not be considered as an undue hardship. However, the cost of the required work may be considered relative to the benefit of compliance with this subsection to the public and future owners or occupants of the building in making such a determination.

In granting any variance, the board may attach such reasonable conditions as it deems necessary to implement the purposes of this subsection.

Ordinance Nos. 5850 (1996); 7142 (2001); 7287 (2003); 7331 (2004); 7476 (2006).

TITLE 10 STRUCTURES

Chapter 6 Electrical Code[1]

Section:

10-6-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating the installation, alteration, or repair of or addition to electrical conductors or equipment installed within or on any structure in the city. The city council hereby adopts the 2002 edition of the National Electrical Code with certain amendments and deletions thereto found to be in the best interests of the residents of the city.

Ordinance Nos. 5177 (1989); 5310 (1990); 5571 (1993); 5851 (1996).

10-6-2 Adoption Of The National Electrical Code With Modifications.

(a) The 2002 edition of the National Electrical Code of the National Fire Protection Association is hereby adopted by reference as the City of Boulder Electrical Code or electrical code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) Article 80 is repealed. This code shall be administered in accordance with chapter 1, "Administration," of the International Building Code as adopted, with amendments, by section 10-5-2, "Adoption Of International Building Code With Modifications," B.R.C. 1981.

(c) Subsection 210-8(b), is amended by adding the following additional locations where ground-fault circuit-interrupter protection for personnel is required:

3. Wet bar sinks - where the receptacles are installed to serve a countertop surface and the receptacle is located within 6 feet of the outside edge of the wet bar sink.

(d) Subsection 210-70(a)3 is repealed and reenacted to read:

(3) Storage or Equipment Spaces. For attics, underfloor spaces, utility rooms and basements, at least one lighting outlet controlled by a wall switch shall be installed where these spaces are used for storage or contain equipment requiring servicing. The control wall switch shall be located at the usual point of entry to such space. The lighting outlet shall be provided at or near the equipment requiring servicing.

(e) The first sentence of section 230.2, "Number Of Services," is repealed and reenacted to read:

230.2. Number of Services. A building or other structure shall be supplied by only one service unless permitted in 230.2(A) through (D) and approved prior to permit issuance or prior to the start of any electrical work indicated on the permit.

[1]Adopted by Ordinance No. 4636. Amended by Ordinance Nos. 4710, 7304. Derived from Ordinance No. 3803.

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(f) A new item 3 is added to section 230.2(B), "Special Occupancies," to read:

(3) Fire areas separated by a minimum two hour fire wall as defined by the building code may be considered as separate buildings for the purpose of calculating the number of services if approved by the building official.

(g) A new item 4 is added to section 230.2(C), "Capacity Requirements," to read:

(4) Where the existing service is being used to capacity and has been properly maintained.

(h) Subsection 230-40, concerning the number of service-entrance conductor sets, is amended by deleting exceptions 3 and 4.

(i) Subsection 230-70(a), concerning the location of service equipment disconnecting means, is repealed and reenacted to read:

(a) Location. The service disconnecting means shall be installed at a readily accessible location either immediately adjacent to or attached to the outside of a building or structure, or inside nearest the point of entrance of the service conductors.

(1) Service entrance conductors shall not exceed ten feet maximum developed length unspliced between the meter housing and the main disconnect. This allows the service entrance conductors to run within the building up to ten feet and to terminate at the disconnecting means.

(2) Electrical rooms containing building main disconnects located within a structure shall be located near the point of service entrance and on the exterior wall with a door leading directly outside. The door shall be identified with three inch high lettering stating "Electrical Equipment Room."

(j) Section 250-74, concerning connecting receptacle grounding terminal to box, is amended by the deleting exceptions 1, 2 and 3.

(k) The last sentence of the first paragraph of subsection 250.53(D)2, concerning metal underground water pipe as a grounding electrode system, is repealed and reenacted to read:

The supplemental electrode shall be permitted to be bonded to the grounding electrode conductor, the grounded service-entrance conductor, the grounded service raceway, or any grounded service enclosure by means of a separate grounding electrode conductor.

(l) Section 310.12(C) is amended by specifying the colors of ungrounded conductors to be black, red, blue for 120/208 volt systems and brown, orange, yellow for 277/480 volt systems.

Nonmetallic-Sheathed Cable: Types NM, NMC and NMS.

(m) The first sentence of section 334.10(3) is amended to read:

(3) Other structures permitted to be of Types IIIB, IV and V construction of 10,000 square feet or less.

(n) The last sentence of the introductory portion of subsection 404.8, concerning the location of switches, is repealed and reenacted to read:

They shall be so installed that the center of the grip of the operating handle of the switch or circuit breaker, when in its highest position, will not be more than six feet seven inches nor

less than three feet above the floor or working platform if within a building, or exterior grade or a working platform if on the exterior of a building.

(o) Subsection 517-13(A), concerning grounding of receptacles and fixed electric equipment in patient care areas, is amended by adding a sentence to read:

Receptacles and electrical outlets within examining rooms, treatment rooms, and similar areas where the patient may come in contact with electrical devices in these rooms shall be listed hospital grade and identified as such.

(p) Subsection 518-4(B), concerning Non-rated Construction, is repealed and reenacted to read:

(B) Non-rated Construction. Non-metallic-sheathed cable, Type AC cable, electrical non-metallic tubing, and rigid non-metallic conduit shall be permitted to be installed in buildings or portions of buildings of non-rated types of construction in accordance with section 334.10(3).

(q) Subsection 680.73, "Accessibility," is amended by adding the following:

Equipment shall be accessed by a panel with a minimum size of twelve inches by twelve inches.

Ordinance Nos. 4984 (1986); 5125 (1988); 5177 (1989); 5310 (1990); 5462 (1992); 5571 (1993); 5851 (1996); 6015 (1998).

10-6-3 **Electrical Permit Fees.**

Electrical permit fees are those prescribed by subsection 4-20-8(a), B.R.C. 1981.

Ordinance Nos. 4984 (1986); 5851 (1996).

TITLE 10 STRUCTURES

Chapter 7 Energy Conservation And Insulation Code[1]

Section:

10-7-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by encouraging the conservation of scarce energy resources through the regulation of building construction standards to minimize energy consumption for heating, cooling, lighting, and ventilating structures in the city and to encourage building design incorporating passive solar heating.

10-7-2 Energy Conservation Code.

(a) Council adopts by reference the 2000 International Energy Conservation Code of the International Code Council with the amendments specified below. This chapter shall be administered in accordance with and as part of chapter 10-5, "Building Code," B.R.C. 1981.

(b) A new subsection is added to read as follows:

101.3.1.3 For all permit applications involving demolition, new construction and remodels/additions of residential buildings greater than 500 square feet, the compliance form will include a deconstruction check list indicating waste reuse and recycling methods being proposed by the applicant.

(c) A new subsection is added to read as follows:

101.4.1.2 Remodels of existing buildings. For an interior remodel where the work authorized by a building permit under Chapter 10-5, "Building Code," B.R.C. 1981, does not alter more than 500 square feet of the existing conditioned space.

(d) Section 101.4.2.2, "Additions, Alterations Or Repairs," is amended by adding the following new paragraph:

1. In residential construction, additions to existing buildings may choose any of the compliance provisions found in chapters 4 or 5, including the prescriptive methods in section 502.2.5. Only the addition is required to comply with this energy conservation code. Where the method chosen for compliance includes energy conservation improvements in the existing floor area necessary for the new area or addition to comply, the entire building must be included in the calculations. Interior remodels affecting more than 500 square feet may choose a compliance path as required in 101.3.1 or demonstrate improvements in the envelope where those framing elements are exposed during construction. Exposed wall framing cavities shall be insulated to their fullest depth but in no case shall the insulation R-value be less than R-13. Exposed or accessible floor/ceiling assemblies, attics, basements and crawlspaces separating conditioned spaces from unconditioned spaces must be insulated to their fullest depth or, wherever possible, meet the prescriptive requirements of table 502.2.5. Replacement windows shall have a

1. Adopted by Ordinance No. 4636. Amended by Ordinance Nos. 4984, 5850, 7233. Derived from Ordinance Nos. 4236, 4503. Repealed and reenacted by Ordinance No. 7141.

maximum U-factor of 0.45. Replacement glazed doors shall meet or exceed the double glazed U-factors of table 102.5.2(1). Replacement non-glazed doors shall meet or exceed the U-factors described in table 102.5.2(2). Replacement building mechanical systems and equipment shall comply with Section 503 with the exception of 503.3.1 load calculations. Replacement service water heating equipment shall comply with Section 504.2. Exposed service water heating pipes shall comply with Section 504.5 for pipe insulation. All existing or new showerheads shall comply with Section 504.6 for conservation of hot water.

(e) A new section 101.5, "Demand Controllers Required In Electrically Heated Residential Buildings," is added:

(a) All electrically heated residential buildings shall have an automatic demand controller installed in each dwelling unit or in each separately metered electrical system. An automatic demand controller is defined as a device that automatically regulates the use of major electrical appliances and controls electrical demand load without human intervention.

(b) Individual energy meters are required for each dwelling unit in multi-family housing.

(f) Section 104, "Construction Documents," is repealed and reenacted to read as follows:

104.2 General. Construction documents and other supporting data shall be submitted in one or more sets with each application for a permit. The construction documents and designs submitted under the provisions of this chapter shall be prepared by and bear the stamp of a Colorado licensed professional engineer or architect. Documents submitted for the purposes of subsection 503.3.1 load calculations shall be submitted by a Colorado licensed engineer, architect or a professional who demonstrates the knowledge and experience to perform such calculations. Where special conditions exist, the code official is authorized to require additional construction documents to be prepared by a licensed professional.

Exceptions:

1. The code official may waive the submission of construction documents and other supporting data if the official finds that the nature of the work does not require review of the documents or data to obtain compliance. This waiver authority does not apply to documents required to be prepared by a licensed architect or engineer.

2. Single family dwellings using the prescriptive approach in Chapter 6 or any of the design packages in Chapter 5 and submitting worksheets provided by the United States Department of Energy, the International Code Council, or the city manager.

(g) Section 105.3, "Final Inspection," is amended by adding a new paragraph to read:

The applicant must provide at time of final inspection of a commercial building written verification which bears the stamp of a licensed architect or engineer or special inspector as described in the International Building Code that the structure conforms with the provisions of section 101.3.2.

(h) Section 202, the definition of "Code official" is repealed and reenacted to read:

Code official is the city manager.

(i) Table 302.1, "Exterior Design Conditions":

Winter, Design Dry-bulb (°F)	8F
Summer, Design Dry-bulb (°F)	91F
Summer, Design Wet-bulb (°F)	59F
Degree days heating	5554
Degree days cooling	649
Climate Zone	13b

(j) Section 502.1.1, is amended by adding a second paragraph to read:

Where the foundation walls, crawlspace or similar areas are insulated, the ground shall be provided with a vapor barrier of four mil polyethylene or equivalent, lapped at least one foot at each joint and extending up the foundation wall a minimum of six inches.

(k) Section 502.2.5, "Prescriptive Path For Additions And Window Replacements," is repealed and reenacted to read:

As an alternative to demonstrating compliance with Section 402 or 502.2, additions with a conditioned floor area less than fifty percent of the floor area as described in section 101.4.2.2 to the existing single family residential buildings and structures shall meet the prescriptive envelope component criteria in Table 502.2.5 for the designated hearing degree days (HDD) applicable to the city. The U-factor of each individual fenestration product (windows, door and skylights) shall be used to calculate an area-weighted average fenestration product U-factor for the addition, shall not exceed the applicable listed values in Table 502.2.5. For additions, the total area of fenestration products shall not exceed twenty-five percent of the gross wall and roof area of the addition. The R-values for opaque thermal envelope components shall be equal to or greater than the applicable listed values in Table 502.2.5. Replacement fenestration products (where the entire unit, including the frame, sash and glazing, is replaced) shall meet the prescriptive fenestration U-factor criteria in Table 502.2.5 for the designated HDD applicable to the city.

1. Replacement skylights shall have a maximum U-factor of 0.5.

2. There is no maximum area limitation on the amount of glazing that may be located in south facing walls provided: (a) the windows are provided with operable insulated shutters or other devices which, when drawn or closed, shall cause the window area to reduce maximum outward heat flows in accordance with table 502.1.4.1 and (b) the window areas are shaded or otherwise protected from direct rays of the sun during periods when mechanical cooling is required. As used herein, "south facing wall" means any glazed exterior wall that is oriented within thirty degrees of due south and not more than thirty degrees from the vertical.

(l) Section 701.1, "General," is repealed and reenacted to read:

Commercial buildings shall meet the requirements of ASHRAE/IES 1999 Energy Code for Commercial and High-Rise Residential Buildings.

Exception: Commercial buildings that comply with Chapter 8.

Ordinance No. 7172 (2001).

TITLE 10 STRUCTURES

Chapter 8 Fire Prevention Code[1]

Section:

10-8-1 Legislative Intent.

The purpose of this chapter is to protect public health and safety by regulating the use, condition, construction, alteration, and repair of property, structures, and occupancies in the city in order to prevent the ignition and spread of fire and risk of harm to persons or property from fire and other causes. The city council hereby adopts the 2003 edition of the International Fire Code with certain amendments, additions, and deletions thereto found to be in the best interests of the city. The standards provided in this chapter shall be used, insofar as they are applicable, in determining whether a condition is a hazardous one, whether any work that has been performed has been done in an approved manner, or whether any equipment is of an approved type or quality, and in any determination concerning fire hazards and fire safety in the city building code not specifically provided for therein.

Ordinance Nos. 5781 (1996); 6015 (1998).

10-8-2 Adoption Of International Fire Code With Modifications.

(a) The 2003 edition of the International Fire Code of the International Code Council is adopted by reference as the City of Boulder Fire Code or fire code, and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) The Fire Code adopted by subsection (a) of this section is amended in the following places:

(1) Section 102.3 is repealed and reenacted to read:

102.3 Change of use or occupancy. The provisions of the building code shall apply to all buildings undergoing a change of occupancy.

(2) Section 102.4 is repealed and reenacted to read:

102.4 Application of building code. The design and construction of new structures shall comply with the building code. Repairs, alterations and additions to existing structures shall comply with the building code.

(3) Section 102.5 is repealed and reenacted to read:

102.5 Historic buildings. The construction, alteration, repair, enlargement, restoration, relocation or movement of existing buildings or structures that are designated as historic buildings when such buildings or structures do not constitute a distinct hazard to life or property shall be in accordance with the provisions of the building code.

[1]Adopted by Ordinance No. 5493. Amended by Ordinance No. 7304. Derived from Ordinance Nos. 3798, 4154, 4485, 4636, 4680, 4799, 4946, 4967, 4969, 5029, 5125, 5194, 5245, 5271, 5382.

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(4) Section 103.1 is repealed and reenacted to read:

103.1 Division of Fire Safety

A division of fire safety is established within the fire department under the direction of the manager, which shall consist of such fire department personnel as may be assigned thereto by the manager. The function of this division shall be to assist the manager in the administration and enforcement of the provisions of this code.

(5) Section 103.4 is repealed and reenacted to read:

103.4 Liability

The fire code shall not be construed to hold the City of Boulder or any of its employees or agents responsible for any damage to persons or property by reason of inspection or reinspection or failure to inspect or reinspect as herein provided or by reason of the approval or disapproval of any equipment as herein provided.

No employee of the city who enforces, attempts to enforce, or is authorized to enforce the fire code renders him or herself or the city liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or non-enforcement of the fire code. The city assumes no duty of care by virtue of the adoption of the fire code. No person is justified in relying upon the approval of a plan, the results of an inspection, or the issuance of a certificate of inspection or occupancy, and such approvals, inspections, and certificates are not a guarantee that the plan or work so approved, inspected, or certificated in fact complies with all requirements of the fire code. It is the duty of the person owning, controlling, or constructing any building or structure to insure that the work is done in accordance with the requirements of the fire code, and it is such persons and not the city who are responsible for damages caused by negligent breach of such duty.

(6) Section 104.4 is repealed and reenacted to read:

104.4 Identification.

For the purposes of this section, the term "fire code official" includes all firefighters appointed pursuant to Section 2-5-4, "Identification Card for Firefighters," B.R.C. 1981.

(7) Section 105.6 is repealed and reenacted to read:

105.6. Required operational permits. The fire code official may issue an operational permit for the following operations:

(a) 105.6.15, Explosives

(b) 105.6.31, Open Burning

(c) 105.6.33, Open Flames and Candles

(d) 105.6.37, Pyrotechnic special effects material

(e) 105.6.44 is amended by the addition of the following:

105.6.44. Temporary Membrane Structures, tents and canopies. An operational permit may be issued with the construction permit that will be issued by the building official.

(8) Section 105.7 is repealed and reenacted to read:

105.7. Required construction permits. All construction permits will be issued by the building official. The Division of Fire Safety will be the approving authority for the following:

(a) 105.7.1 Automatic fire-extinguishing systems

(b) 105.7.3 Fire alarm and detection systems and related equipment

(c) 105.7.4 Fire pump and related equipment

(d) 105.7.11 Standpipe systems

(9) Section 108, "Board Of Appeals," is repealed and reenacted to read:

108 Board of Appeals

(a) A person refused a building permit or refused approval of work done under a permit on the grounds that the proposed or completed construction fails to comply with this code or any other city building code may appeal the decision to the board of zoning adjustment and building appeals on the grounds that:

1. The denial was based on an erroneous interpretation of such code by the city manager; or

2. The city manager has erroneously failed to approve an alternate material or method pursuant to Section 104.9 of the fire code prior to its installation or use. In determining such an appeal the board shall apply the standards of Section 104.9 of the fire code.

The city manager has the burden of proof under paragraph 1 above. The appellant has the burden of proof on appeals brought pursuant to paragraph 2. The board shall determine the appeal and decide whether the city manager's interpretation or application of such code was correct or in error at a hearing under the procedures described by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(b) Any person whose building permit has been suspended or revoked may appeal such action by the city manager to the board of appeals on the ground that the suspension or revocation was based on an error in fact or an erroneous application of this code to the facts. The city manager has the burden of proving the facts upon which the manager relies at such a hearing.

(c) An applicant for an appeal to the board of appeals shall pay the fee prescribed by Section 4-20-52, "Fire Code Permit and Inspection Fees," B.R.C. 1981.

(d) The city manager may apply to the board of appeals, without fee, for an advisory opinion concerning alternative methods, applicability of specific requirements, approval of equipment and materials, and granting of special permission as contemplated in Sections 104.8 or 104.9 of the fire code.

(e) The board of appeals has no authority to interpret Chapter 1 (the administrative requirements) of this code except as expressly provided in this section, nor, because this code sets minimum standards, to waive any requirement of this code.

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(10) Appeals concerning existing conditions:

(a) Any aggrieved person who has been issued an order or other notice of violation under this fire code, other than a summons and complaint, under Sections 102.1 and 102.2 concerning legally existing conditions in a structure based upon the city manager's determination that such conditions constitute a distinct hazard to life or property, and who believes the alleged violation to be factually or legally contrary to the requirements of this fire code or rules and regulations issued pursuant to this fire code may appeal the order or notice to the board of building appeals in a manner provided by the board under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. An appellant shall file the appeal with the board within thirty days from the date of service of the notice of alleged violation. The appellant may request enlargement of time to file if such request is made before the end of the time period. The city manager may extend for a reasonable period the time to file with the board if the applicant shows good cause therefor.

(b) Any person aggrieved by a decision of the city manager upon a reinspection that any or all of the violations alleged in the notice of violation have not been adequately corrected may appeal such determination by filing a notice of appeal with the board of appeals within ten days of the date of the reinspection.

(c) The appeal will be conducted under the procedures of Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The burden of proof is on the city manager to establish an alleged violation.

(d) If the board of appeals affirms the determination by the city manager, it shall grant the person a reasonable period of time to correct the violation appealed. Any subsequent determination by the manager as to whether the violations alleged in the notice of violation have been adequately corrected is final.

(e) The fee for filing an appeal is that prescribed by Section 4-20-52, "Fire Code Permit and Inspection Fees," B.R.C. 1981.

(f) An aggrieved person seeking judicial review of a decision of the board of appeals made under this section shall file a complaint for such review within thirty days after the date of the decision under Colorado Rule of Civil Procedure 106(a)(4).

(g) If no person appeals a notice of violation to the board of appeals, the provisions of the notice becomes final when the time for filing an appeal with the board has expired. An order appealed to court is final unless a stay is in effect.

(h) If a person to whom the city manager has issued a notice of violation does not appeal to the board, such person may not raise as a defense to any subsequent prosecution in municipal court for a violation of an order that the conditions alleged to be violations in the notice of violation were not in fact or law violations.

(i) If the city manager determines that the subject of an order or notice issued under this fire code constitutes an immediate hazard to the public health, safety, or welfare, the manager may order immediate compliance. Persons subject to such orders shall comply forthwith, but shall be entitled to a prompt post-compliance appeal hearing before the board of building appeals under the procedures specified in this section.

(11) Chapter 2, "Definitions," is amended by the addition of the following additional definitions:

"Accessible private drive" means a twenty foot unobstructed clear width with a twelve foot hard, all-weather, drivable surface which can support forty tons on ten wheels and has an SU 30 turning radius for the fire department's fire apparatus.

"Attached Dwelling Unit" means a structure which contains more than one dwelling unit regardless of any fire separation features.

"Detached Dwelling Unit" means a structure which contains only one dwelling unit together with any building accessory to the dwelling unit, and is structurally independent of other structures or occupancies, and has a fire separation distance of not less than six feet from other structures.

"Emergency Vehicle Access Street" means a street meeting the requirements of this code and the City of Boulder Design and Construction Standards.

"Fire Access Distance" means the distance between two hydrants, or the distance from a hydrant to any external portion of any building or buildings or the distance from the center line of a non-dead-end emergency vehicle access street to the point on the curb on such street from which access to such building is gained, measured along public or private (but accessible to fire equipment) roadways or fire lanes, as would be traveled by motorized firefighting equipment.

"Fire code official" means the city manager or the manager's delegate.

"Fire Department" or "Municipal Fire Department" means the Fire Department of the City of Boulder, Colorado.

"House Behind a House" exists if the dwelling unit is on a lot which does not front on an emergency vehicle access street meeting the requirements of Sections 503.1 and 503.2, or the dwelling unit is not served by a fire lane meeting the requirements of Section 502.1 from an emergency vehicle access street to an entrance to the dwelling unit, and access from the emergency vehicle access street to the unit is obstructed by any structure.

"Portable appliance" means any appliance that is designed to be moved or relocated on a daily basis without any special knowledge. This includes, but is not limited to, box or oscillating fans, power tools, vacuum cleaners, and floor polishers.

"Tank Truck" means any single rear axle, self-propelled motor vehicle, equipped with a cargo tank mounted thereon, and used for the transportation of flammable and combustible liquids, but this term excludes any combination of units, such as a semi-trailer. Said tank truck shall not exceed 35,000 GVW, and its total capacity shall not exceed 3,000 gallons.

"Transport route" means:

(1) Denver-Boulder Turnpike (U.S. 36) from the south city limits to Baseline Road.

(2) Foothills Parkway (Colorado 157) from U.S. 36 to the north city limits.

(3) 28th Street from Baseline Road to the north city limits.

(4) Arapahoe Avenue from 28th Street to the east city limits.

(5) Canyon Boulevard from 28th Street to the west city limits.

(6) Pearl Street/Pearl Parkway from 28th Street to the east city limits.

(7) Longmont Diagonal (Colorado 119) as it passes through the city limits.

(8) Valmont Road from the Foothills Parkway (Colorado 157) to Airport Road and Airport Road.

(9) Baseline Road from the east side of 28th Street (U.S. 36) to Foothills Parkway (Colorado 157).

"Unobstructed By Any Structure Above Grade" means that no structure blocks the view so that there is not at least one entire face of the building substantially visible in a direct line over the lot upon which the building sits from the nearest emergency vehicle access street, and no structure would significantly interfere with a stream of water being sprayed on the building by a nozzle mounted on a fire truck parked on the nearest emergency vehicle access street. For the purposes of this definition, a legal fence shall not be considered an obstruction if it has a gate which opens at least three feet wide, which is not locked, and through which firefighters on foot have ready access to the building within the distance limitations.

(12) Section 307 is repealed and reenacted to read:

307 Open Burning and Recreational Fires.

(1) No person shall kindle or maintain outside of a habitable building any bonfire or burn or permit to be burned any trash, paper, rubbish, wastepaper, wood, weeds, brush, plants, or other combustible or flammable material anywhere within the city limits or anywhere on city property outside of the city limits, except when:

(a) The burning is in the course of an agricultural operation in the growing of crops as a gainful occupation and presents no fire hazard to other property in the vicinity;

(b) The burning is solely for cooking food for human beings, and said cooking is done in a manner consistent with safe practice;

(c) The burning is a smokeless flare or a safety flare used to indicate some danger to the public;

(d) The burning is a training fire conducted by the fire department, or is a training fire conducted by another fire department, or privately for industrial or commercial fire training purposes, and approved in writing by the fire chief; or

(e) The burning is solely for the purpose of fuels mitigation to alleviate wildland fire potential, or weed abatement to assist restoration of native plants, and is approved in writing by the fire chief.

(2) Mobile or portable type outdoor fire places are prohibited within the city limits or anywhere on city property outside of the city limits.

(13) Repealed.

(14) Exceptions 1 and 2 to section 311.2.2, "Fire Protection," are repealed.

(15) A new section 401.3.1.1, "Fire Alarm Fees," is added to read:

(a) After the fire department has responded to two alarms of fire from any property or address in any calendar year, the city manager may impose a charge for each additional

response to an alarm which originates from the property during the same calendar year, in accordance with the schedule prescribed by Section 4-20-52, "Fire Code Permit and Inspection Fees," B.R.C. 1981.

(b) The city manager may waive a charge imposed for a fire alarm response if the property owner of record demonstrates that such alarm was caused by a fire or the threat of a fire, or that such alarm was not under the property owners control. It shall not be a defense that the alarm system is malfunctioning, unless the owner or manager is able to demonstrate that said alarm system is currently being serviced to remedy the problems being encountered.

(c) If any fee is not paid within thirty days after demand therefor has been mailed to the record owner of the building, the city manager may certify the amount due to the County Treasurer pursuant to Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

(16) Section 503.2.1 is repealed and reenacted to read:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than twenty feet (6,096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than fifteen feet (4,572 mm).

(17) Section 508.5.1 is repealed and reenacted to read:

508.5.1 Where required. Location and spacing of fire hydrants will be in accordance with the City of Boulder Design and Construction Standards.

(18) Section 603.4 is repealed and reenacted to read:

603.4 Portable unvented heaters. Portable unvented fueled-fire heating equipment are prohibited.

(19) Section 901.6 is amended by the addition of the following:

If any building, structure, or portion of the same is protected by a fire detection, alarm, and extinguishing system, or the owner has agreed with the city manager so to protect the building or structure or portion thereof, then no person shall shut off or disable such system, and no owner, manager, or tenant of such space shall fail to prevent the shutting off or disabling of such system. It is a specific defense to a charge of violation of this section that the system was shut off in order to perform maintenance work on the system, that it was shut off for the minimum period of time necessary to perform such work, and that maintenance personnel were on the premises performing such work during the entire time the system was shut off. The minimum penalty for violation of this section, no portion of which may be suspended, is a fine of $1,000.00.

(20) Section 903 is amended by the addition of the following:

(a) Design. When hydraulically designing a sprinkler system, the system demand point shall be at least 10 psi and 200 gpm below the actual supply curve; or a minimum design area of 2,500 square feet for Light and Ordinary hazard, and 3,000 square feet for Extra hazard systems, with the corresponding density, shall be used to design the system. However, if the building code or fire code have specified minimum areas or densities, those minimums shall be used and the sprinkler demand point must be 10 psi and 200 gallons per minutes below the actual water supply curve.

Exception: Sprinkler systems designed under the NFPA 13D method for One- and Two-Unit Dwellings shall have a "pressure required" at least 20 psi below the "pressure available."

(b) Any new building or change of occupancy of an existing building that does not have approved fire department access as required by the fire code may be required by the fire code official to have an automatic fire sprinkler system installed regardless of the building's size.

(21) Section 903.1 is repealed and reenacted to read:

Section 903.1, General. An automatic sprinkler system shall be installed in the occupancies and locations as set forth in this section. Changes in use, as defined in Section 10-5-2, "Adoption of International Building Code with Modifications," B.R.C. 1981, shall comply with the provisions listed below.

(22) Section 903.2.1 is amended by the addition of the following:

903.2.1 Group A. All basements classified as, or a part of, a Group A occupancy shall be provided with an automatic sprinkler system regardless of the gross square footage.

(a) Section 903.2.1.1 Group A-1, #1 is repealed and reenacted to read:

1. The fire area exceeds 2,000 square feet (185.8 m^2)

(b) Section 903.2.1.2 Group A-2, #1 is repealed and reenacted to read:

1. The fire area exceeds 2,000 square feet (185.8 m^2)

(c) Section 903.2.1.3 Group A-3, #1 is repealed and reenacted to read:

1. The fire area exceeds 2,000 square feet (185.8 m^2)

(d) Section 903.2.1.4 Group A-4, #1 is repealed and reenacted to read:

1. The fire area exceeds 2,000 square feet (185.8 m^2)

(23) A new section 903.2.1.6, "Group B Occupancies," is enacted to read:

All new Group B occupancies greater than 2,000 gross square feet (185.8 m^2).

(24) Section 903.2.2, "Group E," #1, is repealed and reenacted to read:

(a) Throughout all Group E fire areas greater than 2,000 square feet (185.8 m^2) in area.

(b) Exception is repealed.

(c) All basements classified as, or a part of, a Group E occupancy shall be provided with an automatic sprinkler system regardless of the gross square footage.

(25) Section 903.2.3, "Group F-1," is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout all new Group F occupancies greater than 2,000 square feet (185.8 m^2).

(26) Section 903.2.6, "Group M," is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout all new Group M occupancies greater than 2,000 square feet (185.8 m^2).

(27) Section 903.2.7 is amended by the addition of the following:

(a) Exception 1: Detached and two unit attached dwelling units are not required to have an automatic fire sprinkler system if they are not used as residential board and care occupancies, and the distance, unobstructed by any structure above grade, landscaping, or topographical obstruction from the curb face of the emergency vehicle access street on which the structure is addressed, to a face of the unit containing an entrance, is not greater than one hundred feet.

(b) Exception 2: A detached dwelling unit is not required to have an automatic fire sprinkler system if it is not used as a residential board and care occupancy, and is located on a lot larger than 14,500 square feet, in which the driveway meets the requirements of a fire department accessible private drive, and extends without interruption from the nearest emergency vehicle access street on which the structure is addressed, to the side of the building which contains the main entrance.

(c) If more than one principal building is constructed on a lot pursuant to the exceptions listed in Section 9-7-9, "Two Detached Dwellings on a Single Lot," B.R.C. 1981, then each building other than the building closest to an emergency vehicle access street on which the structure is addressed, shall be protected by an approved and supervised automatic sprinkler system in accordance with Section 903.3.

Exception: If a lot has frontage on two streets and each street is an emergency vehicle access street, then two buildings, each closest to their respective streets, shall not be required to be so protected by this subsection.

(d) Houses behind houses shall be protected throughout by an approved automatic sprinkler system in accordance with Section 903.3.

(28) Section 903.2.8, "Group S-1," is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout all new Group S-1 occupancies greater than 2,000 square feet (185.8 m^2).

(29) Section 903.2.9 "Group S-2," is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout all new Group S-2 occupancies greater than 2,000 square feet (185.8 m^2).

(30) A new section is added to read:

Section 903.2.12.3, Group U Occupancies. An automatic sprinkler system shall be provided in all new Group U occupancies greater than 2,000 gross square feet (185.8 m^2).

(31) A new section 903.2.12.4 is added to read:

Any occupancy, structure or unit required to be protected by a sprinkler system by one provision of the fire code or the building code, and falling within an exception to a requirement of such protection to any other provision of the fire code or building code, shall be so protected.

(32) A new section 903.2.12.5 is added to read:

If the floor area of an addition to any existing occupancy as described in 903.1 through 903.2.12.3 above is greater than either fifty percent of the existing gross floor area or 2,000 square feet, and the total altered structure would be required to be protected by a sprinkler

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system by this section if it were new construction, then the entire addition shall be protected throughout by an approved and supervised automatic sprinkler system, installed in accordance with Section 903.3.1. Said sprinkler system shall be continuous throughout the addition up to a fire barrier built in accordance with the building code for that occupancy.

(33) Exception 4 to section 903.3.1.1.1 is repealed.

(34) Section 903.3.5.1 is repealed.

(35) Section 903.3.5.1.2 is repealed and reenacted to read:

903.3.5.1.2. Residential combination services. Combination of domestic and fire service lines shall be in accordance with the City of Boulder Design and Construction Standards.

(36) Section 903.4.1 is repealed and reenacted to read:

903.4.1 Signal. Valve supervision and water-flow alarm and trouble signals shall be distinctly different and shall be automatically transmitted to an Underwriters Laboratory approved central station.

Exception: Underground key or hub valves in roadway boxes provided by the municipality or public utility need not be supervised.

(37) Section 903.4.2 is repealed and reenacted to read:

903.4.2 Alarms. Approved audible and visual devices shall be connected to every automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided in the interior of the building in accordance with NFPA 72 and on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler shall actuate the building fire alarm system.

(38) A new section 903.7, "Response Time Sprinkler Requirement," is adopted to read:

(a) It is the city's goal, as reflected in the Boulder Valley Comprehensive Plan's urban fire service criteria, that land not be annexed unless the response time for service is normally six minutes or less. Nonetheless, there may be occasions when annexation outside the existing six minute limit but within eight minutes or less is, due to special circumstances, in the city's best interest. Before such land is annexed, consideration must be given to the need for and provision of additional fire stations and equipment to serve properly the area being annexed and to bring it within the six minute limit eventually. Protection by a sprinkler system as required by subsection (c) below is a temporary substitute, and is not intended to eliminate the requirement for additional fire stations and equipment.

(b) Land used or to be used for residential purposes will not normally be annexed if it is outside the six minute limit unless excepted from this policy by subsection (d) below. All new dwelling units on land annexed outside the six minute limit shall be protected by an automatic fire sprinkler system.

(c) On land annexed after the effective date of this chapter and not excepted under subsection (d) below, all new non-residential construction and any existing non-residential structures shall be provided throughout with an approved and supervised fire sprinkler system installed in accordance with Section 903.3.1 adopted in Chapter 10-8, "Fire Prevention Code," B.R.C. 1981, if such land is outside of the six minute City of Boulder fire response time from city fire stations housing at least one pumper which is rated at one

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thousand gallons per minute pumping capacity or greater, and which requires a crew of three or more for proper operation.

(d) The requirements of this Section may be waived by the city council by a provision doing so in an annexation agreement incorporated into an annexation ordinance if, in the opinion of the city council it is in the city's best interest to do so because:

(1) Of changed or special conditions;

(2) The land to be annexed is located on Arapahoe Avenue west of the city; or

(3) The land to be annexed is below the blue line, west of Broadway, south of Norwood Avenue, and north of Table Mesa Drive.

Exceptions (2) and (3) above reflect the fact that it is not anticipated that new fire stations will be constructed to bring these areas within the six minute limit. In other areas it is anticipated that new fire stations will eventually be constructed or upgraded to bring the service area within this limit.

(39) A new section 903.8, "Fire Suppression Systems," is added to read:

903.8, Fire Suppression Systems

All existing structures in the following categories shall be protected throughout by an approved and supervised automatic sprinkler system installed in accordance with the provisions of Section 903.3.1. Except that any structure or portion thereof required by this section to be so protected prior to the effective date of this ordinance shall be immediately so protected:

(a) R-1 and R-2 occupancies greater than fifty five feet high.

(b) Hotels and motels. Exceptions: One- and two-story structures, and three-story structures with an exterior exit balcony for all rooms above grade.

(c) Congregate residences classified as Group R-4.

(d) Group I-1 and I-2 occupancies as defined in the fire code.

(e) Basements greater than 2,000 gross square feet.

Exception 1. Basements below R occupancies.

Exception 2. Basements used exclusively for "services to the building," such as electric meters, compressors, and so forth. But "services to the building" shall not include any storage (either combustible or non-combustible), nor routine human occupancy.

Exception 3. Basements where there is provided at least 20 square feet of opening entirely above the adjoining ground level in each fifty lineal feet or fraction thereof of exterior wall in the basement on at least one side of the building. Openings shall have a minimum dimension of not less than 30 inches, and shall be accessible to the fire department from the exterior and shall not be obstructed in a manner that firefighting or rescue cannot be accomplished from the exterior.

When openings are provided on only one side and the opposite wall of said basement is more than seventy-five feet from such openings, said basement shall be provided with an approved

automatic sprinkler system, or openings as specified above shall be provided on at least two sides of an exterior wall of the basement.

(f) All Group A occupancies used primarily for dining, drinking or motion picture viewing, shall be protected throughout by an approved and supervised automatic sprinkler system installed in accordance with the provisions of Section 903.3.1, when said Group A occupancy is greater than 2,000 gross square feet in size.

For Group A occupancies described in this part (f) not currently provided with complete automatic sprinkler protection, this paragraph shall take effect during a remodel or renovation which 1) requires one or more building permits with a combined valuation (labor and materials) of $30.00 per square foot or more within any calendar year, and 2) necessitates business closure for a combined period of five calendar days or more, in the aforementioned calendar year.

(40) Section 907.15 is repealed and reenacted to read:

Section 907.15 Monitoring. Fire alarm systems shall be supervised by an Underwriters Laboratory listed central station.

(41) Section 3301.2.4.2 is amended by the addition of the following:

The city manager shall require a certificate of insurance to protect persons and property from death or injury as a result of the fireworks display, in an amount not less than $150,000.00 per person injured and $600,000.00 per incident. The insurance shall cover any liability of the city or any employee or agent thereof arising out of or connected with the permit and the fireworks display permitted thereunder. Before any permit for a fireworks display is issued, the applicant shall comply with the provisions of this Section.

(42) Section 3401.4 is amended by the addition of the following:

(1) A regular permit allows a permittee on a transport route to take delivery of flammable and combustible liquids from any delivery vehicle or from a tank truck where the premises are not located on a transport route. Upon payment of the fee provided in Section 4-20-52, "Fire Code Permit and Inspection Fees," B.R.C. 1981, the city manager shall issue to an applicant therefor a permit to receive deliveries of flammable and combustible liquids at a particular location or outlet if the manager finds that:

(a) The outlet or location contains sufficient room to accommodate the delivery vehicle, so that the delivery vehicle is capable of being parked entirely within the property boundary lines of the outlet or location and in such a manner that no part of the vehicle extends into any street, sidewalk, or alley while the vehicle is off-loading and no backing of the vehicle either into or out of station property is necessary;

(b) The entrance and exit access-ways for the delivery vehicle are so arranged that no obstruction of traffic will result from the vehicle entering or leaving the outlet or location; and

(c) The storage tanks for flammable and combustible liquids are located underground and constructed in accordance with the applicable provisions of this code, unless specifically allowed to be installed above ground by other sections of this code.

(2) A special permit allows a permittee to take delivery of flammable and combustible liquids on premises outside of transport routes from specified delivery vehicles other than a tank truck. The owner or person in control of any outlet or location holding a regular permit may, upon payment of the fee provided in Section 4-20-52, "Fire Code Permit and Inspection Fees,"

B.R.C. 1981, apply to the city manager for a special permit allowing delivery with a vehicle other than a tank truck as defined in Chapter 2. The city manager shall schedule with the applicant a simulated demonstration with an empty vehicle of the size and design that the applicant will use under the permit. The applicant shall furnish the vehicle and driver at its cost. The simulated test shall be observed by the city manager who shall issue the special permit if the manager finds that:

(a) The outlet or location contains sufficient room to accommodate the delivery vehicle, so that the delivery vehicle is capable of being parked entirely within the property boundary lines of the outlet or location in such a manner that no part of the vehicle shall extend into any street, sidewalk or alley while the vehicle is off-loading, and no backing of the vehicle either into or out of the station property is necessary;

(b) The entrance and exit access-ways for the delivery vehicles are so arranged that no obstruction of traffic will result from the vehicle entering or leaving the outlet or location;

(c) The roads and streets are accessible to fire-fighting equipment and vehicles;

(d) The topography or configuration of the roads and streets does not involve potential difficulties in containing, fighting, or suppressing a fire or spill and does not impair the ability of a transport vehicle to maneuver safely; and

(e) The traffic congestion and flow of vehicles using the roads and streets will not create potential hazards to transport vehicles.

Upon issuance, the permit will designate a specific route to be followed from the nearest transport route to the permit location and to return to the transport route. The permit will specify a vehicle capacity. Special permits are valid only between 3:00 a.m. and 6:00 a.m. But, for the delivery of gasoline or diesel fuel only, if the permit location is in an industrial zone, and is connected to a transport route by a former transport route established by ordinance 4636 (1982), and the applicant demonstrates that there were no incidents involving the discharge of gasoline or diesel fuel from delivery vehicles using the relevant portion of such former route, then the city manager may issue the special permit for such other hours as the applicant is able to demonstrate present no more hazard than delivery during the hours of 3:00 a.m. through 6:00 a.m.

(3) Revocation or Suspension of Permits.

(a) Each of the following is a ground for revocation of a special permit:

1. Failure of a transport vehicle to park entirely on the site while unloading;

2. Obstructing of sidewalks while unloading;

3. Backing the vehicle onto or off of the site;

4. Obstruction of traffic while entering or leaving;

5. Failure of a transport driver to follow the prescribed route to or from the permit location; or

6. Failure to maintain a copy of the special permit on the premises.

(b) Each of the following is a ground for suspension of a regular permit for up to fourteen days:

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1. Failure of a transport vehicle to park entirely on the site while unloading;

2. Obstructing of sidewalks while unloading;

3. Backing the vehicle onto or off of the site;

4. Obstruction of traffic while entering or leaving; or

5. Failure of a transport driver to follow the prescribed route to or from the permit location.

(c) When matters are brought to the attention of the city manager, which if substantiated would be grounds for revocation of a special permit or suspension of a regular permit, the manager shall issue a written notice thereof to the permittee containing a concise written statement of the violation constituting grounds for revocation or suspension and indicating that the revocation or suspension shall take effect fourteen days after the issuance of said notice unless the permittee appeals in accordance with the terms of Section 103.1.4.

(d) All special permit revocations shall be for a period of six months, after which time the permittee may reapply for a special permit. During the period of revocation, the outlet may continue to operate with and according to the terms of a regular permit.

(4) If, due to changed conditions, including without limitation changes in the transport routes, the manager has probable cause to believe that an existing regular or special permit no longer meets the criteria for issuance, the manager may require a new simulated demonstration. For purposes of notice and appeal, such proceedings shall be deemed a new application, but no additional fee shall be charged.

(43) A new section 3401.6, "Prohibited Acts," is adopted to read:

(a) No owner and no person in control of any outlet or location shall accept deliveries of flammable or combustible liquids, unless such person has applied for and has been issued a permit therefor by the city manager.

(b) No owner and no person in control of any outlet or location for which a permit to accept deliveries of flammable or combustible liquids has been issued shall accept deliveries of such liquids unless delivery is in compliance with all the provisions of this code and any conditions on the permit.

(c) No person shall spill more than thirty-two fluid ounces of flammable or combustible liquid upon the ground.

(d) No person shall fail to notify the fire department of any spill of flammable or combustible liquid of more than thirty-two fluid ounces at the earliest practicable moment after said spill has occurred.

(e) Except to replace existing tanks, no person shall install any tanks used for the storage of any type of flammable or combustible liquid, or other hazardous material or waste in the floodplain as defined in Section 9-16-1, "General Definitions," B.R.C. 1981. This prohibition is not retroactive, but no person shall use or maintain any tank installed in violation of this prohibition.

(f) No person shall weld or cut by torch on the premises of a service station or allow or cause crankcase drainings to be spilled or poured onto the ground. No person shall dispose of hazardous materials by dumping or pouring on the ground or into a storm drain or sanitary sewer or any connection thereto.

(44) Section 3404.2 "Tank Storage," is amended by the addition of the following:

(a) Except for fuel carried on tank trucks, above-ground storage of all Class I, II, and III flammable and combustible liquids in aggregate amounts of more than 500 gallons of such liquids on a single lot is allowed only in those areas of the city zoned "industrial." All installations shall comply in all respects with Chapter 34. Any tank intended for the bulk storage of any Class I, II or III flammable or combustible liquid may be stored above ground only in those areas of the City zoned industrial.

(b) All service stations, as defined in Chapter 22, regardless of zoning, shall install all bulk fuel storage tanks, oil storage tanks, and waste oil storage tanks underground and meet all requirements of Chapters 22 and 24. All bulk fuel storage tanks, oil storage tanks, and waste oil storage tanks in a residential zone shall be installed underground and meet all requirements of Chapter 34. Liquefied natural gas (LNG) or liquefied petroleum gas (LP-Gas) may be stored above ground in areas of the city zoned "industrial" and dispensed at such sites by a service station, if the city manager finds that such installation meets all the requirements of applicable fire codes before any dispensing of such fuel and proper and necessary on-site fire control devices are provided. The fee for review and inspection of such a specialized installation shall be as provided in Section 4-20-52, "Fire Code Permit and Inspection Fees," B.R.C. 1981.

(c) All underground tanks used for dispensing or bulk storage of any flammable or combustible liquid shall comply with the requirements of Chapter 34, any other pertinent city codes, including without limitation those concerning fire and flood, the Colorado State Oil Division, and the manufacturer's specifications for installation. Plans for installation shall be approved by the Colorado State Oil Division and the city flood control office, before the city may issue permits for construction, installation, and use of the tanks. No person shall install a used tank.

(d) No person shall install a tank or tanks for the dispensing or bulk storage of any flammable or combustible liquid, including temporary installations on construction sites, until such person has first submitted plans for the installation to the city manager and has received approval of such plans and of the installation.

(45) A new section 3406.2.8.2, "Safety Devices Required For Outlets Or Locations Accepting Deliveries Of Flammable Or Combustible Liquids," is adopted to read:

No owner and no person in control of any outlet or location shall accept deliveries of flammable and combustible liquids, and no person shall make deliveries of such liquids to any outlet or location, unless the following conditions are met during such delivery:

(a) The hose connection employed in making a delivery of flammable or combustible liquids contains the safety device known as a "glass elbow" to allow inspection of the contents of the delivery hose; and

(b) Any hose used in making deliveries of flammable or combustible liquids contains the apparatus commonly known as a tight-fill connection device to secure the off-loading device of the delivery vehicle to the intake structure of the storage tank.

(c) Exceptions to (a) and (b) above may be granted by the city manager for industrial installations if conditions warrant.

(46) A new section 3406.2.8.3, "Full Compartment Dumps Required," is adopted to read:

Any person delivering flammable and combustible liquids in a vehicle that contains compartments larger than six hundred gallons shall empty each such compartment at a single stop, if any delivery of liquids is made at any outlet or location from any such compartment.

Ordinance Nos. 5562 (1993); 5622 (1994); 5781 (1996); 6015 (1998); 7371 (2004).

10-8-3 **Violations.**

Any violation of the International Fire Code, any appendix thereto adopted by this chapter, or of any order issued by the city manager thereunder is punishable as provided in section 5-2-4, "General Penalties," B.R.C. 1981. Every twenty-four-hour period in which a violation exists constitutes a separate violation.

Ordinance No. 5781 (1996).

TITLE 10 STRUCTURES

Chapter 9 Mechanical Code[1]

Section:

10-9-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating the installation, alteration, and repair of heating, ventilating, cooling, and refrigeration devices in structures in the city. The city council hereby adopts the 2003 edition of the International Mechanical Code with certain amendments and deletions thereto found to be in the best interests of the residents of the city.

Ordinance Nos. 4984 (1986); 5177 (1989); 5493 (1992); 5781 (1996).

10-9-2 Adoption Of The International Mechanical Code With Modifications.

(a) The 2003 edition of the International Mechanical Code, including appendices A thereto of the International Code Council, is hereby adopted by reference as the Mechanical Code of the City of Boulder or mechanical code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) Except as specified below, chapter 1 is repealed. This code shall be administered in accordance with chapter 1, "Administration," of the International Building Code as adopted, with amendments, by section 10-5-2, "Adoption Of International Building Code With Modifications," B.R.C. 1981.

(1) Section 101.2, "Scope," and exception 1 are adopted as administrative provisions.

(2) Section 101.2.1, "Appendices," is adopted as an administrative provision. Appendix A is adopted as a part of this code.

(3) Section 101.3, "Intent," is adopted as an administrative provision.

(4) Section 105.4, "Material, Equipment And Appliance Reuse," is adopted as an administrative provision.

(c) Section 301.7, "Electrical," is repealed and reenacted to read:

301.7 Electrical. Electrical wiring, controls and connections to equipment and appliances regulated by this code shall be in accordance with Chapter 10-6, "Electrical Code," B.R.C. 1981.

(d) Section 306.5 "Equipment And Appliances On Roofs Or Elevated Structures," is repealed and reenacted to read:

306.5 Equipment and appliances on roofs or elevated structures. Where equipment and appliances requiring access are installed on roofs or elevated structures at a height exceed-

[1]Adopted by Ordinance No. 4636. Amended by Ordinance Nos. 6015, 7304. Derived from Ordinance Nos. 4327, 4502, 4548.

ing 16 feet (4877 mm), such access shall be provided by a permanent approved means of access. The means of access shall start at no more than 8 feet (2438 mm) above finished grade or floor level and continue unobstructed to the equipment and appliances level service space. Such access shall not require walking on roofs having a slope greater than 4 units vertical in 12 units horizontal.

Permanent ladders installed to provide the required access shall comply with the following minimum design criteria:

1. The side railing shall extend above the parapet or roof edge not less than 30 inches (762 mm).

2. Ladders shall have rung spacing not to exceed 14 inches (356 mm) on center.

3. Ladders shall have a toe spacing not less than 6 inches (152 mm) deep.

4. There shall be a minimum of 18 inches (457 mm) between rails.

5. Rungs shall have a minimum 0.75-inch (19 mm) diameter and be capable of withstanding a 300-pound (136.1 kg) load.

6. Ladders over 30 feet (9144 mm) in height shall be provided with offset sections and landings capable of withstanding 100 pounds (488.2 kg/m^2) per square foot.

7. Ladders shall be protected against corrosion by approved means.

Catwalks installed to provide the required access shall be not less than 24 inches (610 mm) wide and shall have railings as required for service platforms.

(e) Section 306.6, "Sloped Roofs," is amended by the addition of a new section 306.6 to read:

306.6 Sloped roofs:

(1) Mechanical equipment placed, replaced, or resting over roofing shall be supported by curbs or legs which shall be flashed to the roofing and made watertight. Mechanical equipment shall include, but not be limited to, heating equipment, cooling and refrigeration equipment, ventilating fans, blowers, and other similar devices located on the roof.

(2) Flat roofs. On roofs having a pitch of less than 2 in 12, mechanical equipment shall be supported on a solid curb greater in size than the equipment which it serves. Curbs can be manufactured or built-in-place. If built-in-place, the curb shall be covered with metal of at least 26 gauge. All seams and miter corners of the metal shall be riveted and soldered so as to be weathertight. The curb shall be a minimum of 9 inches above the finished roof.

(A) Ducts less than four feet in width shall have at least twelve inches clearance from the finished roof surface to the bottom of the duct.

(B) Ducts between four feet and eight feet in width shall have at least twenty-four inches clearance from the finished roof surface to the bottom of the duct.

(C) Ducts over eight feet in width shall have at least thirty-six inches clearance from the finished roof surface to the bottom of the duct.

(3) Pitched Roofs. On roofs having a slope over a 2 and 12, mechanical equipment may be set on legs which provide a minimum of 11 inches clearance between the finished roof surface and the equipment frame.

(f) Section 506.3.10, "Grease Duct Enclosure," is amended by deleting the last sentence of exception 1 and adding the following sentence:

All duct wrap systems shall be in a concealed space.

(g) Section 603.6.1.1, "Duct Length," is repealed and reenacted to read:

603.6.1.1 Duct length. Approved Class 0 and Class 1 flexible air duct shall not exceed seven feet in length.

(h) Section 603.6.2.1, "Connector Length," is deleted.

(i) Section 606.3, "Installation," is amended by the addition of a new sentence to read:

Smoke detectors must be capable of being tested from a remote and readily accessible location.

Ordinance Nos. 4984 (1986); 5177 (1989); 5493 (1992); 5781 (1996).

10-9-3 **Mechanical Permit Fees.**

Mechanical permit fees are those prescribed by subsection 4-20-13(c), B.R.C. 1981.

Ordinance Nos. 4984 (1986); 5493 (1992); 5781 (1996).

TITLE 10 STRUCTURES

Chapter 9.5 Fuel Gas Code[1]

Section:

10-9.5-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating fuel gas systems and gas-fired appliances in the city. The city council hereby adopts the 2003 edition of the International Fuel Gas Code as a new chapter 10-9.5 with certain amendments thereto found to be in the best interest of the city.

10-9.5-2 Adoption Of The International Fuel Gas Code With Modifications.

(a) The 2003 edition of the International Fuel Gas Code of the International Code Council is hereby adopted by reference as the City of Boulder Fuel Gas Code or fuel gas code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) Except as specified below, chapter 1 is repealed. This code shall be administered in accordance with chapter 1, "Administration," of the International Building Code as adopted, with amendments, by section 10-5-2, "Adoption Of International Building Code With Modifications," B.R.C. 1981.

(1) Section 101, "General," is adopted as an administrative provision with the following amendments:

(a) 101.1, "Title," is amended to read:

101.1 Title. These regulations shall be known as the Fuel Gas Code of the City of Boulder or fuel gas code.

(2) Section 107, "Inspections And Testing," is adopted as an administrative provision.

(c) Exceptions 2, 3 and 4 in section 303.3, "Prohibited Locations," are repealed.

(d) Section 404.9, "Minimum Burial Depth," is repealed and reenacted to read:

404.9 Minimum burial depth. Underground piping systems shall be installed at a minimum depth of 12 inches below grade for metallic piping and a minimum depth of 18 inches for non-metallic piping or where such depths cannot be obtained, other equivalent protection must be provided.

(e) Section 404.9.1 is repealed.

(f) Section 406.4.1, "Test Pressure," is repealed and reenacted to read:

The test pressure to be used shall be no less than 1-$^1/_2$ times the proposed maximum working pressure, but not less than 10 psig.

[1]Adopted by Ordinance No. 7304.

10-9.5-2

(g) Section 406.4.2, "Test Duration," is repealed and reenacted to read:

Test duration shall not be less than 15 minutes.

(h) Section 602.1, "General," is amended by adding a new sentence to read:

Within a vented fireplace the damper must be removed or welded open and glass doors installed over the fireplace opening.

(i) Section 604, "Vented Gas Fireplaces," is amended by adding a new section to read:

604.3 Combustion air. Vented gas fireplaces shall be provided with outside combustion air and glass doors.

(j) Section 605, "Vented Gas Fireplace Heaters," is amended by adding a new section to read:

605.2 Vented gas fireplace heaters shall be provided with outside combustion air.

(k) Section 621.4, "Prohibited Locations," is amended by adding a new sentence to read:

These appliances shall not be used in bedrooms or rooms readily used for sleeping purposes.

TITLE 10 STRUCTURES

Chapter 10 Plumbing Code[1]

Section:

10-10-1 Legislative Intent.

The purpose of this chapter is to protect the public health and safety by regulating the installation, alteration, and repair of plumbing devices in structures in the city. The city council hereby adopts the 2003 edition of the International Plumbing Code with certain amendments and deletions thereto found to be in the best interests of the residents of the city.

Ordinance Nos. 4984 (1986); 5177 (1989); 5493 (1992); 5781 (1996).

10-10-2 Adoption Of The International Plumbing Code With Modifications.

(a) The 2003 edition of the International Plumbing Code, published by the International Code Council, including appendices C, Gray Water Recycling Systems, and E, Sizing of Water Piping System, is hereby adopted by reference as the City of Boulder Plumbing Code or plumbing code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) Except for sections 101, 102, and 107, chapter 1 is repealed. This code shall be administered in accordance with chapter 1, "Administration," of the International Building Code as adopted, with amendments, by section 10-5-2, "Adoption Of International Building Code With Modifications," B.R.C. 1981.

(c) Section 101.1 is repealed and reenacted to read:

101.1 Title. These regulations shall be known as the Plumbing Code for the City of Boulder or plumbing code and will be referenced herein as "this code."

(d) The exception 2 in section 101.2, "Scope," is repealed.

(e) Section 312.5, "Water Supply System Test," is amended by deleting the words "for piping systems other than plastic" in the first paragraph.

(f) Section 603.2, "Separation Of Water Service And Building Sewer/Drain," is repealed and reenacted to read:

603.2 Separation of water service and building sewer/drain. Water service pipe and the building sewer shall be separated in accordance with the City of Boulder Design and Construction Standards.

(g) Section 610, "Disinfection Of Potable Water System," is repealed.

[1]Adopted by Ordinance No. 4636. Amended by Ordinance Nos. 6015, 7304. Derived from Ordinance Nos. 4326, 4501.

(h) Section 605.4 is amended by adding a new paragraph to read:

Water service line pipe between the water meter and building shall be Type K copper if it is in the public right-of-way, a public utility easement, or on other public property.

(i) Section 712.4.2, "Capacity," is amended by the addition of a new sentence to read:

Sewage pumps and sewage ejectors serving public fixtures shall be provided with dual pumps and ejectors arranged to operate independently in case of overload or failure.

(j) Section 1101.3, "Prohibited Drainage," is repealed and reenacted to read:

No rain, surface, or subsurface water shall be connected to or discharged into any drainage system, unless first approved by the Administrative Authority.

(k) Section 1106.1, "General," is repealed and reenacted to read:

1106.1 General. The size of the vertical conductors and leaders, building storm drains, building storm sewers, and any horizontal branches of such drains or sewers shall be based on the 100-year hourly rainfall rate of 2.5 inches per hour or other approved local weather data.

(l) Appendix C, section C101, last sentence of exception is repealed and reenacted to read:

Such systems shall be designed as required by the Boulder County Health Department.

(m) Table E103.3(2), "Load Values Assigned To Fixtures," is amended by the addition of a new sentence to read:

For the purpose of determining the largest instantaneous demand required in order to size a water meter, or for determining the amount of the plant investment fee, this table is repealed and replaced by the Fixture Unit/GPM Demand Chart and PIF Computation Sheet found at Appendix A to Chapter 11-1, "Water Utility," B.R.C. 1981.

(n) Table E103.3(3), "Table For Estimating Demand," is amended by the addition of a new sentence to read:

For the purpose of determining the largest instantaneous demand required in order to size a water meter, or for determining the amount of the plant investment fee, this table is repealed and replaced by the Fixture Unit/GPM Demand Equations and PIF Computation Sheets found at Appendix A to Chapter 11-1, "Water Utility," B.R.C. 1981.

Ordinance Nos. 4879 (1985); 4984 (1986); 5050 (1987); 5177 (1989); 5493 (1992); 5781 (1996); 6065 (1999); 6065 (1999); 7024 (1999).

10-11

TITLE 10 STRUCTURES

Chapter 11 Signs On Private Property[1]

[1]Repealed and reenacted by Ordinance No. 7476. See section 9-9-21, "Signs," B.R.C. 1981.

TITLE 10 STRUCTURES

Chapter 12 Mobile Homes[1]

Section:

10-12-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare of the residents of the city by regulating the construction, alteration, extension, location, installation, use, and maintenance of all mobile homes and mobile home parks in the city. Nothing in this chapter shall be construed to discriminate against mobile homes as housing.

10-12-2 Definitions.

The following words used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Accessory structure" means any structural addition to a mobile home or a mobile home space, including without limitation, awnings, carports, porches, storage cabinets, and similar appurtenant structures.

"Camper" means a unit containing cooking or sleeping facilities that is designed to be loaded onto or affixed to the bed or chassis of a truck to provide temporary living quarters for recreational camping or travel use.

[1]Adopted by Ordinance No. 4698. Derived from Ordinance No. 3914.

"Mobile home" means a transportable, single-family dwelling unit, suitable for year-round occupancy that contains the same water supply, waste disposal, and electrical conveniences as immobile housing, that has no foundation other than wheels or removable jacks for conveyance on highways, and that may be transported to a site as one or more modules, but the term does not include "travel trailers," "campers," "camper buses," or "motor homes," or modular homes designed to be placed on a foundation.

"Mobile home park" means any lot or tract of land designed, used, or intended to provide a location or accommodation for one or more mobile homes and upon which any mobile home or homes are parked or located, whether or not the lot or tract or any part thereof is held or operated for profit, but the term excludes automobile or mobile homes sales lots on which mobile homes are parked only for inspection and sale.

"Mobile home space" means a plot of ground within a mobile home park designed for the accommodation of one mobile home and its accessory structures.

"Motor home" means a motor vehicle containing cooking or sleeping facilities and designed as temporary living quarters for recreational camping or travel use and includes, without limitation, vehicles designated as "camper buses" and those that may have been originally designed for use as vans or buses but that have been converted to use as living quarters.

"Travel trailer" means a portable structure, mounted on wheels and designed to be towed by a motor vehicle, that contains cooking or sleeping facilities to provide temporary living quarters for recreational camping or travel.

10-12-3 **Application Of Chapter To Existing Mobile Homes And Mobile Home Parks.**

(a) Any mobile home park in existence in the city on July 5, 1973, or annexed to the city after such date that complies with all applicable legal requirements then in effect is deemed to be legally nonconforming and is not subject to the provisions of this chapter except those concerning blocking and tying down of mobile homes (section 10-12-8, "Blocking And Tie-Down Required," B.R.C. 1981), use of gas fuel, and fire protection (paragraphs 10-12-21(a)(7), (a)(8), and (a)(10), B.R.C. 1981). But any person who alters or extends such a legally nonconforming mobile home park shall conform to all applicable provisions of this chapter for such alterations and extensions.

(b) An individual mobile home may be replaced or relocated within a legally nonconforming mobile home park if such mobile home is blocked and tied down in compliance with the requirements of section 10-12-8, "Blocking And Tie-Down Required," B.R.C. 1981, and if gas connections are made in compliance with the requirements of paragraphs 10-12-21(a)(7) and (a)(8), B.R.C. 1981.

(c) Any mobile home in existence in the city on July 5, 1973 or annexed to the city after such date that complied with all applicable legal requirements then in effect is considered to be legally nonconforming and is not subject to the provisions of this chapter except the requirements relating to blocking and tying down of mobile homes (section 10-12-8, "Blocking And Tie-Down Required," B.R.C. 1981).

(d) If any such legally nonconforming mobile home is removed from its location, whether within a mobile home park or elsewhere, the mobile home may not be replaced or relocated except in conformity with all applicable requirements of this chapter. If the use of such a legally nonconforming mobile home is discontinued for a period of twelve consecutive months or more, no person shall occupy the mobile home until it conforms with all requirements of this chapter.

(e) No person may replace an existing mobile home located on a mobile home space that is not large enough to provide the minimum requirements of section 9-7-10, "Mobile Home Park Form And Bulk Standards," B.R.C. 1981, by a larger mobile home, but such person may replace such existing mobile home with a mobile home of the same or smaller length and width dimensions.

(f) No person shall replace an existing mobile home located on a lot outside a mobile home park with a larger mobile home, but such person may replace such mobile home with a mobile home of the same or smaller length and width, if the replacement is made within thirty days after the removal of the existing mobile home.

Ordinance Nos. 5462 (1992); 5562 (1993).

10-12-4 **Enforcement.**

(a) The city manager may enter any mobile home park in the city to inspect and investigate conditions relating to the enforcement of this chapter at all reasonable times.

(b) Whenever, after inspection of any mobile home or mobile home park, the city manager finds any violation of this chapter, the manager shall give to the owner of the mobile home or the mobile home park a notice that specifies:

(1) The provisions of this chapter that are alleged to be violated;

(2) A reasonable period of time in which to correct the alleged violation; and

(3) The right to appeal the violation notice within thirty days from the date of its issuance to the board of zoning adjustment or board of building appeals under the procedures prescribed by section 10-12-24, "Appeals And Variances," and chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(c) The city manager shall reinspect the mobile home or the mobile home park for which a notice of violation was issued upon expiration of the period of time stated in the violation notice for correction of the alleged violation.

10-12-5 **Residential Mobile Homes Required To Be In Mobile Home Park.**

(a) Except as provided in this section, no person shall park or locate any mobile home or use a mobile home as a dwelling permanently, temporarily, or for indefinite periods of time, unless the mobile home is located in a mobile home park.

(b) A person may park or stop a mobile home on any street, alley, or public or private property in the city for not more than seventy-two hours but only if the home is not occupied and only if the parking or stopping complies with all traffic and parking provisions of this code and any other ordinance of the city and any signs and instructions posted on the property on which the mobile home is parked.

(c) A person may park a mobile home for inspection and sale on a mobile home sales lot, but no person shall fail adequately to secure all mobile homes so parked on such lots against damage and overturning by high winds.

10-12-6 Nonresidential Use Of Mobile Home.

(a) A person may use a mobile home as an office or other nonresidential use on a temporary basis during construction or remodeling connected with a use permitted on the lot, if the use and location of the mobile home comply with all applicable zoning and building provisions of this code and other ordinances of the city, but only if the mobile home is removed from the site upon completion of the construction or remodeling and only if the home is adequately secured against damage and overturning by winds while on the premises.

(b) A person may use a mobile home for nonresidential purposes on other than a mobile home park for other than construction or remodelling if the person requests a special exception for such use from the board of zoning adjustment. The board may grant a special exception if it finds that:

(1) The use of the mobile home is a temporary and accessory use necessary to enhance the principal use of the property;

(2) The use is limited to no more than twenty-four months, unless the board finds good cause for a longer use;

(3) The mobile home installation meets all of the requirements of this chapter relating to tie-down and wind security;

(4) The applicant has demonstrated an undue hardship and the need for the temporary use pending permanent construction of other facilities; and

(5) If granted, the special exception will not adversely affect the character of the neighborhood in which the mobile home is proposed to be located nor substantially impair the appropriate use and development of adjacent property.

(c) The board may impose reasonable conditions upon the use that it deems necessary to promote the purposes of this chapter.

10-12-7 Accessory Structures.

(a) The following accessory structures to an individual mobile home are permitted if they comply with all applicable provisions of this code and other ordinances of the city: unenclosed carports and porches; awnings; and detached storage cabinets that do not exceed one hundred fifty square feet in floor area. Such structures:

(1) Shall not obstruct required openings for light and ventilation of the mobile home or prevent inspection of mobile home equipment and utility connections; and

(2) Shall be located at least ten feet from any adjacent mobile home.

(3) The requirements of this subsection may be modified as part of a site review approval under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

(b) Existing accessory structures not in compliance with the requirements of this section may remain in place only until the mobile home to which the structures are accessory is removed or replaced. When such mobile home is replaced, no person owning or occupying the mobile home or using the accessory structure shall fail to remove all such accessory structures or bring them into compliance with the applicable provisions of this chapter.

Ordinance Nos. 4907 (1985); 5562 (1993).

10-12-8 Blocking And Tie-Down Required.

(a) No owner or occupant of a mobile home shall fail to provide a skirting of rigid material for the mobile home or fail to secure the mobile home against wind damage by providing tie-downs as required in this section.

(b) The city manager may reduce the number of tie-down sets for any mobile home park constructed before July 5, 1973 and annexed to the city after July 5, 1973, if the manager determines, after presentation of evidence by the owner or occupant of a mobile home, that certain spaces are not subject to the wind forces upon which these requirements are based.

(c) No owner or occupant of a mobile home shall fail to provide it with tie-downs to the main framing members of the mobile home that comply with the following conditions:

(1) In mobile home parks constructed before July 5, 1973:

Length of Mobile Home	Required Tie-Down Sets	Number of Anchors
Up to 50 feet	2	4
50 to 70 feet	3	6
Over 70 feet	4	8

(2) In mobile home parks constructed after July 5, 1973:

Length of Mobile Home	Required Tie-Down Sets	Number of Anchors
Up to 30 feet	2	4
30 to 50 feet	3	6
50 to 70 feet	4	8
Over 70 feet	5	10

(3) All ties are fastened to an anchorage as provided in section 10-12-9, "Anchorage," B.R.C. 1981, and are drawn tight with one-half inch or larger galvanized, drop-forged turnbuckles or other equivalent tightening device approved by the city manager. Turnbuckles are ended with jaws or forged or welded eyes. Turnbuckles with hood ends are not used.

(4) All cable ends are secured with at least two U-bolt type cable clamps or other fastening device approved by the city manager.

(5) Cable used for tie downs is either galvanized steel or stainless steel and either three-eighths-inch diameter 7 x 7 (seven strands of seven wires each) steel cable or three-eighths-inch diameter 7 x 19 (seven strands of nineteen wires each) "aircraft" cable.

(6) When flat steel strapping is used, it meets federal specifications QQ-S-781 (one and one-fourth inch x 0.035 inch Type 1, Class B, Grade 1). Zinc coating is a minimum of 0.30 ounces per square foot of surface. Breaking strength is a minimum of four thousand seven hundred fifty pounds[1]. Other material used is at least equal to the above specifications in tensile strength and weather resistance.

(7) Steel bands used for ties terminate with a D-ring bolt or other device that will not cause distortion of the band with a tensioning device attached.

[1]See paragraphs 1.2.1.1, 1.2.1.2, 3.10.2, 6.1.7, and table II of QQ-S-781.

(8) Sharp edges of the mobile home that would tend to cut the cable when the home is buffeted by wind are protected by a thimble or other device to prevent such cutting.

(9) Connection to the I beam may be by a five-eighths inch drop forged closed eye, bolted through a hole drilled through the beam. A washer or its equivalent is used so that the beam is sufficiently fish-plated through the hole.

(d) The city manager may approve other connectors or means of securing the cable to the beam if they are of equivalent holding power and permanence.

10-12-9 **Anchorage.**

(a) Ground anchors shall comply with the following conditions:

(1) They are aligned with the piers required by section 10-12-10, "Piers And Footings," B.R.C. 1981, and are situated immediately below the outer wall if they are to accommodate over-the-home ties, if this placement allows for sufficient angle for the anchor-to-frame connection.

(2) Steel rods are of a five-eighths-inch minimum diameter with a forged or welded eye at the top; the bottom of the rod for dead-man anchors is hooked into the concrete.

(3) Augers are at least six inches in diameter, with arrowheads of eight inches, and are sunk to a depth of at least five feet.

(4) Dead-man anchors are sunk to a depth of at least five feet with a minimum vertical dimension of two feet and a diameter of six inches; no celled concrete blocks are provided.

(b) The city manager may approve anchors to reenforced concrete slabs if they are of strength comparable to the requirements set forth in this section and if the weight of the mobile home rests on the slab.

10-12-10 **Piers And Footings.**

(a) Piers and footings on all mobile homes, except those installed before April 21, 1972, shall meet the following conditions:

(1) All piers are placed on footers of concrete with a minimum dimension of sixteen inches by sixteen inches by four inches or an equivalent as approved by the city manager.

(2) Piers are constructed as standard eight inches by eight inches by sixteen inches celled concrete blocks placed over the footings with the long dimension crossways to the main frame members and centered under them, with cells vertical; piers are of a height so that the mobile home will be located as close to the ground as possible.

(3) Piers are topped with a concrete cap eight inches by sixteen inches by four inches.

(4) Hardwood shims are driven tight between the cap and the main frame to provide uniform bearing and are four inches or less in thickness and wide enough to provide bearing over the top cap.

(5) Required piers are centered under each main frame or chassis member within five feet of anchorage, and the end piers are no farther than five feet from the ends of the mobile home. There is at least one pier for required anchorage.

(b) The city manager may approve other types of piers and footings of equivalent permanence and weight bearing ability[1].

10-12-11 Cabanas And Awnings.

(a) Cabanas, awnings, and similar accessory structures shall comply with the city building code, chapter 10-5, "Building Code," B.R.C. 1981.

(b) Other adjacent structures such as storage bins, antennas, and refuse containers shall be secured and approved as required by the city manager.

10-12-12 Alternative Tie-Down And Blocking Methods.

If a mobile home park owner or developer wishes to use different tie-down, blocking, or anchorage systems than those required by this chapter, before seeking approval of a final mobile home park site plan from the planning board, the owner or developer shall obtain approval from the city manager for typical tie-downs and for each individual space shown on the proposed final site plan, based on plans for the method and materials for tie-down pads designed by a Colorado licensed professional engineer and complying with the city building code, chapter 10-5, "Building Code," B.R.C. 1981.

10-12-13 Mobile Home Park Environmental Standards.

(a) Each mobile home park shall be located on a well-drained site and located so that its drainage will not constitute an unreasonable hazard or nuisance to persons, property, or water supply in the immediate vicinity. The site shall be free of marshes, swamps, or other potential breeding places for insects or rodents; not be subject to undue flooding or fire or safety hazards; and not be exposed to nuisances such as noise, smoke, fumes, or odors. The topography of the site shall minimize the need to grade, facilitate useable mobile home placement, and provide for convenient maintenance. Initial site grades shall not exceed eight percent.

(b) The requirements of subsection (a) of this section may be modified as part of a site review approval under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

(c) Where the mobile home park site is being annexed to the city or is subject to city regulation by use of city utility services, the mobile home park owner shall pay the park land acquisition and development fee required by that section after a consideration of recommendations by the planning board and the parks and recreation advisory board.

(d) Repealed.

Ordinance Nos. 4907 (1985); 5562 (1993).

10-12-14 Nonresidential Uses In Mobile Home Parks.

(a) No person shall use any part of a mobile home park for nonresidential purposes except such uses that are required for the direct benefit and well-being of park residents and for the management and maintenance of the park, including, without limitation, convenience stores, personal service shops, and day care nurseries provided for the exclusive convenience and use of the residents, as permitted under section 9-6-1, "Schedule Of Permitted Land Uses,"

[1]The use of a heavy metal adjustment column anchored to both frame and footing is recommended.

B.R.C. 1981, and approved as part of the site plan under the provisions for special use review use of section 9-2-15, "Use Review," B.R.C. 1981, or approved as part of a site review approval under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

(b) If any such nonresidential uses are located in a mobile home, the mobile home shall meet the tie-down requirements of section 10-12-8, "Blocking And Tie-Down Required," B.R.C. 1981.

Ordinance Nos. 4803 (1984); 4907 (1985); 5562 (1993).

10-12-15 **Repealed.**

Ordinance No. 4907 (1985).

10-12-16 **Travel Trailer And Camper Areas In Mobile Home Parks.**

(a) If areas are to be provided within the mobile home park for the accommodation of travel trailers, campers, motor homes, and camper buses for temporary occupancy, such areas shall be located where the parking, use, and occupancy of such vehicles does not constitute a nuisance to other residents of the mobile home park and shall be screened from the remainder of the mobile home park spaces in order to reduce undue noise and other disturbance. Such areas shall be located convenient to community service and sanitary facilities, and utilities provided on the spaces shall comply with all applicable health and safety regulations of this code and other ordinances of the city.

(b) Anchors and cables with turnbuckles shall be provided for tying down travel trailers as required by sections 10-12-8, "Blocking And Tie-Down Required," and 10-12-9, "Anchorage," B.R.C. 1981.

Ordinance No. 5271 (1990).

10-12-17 **Repealed.**

Ordinance No. 4907 (1985).

10-12-18 **Windbreaks.**

(a) Where any mobile home park is located on flat open land, without natural barriers to strong winds (such as hills, bluffs, or large stands of trees), windbreaks shall be provided to protect mobile homes from the effects of such winds.

(b) Windbreaks shall be designed and located in relation to wind velocities and directions and the existing and proposed topography and vegetation and shall be approved by the planning department.

(c) One or more of the following techniques shall be used in providing windbreak screening:

(1) Landscape buffering: a combination of trees and "understory" shrubbery of dense deciduous or evergreen plant material with mature shrub heights ranging from four to twelve feet or clustered or row-planted tree or shrub hedges;

(2) Earth berming combined with landscape buffering; or

(3) Opaque fencing (eighty five percent or more capacity) or wood or masonry screening, complying with building and zoning code requirements.

(4) Other techniques may be utilized as part of a site review under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

(d) All plant material used for windbreak protection shall be of an established variety known to provide wind resistance in the Boulder area and conforming to the American Association of Nurserymen specifications and standards.

Ordinance Nos. 4907 (1985); 5562 (1993).

10-12-19 Mobile Home Park Streets And Walkways.

(a) The mobile home park site shall have at least two exits to a public street or highway and access roads to each mobile home space.

(b) All streets and access ways providing ingress to and egress from the mobile home park and circulation within the mobile home park shall be constructed in compliance with the City of Boulder *Design and Construction Standards* and shall be completed within a period of two years after the date of issuance of the mobile home park permit.

(c) The minimum distance from the curb shall be twenty-eight feet for one-way streets and thirty-six feet for two-way streets. The minimum corner radii of all streets shall be one hundred feet. If off-street parking areas are provided exceeding those required by section 9-7-10, "Mobile Home Park Form And Bulk Standards," B.R.C. 1981, and no on-street parking will be permitted in the mobile home park, the city manager may reduce the street width.

(d) If any streets, easements, or other lands are required to be dedicated to the city for public use, the developer shall submit the necessary legal documents or file a plat of the mobile home park covering the dedication of such property before or at the time of final approval of the mobile home park permit, issued under section 4-14-3, "Mobile Home Park Permit," B.R.C. 1981.

(e) Paved walkways at least four feet wide shall be provided from all mobile home spaces to service buildings and other community areas and along all access roads. Pedestrian circulation areas shall be lighted at night by seven thousand-lumen lighting standards (one hundred seventy-five-watt mercury vapor bulbs) spaced not more than three hundred feet apart, with a maximum height of twenty-five feet, or by other lighting methods producing an equivalent level of light at the ground.

(f) The requirements of this section may be modified as part of a site review under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

Ordinance Nos. 4907 (1985); 5562 (1993); 5986 (1998).

10-12-20 Storage Areas.

Storage areas for boats, boat trailers, travel trailers, tent trailers, horse trailers, and detachable pickup campers shall be provided within the mobile home park in an amount equal to one hundred square feet per mobile home space. Such areas shall be screened from adjacent residential properties and public streets by opaque fencing or landscaping and shall be provided with tie-down anchors.

10-12-21 Utilities And Other Public Improvements.

(a) Utilities and public improvements shall meet the following conditions:

(1) All utility lines and service lines within the mobile home park are placed underground.

(2) The mobile home park and all individual mobile homes therein are connected to the city water system, which is used exclusively. Private wells may be used for irrigation purposes if they comply with requirements of state law.

(3) The mobile home park and all individual mobile homes therein are connected to the city's wastewater utility system in compliance with chapter 11-2, "Wastewater Utility," B.R.C. 1981, and all sanitary sewer service lines and appurtenances are maintained and operated so as not to create a nuisance or health hazard.

(4) All plumbing in the mobile home park complies with the city plumbing code, chapter 10-10, "Plumbing Code," B.R.C. 1981, and mobile home drains are watertight and self-draining.

(5) An electrical outlet supplying at least one hundred twenty/two hundred forty volts for utility company three-wire meters, with a minimum of fifty amps capacity, is provided for each mobile home space in compliance with the city electric code, chapter 10-6, "Electrical Code," B.R.C. 1981, and electrical outlets are weatherproofed and power lines and service connections to the mobile home are located in safe conduits below ground level.

(6) The storage, collection, and disposal of refuse in the mobile home park is managed so as to create no health hazards, rodent harborage, insect breeding areas, accident hazards, or air pollution. All refuse is stored in fly-tight, water-tight, rodent-proof containers, provided in sufficient number and capacity to prevent refuse from overflowing or blowing away. Trash container racks or holders are provided at permanent locations convenient to mobile home spaces in areas appropriately screened. Containers are anchored to prevent tipping or spilling due to winds or animals. No incinerators are provided. Refuse is collected at regular intervals, but no less often than twice per week.

(7) Mobile homes using liquified petroleum gas for cooking and heating comply with applicable laws and regulations of the State of Colorado regarding liquified petroleum gases and the city mechanical code, chapter 10-9, "Mechanical Code," B.R.C. 1981.

(8) If the mobile home park is connected to a natural gas supply, a readily accessible and identified shut-off valve controlling the flow of gas to the entire gas piping system is installed near the point of connection to the service piping, and each mobile home space has an approved gas shut-off valve installed upstream of the mobile home gas outlet located on the outlet riser at a height of not less than four inches above ground level and not located under any mobile home. Whenever the mobile home lot outlet is not in use, the outlet is equipped with an approved cap or plug to prevent accidental discharge of gas. Approved flexible connections are installed between the gas meter and the gas piping serving the mobile home.

(9) All piping from outside fuel storage tanks or cylinders to heating units in mobile homes is of standard weight wrought iron or steel pipe or brass or copper pipe of iron pipe size and is permanently installed and securely fastened in place. All fuel storage tanks or cylinders are securely fastened in place and are not located inside or beneath the mobile home or closer than five feet to any mobile home exit.

(10) Oil is stored in tanks or containers not exceeding one hundred twenty gallons in capacity, mounted on an incombustible frame at the rear of the mobile home, vented, and

provided with a stop cock at the outlet of the container and another stop cock on the fuel line where it enters the mobile home. Where feasible, the oil storage facility is placed underground.

(11) Every mobile home park is equipped with fire extinguishing equipment prescribed and located in accordance with the requirements of the city fire code, chapter 10-8, "Fire Prevention Code," B.R.C. 1981. Fires are made only in stoves and other equipment intended for such use.

(b) No mobile home park owner or operator shall connect or permit the connection of any fuel heating unit in a mobile home until such heating unit is inspected and approved by the city manager and the manager issues a permit therefor.

10-12-22 Mobile Home Park Sanitary Facilities.

(a) Every mobile home park shall have sanitary facilities in a service building or office building accessible to all mobile homes within the park.

(b) Any mobile home park that provides accommodations for travel trailers shall provide at least the following toilet and bathing facilities, located in a building that is convenient to the area designed for travel trailer use and not more than two hundred feet from such area:

Number Of Travel Trailer Spaces Provided	Male Facilities	Female Facilities
First 10 (or fraction thereof)	1 toilet	2 toilets
	1 urinal	
	1 lavatory (washbasin)	1 lavatory (washbasin)
	1 shower	1 shower
Each additional 10 (or fraction thereof)	1 toilet (a urinal may be substituted for every third toilet)	1 toilet
	1 lavatory	1 lavatory
	1 shower	1 shower

10-12-23 Permanent Buildings.

(a) The buildings containing the management office and other common facilities (repair shops, storage areas, sanitary and laundry facilities, indoor recreation areas, and commercial areas) shall be conveniently located for their intended uses and may be consolidated if a single location will adequately serve all mobile home spaces. All buildings containing such common facilities shall be located at least fifteen feet from any mobile home space and conform to all applicable requirements of the city building code, chapter 10-5, "Building Code," B.R.C. 1981, and other ordinances of the city.

(b) Where outside drying areas are provided adjacent to service buildings, they shall be screened from view so that they do not detract from the appearance of the mobile home park and are not objectionable to residents of neighboring properties. A minimum of two thousand five hundred square feet of drying area shall be provided for each one hundred mobile home spaces. But if drying areas are provided on individual mobile home spaces, the minimum

area required by this subsection may be reduced by the amount of area actually provided on individual mobile home spaces.

(c) The requirements of this section may be modified as part of a site review under the provisions of section 9-2-14, "Site Review," B.R.C. 1981.

Ordinance Nos. 4907 (1985); 5562 (1993).

10-12-24 **Appeals And Variances.**

(a) Any person to whom a notice of violation has been issued under section 10-12-4, "Enforcement," B.R.C. 1981, may appeal the notice to the board of building appeals on the grounds that the notice is legally or factually incorrect, or both, or may request that a variance be granted from the requirements of this chapter. Any such appeal shall be taken in the manner set forth in this section, and any hearing held in connection therewith shall be conducted under the procedures prescribed in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. An appeal and a request for variance may be filed in the alternative. A person may appeal the issue of whether the period of time stated in the violation notice for correcting the alleged violation is reasonable. A person who believes that an administrative decision regarding or an interpretation of the terms of this chapter is factually or legally incorrect may appeal such decision or interpretation to the board of building appeals (regarding sections 10-12-8, "Blocking And Tie-Down Required," 10-12-9, "Anchorage," 10-12-10, "Piers And Footings," 10-12-11, "Cabanas And Awnings," 10-12-12, "Alternative Tie-Down And Blocking Methods," and 10-12-21, "Utilities And Other Public Improvements," B.R.C. 1981) or the board of zoning adjustment (regarding any other provision of this chapter).

(1) An appeal from an order of the city manager alleging violation of requirements relating to construction of buildings or utilities or blocking and tying down of mobile homes, sections 10-12-8, "Blocking And Tie-Down Required," 10-12-9, "Anchorage," 10-12-10, "Piers And Footings," 10-12-11, "Cabanas And Awnings," 10-12-12, "Alternative Tie-Down And Blocking Methods," and 10-12-21, "Utilities And Other Public Improvements," B.R.C. 1981, shall be made to the board of building appeals.

(2) An appeal from the order of the manager alleging any other violation of this chapter shall be filed with the board of zoning adjustment.

(3) An appellant shall file the appeal, request for variance, or both in the alternative to the board of zoning adjustment or the board of building appeals within thirty days from the date of service of the notice of alleged violation. The appellant may request more time to file. If the appellant makes such request before the end of the time period and shows good cause therefor, the manager may extend for a reasonable period the time to file with either board.

(4) The fee for filing an appeal with the board of zoning adjustment or the board of building appeals is that prescribed by subsection 4-20-47(a) or (b), B.R.C. 1981.

(b) Every variance request that involves a modification, enlargement, or expansion of an approved mobile home park or modification of any conditions placed upon the use at the time of initial approval of the mobile home park permit is subject to the requirements regarding uses permitted by use review in section 9-2-15, "Use Review," B.R.C. 1981.

(c) If an applicant requests that the board of zoning adjustment grant a variance from the requirements of this chapter, the board shall not grant a variance unless it finds that each of the following conditions exists:

(1) There are unique physical circumstances or conditions, such as irregularity, narrowness, or shallowness of the site, or exceptional topographical or other physical conditions peculiar to the affected property;

(2) Because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this chapter;

(3) Such circumstances or conditions have not been created by the applicant;

(4) If granted, the variance will not adversely affect the character of the neighborhood in which the mobile home park is proposed to be located nor substantially or permanently impair the appropriate use and development of the adjacent property; and

(5) If granted, the variance is the minimum variance that will afford relief and is the least modification possible of the ordinance provisions in question.

(d) If an applicant requests that the board of building appeals grant a variance from the requirements of sections 10-12-8, "Blocking And Tie-Down Required," 10-12-9, "Anchorage," 10-12-10, "Piers And Footings," 10-12-11, "Cabanas And Awnings," 10-12-12, "Alternative Tie-Down And Blocking Methods," and 10-12-21, "Utilities And Other Public Improvements," B.R.C. 1981, the board may grant a variance under the standards and procedures prescribed by the city building code, chapter 10-5, "Building Code," B.R.C. 1981.

(e) The board of zoning adjustment or board of building appeals may grant a variance subject to any conditions that it deems necessary or desirable to make the variance compatible with the purposes of this chapter.

(f) Unless used by the applicant, a variance granted by the board of zoning adjustment or the board of building appeals automatically expires one hundred and eighty days after the date it was granted or within such time as the board may prescribe unless an extension of the variance is obtained within such period after a showing of good cause upon application for such extension made before the expiration of the variance.

(g) The order of the city manager becomes the final order of the board of zoning adjustment or board of building appeals if:

(1) The applicant fails to appeal the manager's order to the board within the prescribed time limit;

(2) The applicant fails to appeal the order of the board to a court of competent jurisdiction within the prescribed time limit; or

(3) A court of competent jurisdiction enters a final order and judgment upon an appeal filed from the decision of the board under this chapter.

Ordinance Nos. 4803 (1984); 4879 (1985); 5562 (1993).

10-13

TITLE 10 STRUCTURES

Chapter 13 Historic Preservation[1]

[1]Repealed and reenacted by Ordinance No. 7476. See chapter 9-11, "Historic Preservation," B.R.C. 1981.

TITLE 11

UTILITIES AND AIRPORT

TITLE 11 UTILITIES AND AIRPORT

Chapter 1 Water Utility[1]

Section:

[1]Adopted by Ordinance No. 4672. Derived from Ordinance Nos. 2444, 2693, 2780, 2872, 2944, 3083, 3192, 3422, 3446, 3456, 3478, 3560, 3601, 3672, 3725, 3745, 3761, 3930, 4027, 4031, 4119, 4123, 4335, 4351, 4365, 4366, 4412, 4584, 4664.

11-1-1 **Legislative Intent.**

(a) The purpose of this chapter is to define the water utility of the city, to set forth the responsibilities of water service users, and to promote the public health, safety, and welfare by adopting a system of plant investment fees that insures that each new user of city water services pays its proportionate share of the current replacement cost of water facilities. The plant investment fees in this chapter reflect varying service requirements of residential users and are designed to encourage the construction of moderate income housing.

(b) Utilities should be extended outside the city limits of Boulder consistent with the Boulder Valley Comprehensive Plan and city charter requirements. The comprehensive plan projects extension of urban services, including utilities, in an orderly fashion in order to insure the most efficient and cost effective service to the existing utility system.

(c) The city council finds and determines that the city has historically provided and will continue to provide water services by means of an enterprise, as that term is defined by Colorado law. The city council further declares its intent that the city's water utility enterprise be operated and maintained so as to exclude its activities from the application of article X, section 20 of the Colorado Constitution.

Ordinance No. 5601 (1993).

11-1-2 **Definitions.**

For the purpose of this chapter and chapter 11-2, "Wastewater Utility," B.R.C. 1981, and the related fees in chapter 4-20, "Fees," B.R.C. 1981, the following words have the following meanings, unless the context clearly indicates otherwise:

"Attached residential unit size" means the following in the customer description for PIF valuation:

(a) A small size unit does not have more than one bathroom, and does not have an EQR greater than 0.6.

(b) An average size unit does not have more than two bathrooms, and does not have an EQR greater than 0.8.

(c) A large size unit has more than two bathrooms, and does not have an EQR greater than 1.0 if eighteen gpm or less. If more than eighteen gpm, an EQR shall be calculated on a case-by-case basis.

11-1-2

"Average winter consumption" means the average number of gallons of water use per month reflected on a user's water bill for the period covering the most recent consecutive months of December, January, February, and March. For accounts registering no water use in one or more of the four monthly billing periods, an average shall be established using those months in which there was usage, historical use records, or other available data.

"Bathroom" means a room containing at least a lavatory and a water closet (toilet).

"Bedroom" means a room with seventy square feet or more of floor area that is used for sleeping or could be used for sleeping. Garages, kitchens, bathrooms, and one dining room and one living room per dwelling unit are deemed not to be bedrooms for the purposes of this definition.

"Building" means an independent structure standing alone, excluding fences. To qualify as one building, all portions, additions, or extensions shall be connected by an attachment that is an enclosed and climatized part of the building and that is usable by the occupants thereof.

"Condominium" means real property having more than one dwelling unit and the ownership of which consists of separate, divided fee simple estates in individual air space units, together with an undivided fee simple interest in the common elements appurtenant to such units.

"Condominium unit" means a form of property ownership of airspace, as defined in 38-33-103, C.R.S.

"Detached residential unit size" means the following in the customer description for PIF valuation:

(a) A small size residence does not have more than two bathrooms, and does not have an EQR greater than 0.8. A mobile home is a small size residence.

(b) An average size residence does not have more than three bathrooms, and does not have an EQR greater than 1.0.

(c) A large size residence has more than three bathrooms, and does not have an EQR greater than 1.2 if twenty-four gpm or less. If more than twenty-four gpm, an EQR shall be calculated on a case-by-case basis.

"Developer" means any person who participates in any manner in the development of land.

"EQR" means an equivalent residential unit, which reflects the water demand and wastewater discharge of a detached average size residential unit. Other customer descriptions are proportionally related to that of a detached average size residential unit, which has an EQR of one. An EQR equals one when the instantaneous peak demand is eighteen gpm, the annual water demand is 0.34 acre feet, the peak day demand is one thousand fifty gallons per day, and the average annual demand is three hundred four gallons per day.

"Final construction acceptance" means the city's acceptance of the water or sanitary sewer mains and appurtenances thereto, constructed or installed by the developer or subdivider, at the end of the prescribed warranty period on such improvements and after correction of any deficiencies discovered in the final inspection of such improvements.

"gpm" means gallons per minute and reflects the instantaneous peak demand for a customer. This information is obtained by counting water supply fixture units and then converting to a water demand in gallons per minute. The gpm value is used in determining water meter size, EQR value, and PIF.

"Grant" means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid. "Grant" does not include:

(a) Any indirect benefit conferred upon the utility enterprise from the state or any local government in Colorado;

(b) Any revenues resulting from rates, fees, assessments, or other charges imposed by the utility enterprise for the provision of goods or services by such enterprise;

(c) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by the utility enterprise; or

(d) Any other receipt of revenues excluded from the definition of "grant" under Colorado constitution or law.

"Limited living unit" means an efficiency apartment providing minimum housing accommodations for occupancy by two persons, which may include a private bath or kitchen facilities, all of which does not exceed a maximum interior floor area of four hundred square feet, and shall be considered as a small size attached residence for PIF valuation.

"Multi-unit dwelling" means a building used by two or more of the following groups of persons living independently of each other in separate dwelling units but not including motels, hotels, and resorts:

(a) The members of family plus one or two roomers. The quarters the roomers use shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate dwelling unit;

(b) Up to three individuals in RR-1, RR-2, RE, and RL zones;

(c) Up to eight persons sixty years of age or older in RR-1, RR-2, RE, and RL zones;

(d) Up to four individuals in RM, RMX, MU-1, MU-2, MU-3, RH-1, RH-2, RH-3, RH-4, RH-5, BT, BC, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IG, IM, IMS, BMS, and BR zones; or

(e) Two individuals and any of their children by blood, marriage, guardianship, including foster children, or adoption.

"Permanently affordable unit" means a dwelling unit that in the city manager's judgment is pledged to the city to remain affordable forever to households earning up to eighty percent of the area median income (as determined by the United States Department of Housing and Urban Development or any successor agency of the United States Government) through contractual arrangements, restrictive covenants, and sale restrictions, subject to reasonable exceptions determined by the city manager, including, without limitation, subordination of such arrangements, covenants, and restrictions to a mortgagee.

"PIF" means plant investment fee.

"Preliminary construction acceptance" means the city's acceptance of the developer's or subdivider's construction, installation, and testing of water or sanitary sewer mains and appurtenances thereto as conforming with city standards and defines the date on which the warranty period on such improvements commences.

"Rooming house dwelling unit" means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and study, and that may include a

private bath but does not include a sink or any cooking device, and shall be considered as an attached residential unit with an EQR of 0.3 for PIF valuation.

"Sanitary sewer service line" or "wastewater service line" means the line running from the city sanitary sewer main to the structure to be served.

"Seasonal demand" means the difference between a user's average winter consumption and a user's average number of gallons of water use reflected on a user's water bill for the periods generally covering the months of June, July, and August in any year. For accounts registering no water use in at least one of these monthly billing periods, an average shall be established using historical use records or other available data.

"Single-unit dwelling" means a detached principal building other than a mobile home, designed for or used as a dwelling exclusively by one group of the following persons as an independent living unit:

(a) The members of a family plus one or two roomers. The quarters the roomers use shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate dwelling unit;

(b) Up to three individuals in RR-1, RR-2, RE, and RL zones;

(c) Up to eight persons sixty years of age or older in RR-1, RR-2, MU-2, RE, and RL zones;

(d) Up to four individuals in RM, RMX, MU-1, MU-2, MU-3, RH-1, RH-2, RH-3, RH-4, RH-5, BT, BC, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IG, IM, IMS, BMS, and BR zones; or

(e) Two individuals and any of their children by blood, marriage, guardianship, including foster children, or adoption.

"Subdivider" means any person who participates in any manner in the dividing of land for the purpose, immediate or future, of sale or building development.

"Townhouse" means a multi-unit dwelling in which the ownership of each dwelling unit consists of a separate fee simple estate on an individually platted lot, together with an undivided fee simple interest in the common elements, if any.

"Townhouse unit" means that part of a townhouse constituting a single dwelling unit.

"Wastewater utility enterprise" means the wastewater utility business owned by the city, which business receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this code or any other applicable law.

"Water service line" means the line running from the city water main to the structure to be served.

"Water utility enterprise" means the water utility business owned by the city, which business receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this code or any other applicable law.

Ordinance Nos. 5075 (1987); 5106 (1988); 5526 (1992); 5601 (1993); 5760 (1995); 5769 (1996); 5930 (1997); 7024 (1999); 7168 (2001); 7416 (2005); 7428 (2005).

11-1-3 Rules And Regulations.

The city manager may promulgate such rules and regulations consistent with this chapter and chapters 11-2, "Wastewater Utility," and 11-3, "Industrial And Prohibited Discharges," B.R.C. 1981, as the manager considers necessary to implement and enforce the chapters.

11-1-4 Water User Agrees To The Rules Of The Water Utility; Penalty For Breach.

(a) No person may be served with water from the water utility unless such person agrees to abide by all provisions of this code, all applicable ordinances of the city, and all the rules and regulations of the city pertaining to the water utility.

(b) If any water user fails to pay the charges for water when due or fails to comply with any provision of this code, any applicable ordinance of the city, or regulations issued thereunder, or uses water for a purpose not authorized, the city may discontinue water service until the water user has paid the required charges or is in compliance with all requirements of this code, any ordinance of the city, or regulations issued thereunder. But the water utility may not discontinue water service until it has afforded a water user an opportunity for a hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

11-1-5 Composition Of Water Utility.

All water and water rights, waterworks and appurtenances thereto, machinery, equipment, and supplies used by the city to supply its water users with water constitute the "water utility." The water service line from the customer's side of the meter to the structure or property served, however, is the property of the owner of the structure or property served.

11-1-6 Watershed Patrol Officers.

(a) The city manager shall appoint at least one full-time watershed patrol officer, and, in addition, may appoint as many part-time or temporary watershed patrol officers as may be needed from time to time.

(b) The watershed patrol officers shall enforce city ordinances intended for the protection of the city's watershed and Lakewood properties and shall perform such other duties as the city manager may assign.

(c) Before commencing service, all watershed patrol officers shall receive appropriate training through the police department. Upon satisfactory completion of such training, the officers shall be commissioned as watershed patrol officers and have conferred upon them police powers sufficient to enforce such ordinances, except the power to carry firearms.

11-1-7 Records And Reports.

The city manager shall keep such records and prepare such reports concerning the water utility as the manager deems appropriate. The manager shall advise the city council of the operations, financial conditions, and future needs of the water utility.

11-1-8 Control, Repair, And Tests Of Fire Hydrants.

All fire hydrants on public property are part of and shall be kept in repair by the water utility. The installation, maintenance, testing, and repair of all fire hydrants, stand pipes, and fire sprinkler systems on private property is the responsibility of the property owner, and this responsibility shall be discharged in accordance with the provisions of the City of Boulder Fire Code adopted in chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

Ordinance No. 4919 (1985).

11-1-9 Operation Of Fire Hydrants.

No person, other than a member of the fire department or water utility, shall open or operate any fire hydrant, standpipe, or fire sprinkler system on public or private property without permission from the city manager. It shall be a specific defense to a charge of violation of this section that the opening or operation of a fire hydrant, standpipe, or fire sprinkler system on private property was part of a test required by section 11-1-8, "Control, Repair, And Tests Of Fire Hydrants," B.R.C. 1981, was in response to a fire emergency, or was by the owner or the owner's authorized agent on a metered fire protection water system.

Ordinance No. 4919 (1985).

11-1-10 Damage To Property And Equipment Of Water Utility.

No person shall in any way damage any property, equipment, or appliance, constituting a part of the water utility.

11-1-11 Trespass, Interference With Water Utility Prohibited.

No person shall trespass upon the property of the water utility, tap any water mains, make any connections therewith, in any manner interfere with the water utility or the property, equipment, mains, valves, or any other appliances of the water utility, change or alter the position of any valve or appliances of the water utility, or change or alter the position of any valve or appliance regulating the flow of water in any water utility main, unless authorized to do so by the city manager.

11-1-12 Pollution Of Water Utility Prohibited.

No person shall deposit in any part of the water utility any substance or material that will in any manner injure or obstruct the utility or any material or substance that would tend to contaminate or pollute the water or obstruct the flow of water.

11-1-13 When Connections With Water Mains Are Required.

(a) All property located in the city or annexed to the city that is open to the public or used for commercial or industrial purposes or uses (other than single-family residential) and that requires a potable water supply for human consumption shall be connected with the water utility of the city. The owner of the property, the owner's agent or other person having charge of such property or receiving the rent for it, or a tenant of the property shall pay all applicable fees and charges when the city manager notifies such person that connection is required. The manager shall serve such notice upon the owner of such property by registered

mail to the last address of the owner on the records of the Boulder County Assessor and upon the person in possession of such property by mail to the property address. Connection to the water utility is immediately required only where there exists a city water main abutting or adjacent to any portion of the boundaries of the property upon which there is an existing structure or a proposed structure requiring the use of potable water. A private water supply may be used for irrigation on property connected to the water utility, but no person in possession of such property shall allow the water from the private supply to be used for human consumption or to be cross-connected with a line containing water from the water utility. Nothing in this subsection shall be deemed to require water connection by properties in the portion of Moore's Subdivision annexed on July 11, 1978 or specifically exempted by any written agreement with the city.

(b) No person shall make any connection with any water pipeline or water main that forms a part of the water utility of the city except pursuant to and in accordance with the permit required by this chapter. Only city water utility personnel shall install a tap on such a pipeline or main after it has been accepted by the city manager as part of the water utility.

(c) No person shall make any connections with any privately owned water mains or pipelines that are connected with the water utility of the city or change, alter, or renew any presently existing private main or pipeline connected with the water utility of the city with any pipe larger than that in use as of March 25, 1959 without obtaining a permit from the city.

Ordinance No. 5425 (1991).

11-1-14 **Permit To Make Water Main Connections.**

(a) Any person desiring to make a connection or repair to or disconnect from the water utility or to use water therefrom shall apply to the city manager for one of the following permits on forms provided by the manager, pay the fee prescribed by section 4-20-23, "Water Permit Fees," B.R.C. 1981, and meet the following conditions:

(1) A permit to install a water service line stub from a water utility main to the location of a proposed meter pit, only required if the stub is not installed at the time of construction of the main; no water may be used under this permit;

(2) A permit to connect to the water utility to take and use water for normal municipal purposes, allowing water to be taken and used for domestic, commercial, industrial, and irrigation uses. An applicant for this permit shall pay all applicable costs and fees including those for tap installation as prescribed in section 4-20-23, "Water Permit Fees," B.R.C. 1981, meter installation as prescribed by section 4-20-23, "Water Permit Fees," B.R.C. 1981, inspection of service line installation, plant investment fees, as prescribed by section 4-20-26, "Water Plant Investment Fees," B.R.C. 1981; main assessments, as prescribed by section 11-1-43, "Reimbursement Of Costs For Water Main Extension," B.R.C. 1981, and any other outstanding assessments;

(3) A permit to enlarge existing water service line, authorizing enlarging the size of the existing water service line and installing a larger meter required by increased demand on the water utility due to additional fixtures. An applicant for this permit shall pay the fees and costs set forth in paragraph (a)(2) of this section;

(4) A permit to renew any of the water service lines provided for in this subsection.

(b) The city manager shall sign all permits issued under this title and shall include the name of the person to whom the permit is issued, the date of the permit, the address and legal

description of the premises on which the water will be used, the size of the tap and water service line, and the fees and costs paid for the permit.

Ordinance Nos. 5106 (1988); 5425 (1991).

11-1-15 Out-Of-City Water Service.

(a) Any person outside of the city limits desiring to make a connection or repair to or disconnect from the water utility or to use water therefrom shall apply to the city manager for a revocable out-of-city water permit, which may be issued after approval of the city manager if the manager finds that the application meets the following conditions:

(1) The property is located within Area II of the Boulder Valley Comprehensive Plan, unless the facility to be served is a publicly owned facility that because of its nature is most appropriately located outside Area II and because of the general public interest should be served by water service;

(2) There is no main extension involved for such service beyond one hundred feet or in violation of the main extension limit, whichever is less[1];

(3) The city planning department has determined that the proposal does not constitute new urban development and is consistent with the comprehensive plan;

(4) The city has referred the application to the Boulder County Planning Department under the referral provisions of the comprehensive plan;

(5) The service is to be extended to a structure, which contains a legal use, that existed on the effective date of this chapter or to a platted single-family lot existing on the effective date of this chapter;

(6) The property is located below the "Blue Line;" and

(7) The property owner agrees in an agreement running with the land to annex to the city as soon as the property is eligible for annexation.

(b) If the city manager issues a permit under this section, it will become effective thirty days after the date of its issuance unless the city council schedules a hearing thereon. After issuing the permit, the manager shall promptly notify the council of the permit and within ten days of the date of issuance shall publish notice thereof in a newspaper of general circulation in the city. Before the effective date of the permit, the council may schedule a de novo hearing thereon to determine whether the application meets the standards prescribed by this section.

(c) If the city manager denies the permit, the applicant may, within sixty days of the date of the denial, appeal the denial to the city council, which shall schedule a hearing thereon to determine whether the application meets the standards prescribed by this section.

(d) Nothing in this section shall be deemed to invalidate out-of-city water permits existing at the effective date of this chapter, including those on property currently under development.

(e) If a permit to take or use water from the water utility to serve property situated outside the city's corporate limits is approved under this section, an applicant shall agree:

[1]Section 11-1-41, "Extensions Of Water Mains," B.R.C. 1981.

(1) To use the service only for the qualifying use and to make no enlargement thereto without obtaining a permit therefor under this section and section 11-1-14, "Permit To Make Water Main Connections," B.R.C. 1981;

(2) To make the connection at such point or points as the city manager prescribes;

(3) To pay all of the costs, if any, of extending a water main under a main extension agreement[1] in accordance with plans and specifications approved by the city manager;

(4) Prior to connecting to the water utility, to pay all fees prescribed in this chapter including any existing main assessments;

(5) To pay the outside city rates until such time as the property is annexed;

(6) To install and maintain the devices necessary to measure the use of the services for the purposes of assessing the charges therefor;

(7) To comply with the requirements of section 11-1-18, "Change Of Use Of Water Outside The City Limits Prohibited," B.R.C. 1981, if applicable;

(8) To furnish a current title memorandum showing that title to the property is vested in the applicant's name or to reimburse the city for obtaining such title memorandum and to pay any recording costs incurred;

(9) To file a petition to join the Northern Colorado Water Conservancy District and Subdistrict thereof, if the property is not included therein, and pay the required fees; and

(10) To sign an agreement evidencing an understanding that these water services are provided under a revocable permit, that rates for the said services may be increased, and if they are, the applicant will pay them, and that the services may be discontinued if the applicant fails to perform as required or if the city residents require such services.

(f) If a permittee under this section does not connect to the water utility within six months of issuance of the out-of-city water permit, the permit expires.

(g) Notwithstanding the foregoing provisions of this section, the city manager may allow a temporary connection, not to exceed ninety days, to the city's water utility if all of the following conditions are met:

(1) The city manager finds that a bona fide emergency exists which poses an immediate threat to the public health or safety;

(2) The applicant has provided the city with proof of insurance to protect and hold the city harmless in the event that there is any damage or injury resulting from said emergency connection to the city water utility, including, but not limited to, the quality of the water conveyed;

(3) The applicant shall pay to the city all actual costs involved in the connection to and disconnection from the water utility and shall pay the water rate of permittees under section 11-1-16, "Permit To Sell Water," B.R.C. 1981;

(4) The applicant shall comply with all applicable provisions of subsection (e) of this section;

(5) The area to be served lies within Area II of the Boulder Valley Comprehensive Plan; and

[1]See section 11-1-42, "Agreement To Extend Water Mains," B.R.C. 1981.

(6) The applicant must agree to comply with any additional terms and conditions which the city manager imposes on the temporary emergency connection to the water utility, including, without limitation, the installations of backflow prevention devices.

The manager may, for good cause, grant one extension, not to exceed ninety days, of the temporary connection upon approval by motion of the city council.

Ordinance Nos. 5106 (1988); 5122 (1988).

11-1-16 Permit To Sell Water.

(a) A person wishing to resell water obtained from the city water utility for use on property not connected to the city water utility shall first obtain an annual permit under this chapter and pay the fee prescribed in section 4-20-23, "Water Permit Fees," B.R.C. 1981. The permit expires one year after its issuance. The permittee may apply for a renewal within ninety days before the expiration date. The permit for the resale of water is required in addition to any of the other permits required for water connections prescribed by this chapter. The city manager shall not issue a water resale permit without first finding that:

(1) The applicant has already obtained the required permit for main connections with the water utility of the city;

(2) The applicant has obtained product insurance to protect and hold the city harmless in the event that there is any damage or injury resulting from the quality of the water sold to and resold by the permit holder; and

(3) The estimated quantity of water to be resold will not be of such a volume to interfere with the water service to be provided to existing water utility customers.

(b) When such a permit is issued, the city manager shall ensure that the applicant:

(1) Agrees to provide to the manager the names and addresses of all customers on a continuing basis;

(2) Agrees to observe all city and county health requirements; and

(3) Signs an agreement evidencing the understanding that this permit can be revoked if required by the water needs of the city and of any property situated outside the corporate limits of the city that has connected to the city water utility and provides to the manager a written agreement from each customer evidencing such understanding.

Ordinance No. 5425 (1991).

11-1-17 No Water Connection Permits Issued Before Mains Accepted.

The city manager may not issue permits to connect new water utility customers to newly constructed water mains until the manager has determined that all such mains and appurtenances thereto have been constructed in accordance with the engineering plans therefor approved by the city and the standards prescribed by the City of Boulder *Design and Construction Standards*, and until the manager has issued a preliminary construction acceptance for the mains.

11-1-18 Change Of Use Of Water Outside The City Limits Prohibited.

Outside of the corporate limits of the city, no person shall alter, change, enlarge, or extend in any manner whatsoever the type of use for which water is taken and used from the water utility of the city as of June 4, 1957 or the date of the issuance of the revocable permit, without a permit under this chapter.

11-1-19 Water And Ditch Rights.

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, an applicant for a permit under sections 11-1-14, "Permit To Make Water Main Connections," and 11-1-15, "Out-Of-City Water Service," B.R.C. 1981, shall offer for sale to the city all water and ditch rights available for use on the land at the fair market value determined by the city and the applicant at the time of the sale. The provisions of this subsection apply: 1) to all persons who have voluntarily annexed to the city and are applying for water utility service under the requirements of section 11-1-13, "When Connections With Water Mains Are Required," B.R.C. 1981; 2) to applicants choosing to apply for water utility service after having been unilaterally annexed by the city; and 3) to all owners of Silver Lake Reservoir and Ditch Company Shares, but such owners may apply to sell their shares to the city at a date later than that of the application for a permit under section 11-1-14, "Permit To Make Water Main Connections," or 11-1-15, "Out-Of-City Water Service," B.R.C. 1981.

(1) The provisions of this subsection do not apply to persons applying for water utility service when either the initial city zoning of the property is RR-1, RE, or agricultural or when the property is used for residential or agricultural use only and is 15,000 square feet or larger in size. In such circumstances the applicant shall offer to the city on a form provided by the city manager the right of first refusal on all water and ditch rights used on or appurtenant to the property and shall file such form in the office of the Boulder County Clerk and Recorder. The right of first refusal shall provide that the applicant shall give the manager at least sixty days' advance written notice that water and ditch rights are for sale and the details of the sale. At such time as the RR-1, RE, or agriculturally zoned land is subdivided or redeveloped, the owner thereof shall offer for sale to the city all water and ditch rights used on or appurtenant to the land at the fair market value determined by the city and the applicant at the time of the sale.

(2) The provisions of this subsection do not apply to persons owning property that has been unilaterally annexed to the city who are applying for water utility service under the requirements of section 11-1-13, "When Connections With Water Mains Are Required," B.R.C. 1981, but the applicant shall offer to the city on a form provided by the city manager the right of first refusal on all water and ditch rights used on or appurtenant to the property annexed to the city and shall file such form in the office of the Boulder County Clerk and Recorder. The right of first refusal shall provide that the person shall give the manager at least sixty days' advance written notice that water and ditch rights are for sale and the details of the sale.

(b) If a person purchases or obtains any water or ditch rights after connecting to the city water utility or if a person outside the city and connected to the city water utility who owns water or ditch rights is annexed to the city, the city shall discontinue water utilities services to such person. But the city shall continue water service if such person offers to sell the water or ditch rights to the city at fair market value as determined by the city and the person at the time of sale.

(c) The fair market value of Silver Lake Reservoir and Ditch Company shares is deemed to be $25.00 per share.

11-1-20 Taps Or Connections To Water Mains.

(a) No person not authorized by the city manager shall tap or connect to any part of the water utility.

(b) No person shall fail to make authorized taps and connections in accordance with the terms and conditions of the permit issued therefor.

(c) No person requesting or required to make taps or connections to the water utility shall fail to pay the costs for such taps or connections.

11-1-21 Water Service Lines.

(a) No person other than a contractor in the public right-of-way, licensed under chapter 4-6, "Contractor In The Public Right-Of-Way License," B.R.C. 1981, or a person authorized by the city manager shall install a water service line, including a meter pit and a meter riser.

(b) No person shall install a water service line without first obtaining written permission from the city and unless service lines are made from materials prescribed by City of Boulder *Design and Construction Standards*.

(c) No person other than water utility personnel or licensed contractors working under their direction shall install service lines, including meters and pits, in public streets, alleys, or easements after the date on which the city has accepted responsibility to maintain the mains.

(d) When the city manager finds that service lines between the city water main and the meter pit in use on the effective date of this ordinance are made of materials other than those approved materials prescribed by City of Boulder *Design and Construction Standards*, and that they have become so disintegrated as to be unfit for further use, such lines shall be replaced at the owner's expense. Once such lines have been replaced with approved materials, the water utility shall be responsible for maintenance of the service line between the water main and the meter pit.

(e) The owner of any property who desires to disconnect from the water utility may do so by requesting that the city remove the meter. If the disconnection is to be permanent or the water service line is to be abandoned, the line shall be shut off at the property owner's expense at the corporation cock. All appurtenances from the water main to and including the meter pit shall remain in the ground and become the property of the city. The city shall not resume water service until proper permits have been issued and fees paid.

(f) All service lines shall be installed in accordance with the standards prescribed by the City of Boulder *Design and Construction Standards*.

11-1-22 Excavation And Backfilling Water Service Lines.

(a) No person except an employee of the city or a person licensed as a contractor in the public right-of-way under chapter 4-6, "Contractor In The Public Right-Of-Way License," B.R.C. 1981, shall excavate in public streets or alleys. Such persons shall obtain a permit from the city manager and comply with all applicable provisions of this code, other ordinances of the city, and the *Work Area Traffic Control and Safety Handbook*, City of Boulder Department of Public Works, July 1980.

(b) No person shall backfill any trenches under city streets and sidewalks except in accordance with the City of Boulder *Design and Construction Standards*.

11-1-23 Water Service Line To Be Installed Before Street Paving.

(a) Before the city paves or overlays any street containing a water main, the water utility shall, at the expense of the abutting property owner, install water service line stubs between the city water main and the location of the proposed meter pit for all vacant property abutting the street in a size the city manager determines to be necessary to serve the property when fully developed.

(b) Whenever the council authorizes paving a street or alley under the provisions of chapter 8-1, "Local Improvements," B.R.C. 1981, it may order the owners of abutting properties to connect their premises with the water mains or with any other utility in the street or alley abutting their premises. If such property owner fails or refuses to make such connection for twenty days after such order, the city manager may cause the connections to be made under such conditions as the manager prescribes and shall charge the entire cost of such connection against the property with which the connection is made. Such cost is a lien upon the property, enforceable under the procedures prescribed by sections 11-1-47, "Water Charges Are Lien On Property And Liability Of Owner," and 11-1-54, "Certification Of Unpaid Charges To County Treasurer," B.R.C. 1981.

11-1-24 Extending Water Service Line From One Property To Another.

Each property shall be served by its own service line and no person shall make a connection with the water utility by extending the service line from one property to another property. If service lines have been so extended from one property to another property, persons may continue to use such extension only until water mains are installed that abut such other property, at which time the other property shall be connected to the water main at the expense of the owner of such other property served by such extension, and the extended service line shall be discontinued.

11-1-25 Duty To Maintain Service Lines And Fixtures.

(a) No owner of any property connecting to the water utility shall fail to maintain the water service line from the meter pit to the structure being served and to keep the line in good condition at the owner's expense. No owner of such property shall fail to keep all pipes, fixtures, and appliances on the property tight and in good working order so as to prevent waste of water.

(b) No owner of any property connected to the water utility shall allow any cross-connection to the water utility, unless there is provided an approved backflow prevention assembly commensurate to the potential hazard. No person working on a water line connected to the water utility shall make a cross-connection, unless there is provided an approved backflow prevention assembly commensurate to the potential hazard. No person shall fail to comply with all regulations promulgated by the city manager for the implementation of this chapter.

(c) No person shall tamper with, modify, or in any way damage any backflow prevention assembly.

(d) No person shall manufacture, install, maintain or sell a backflow prevention assembly that does not meet the requirements of section 5.11 of the City of Boulder *Design and Construction Standards*.

(e) If an inspection is requested by an owner or required by this section, a backflow prevention assembly testing or inspection fee or a cross-connection control inspection fee shall be assessed. Such fee shall be a direct charge to owners or lessees of premises subject to this section for the recovery of costs related to the administration of this section and to the inspection and testing of such assemblies performed by the city. The charges for such services are prescribed in section 4-20-23, "Water Permit Fees," B.R.C. 1981.

Ordinance Nos. 5875 (1997); 7024 (1999).

11-1-26 Permit Required For Changing Or Increasing Fixtures.

No plumber or any water user shall install or replace any plumbing fixture using water from the water utility without first obtaining a plumbing permit therefor that states the number and character of each fixture, appliance, or apparatus to be installed or replaced[1].

11-1-27 Water Restrictions In Case Of Emergency.

In the event of a major fire or any other emergency that requires the immediate curtailment of the use of water from the water utility, the city manager may make such restrictions as the manager deems necessary for the protection of the public.

11-1-28 Water To Be Shut Off For Repairs Or Extension.

The city is authorized to shut off water from any water main when necessary to repair the main, to make any connections or extensions of the water mains, or to perform any other work necessary to maintain the water utility.

11-1-29 Who May Turn Water On.

No person other than an employee of the city shall turn on water to any premises, lot, building, or house when the water has been shut off under the provisions of this chapter.

11-1-30 Use Of Water From Private Well.

No person shall have a cross-connection between a private line carrying well water and line carrying water from the water utility.

11-1-31 Building Permit Issuance.

No building permit or water utility connection permit may be issued until all water utility requirements have been met.

11-1-32 Use Of Water By Any Water Customer Under The Provisions Of This Chapter.

The use of water by persons under the provisions of this chapter shall not be deemed to be a relinquishment of any water or water right by the city. The city reserves the full right to determine all matters in connection with the control and use of the water.

[1]See section 11-1-14, "Permit To Make Water Main Connections," B.R.C. 1981.

11-1-33 Use Of Water By Other Than Water Utility Customers.

No person using water under this chapter shall permit any other person to take or use water from such person's water service for use on property not connected to the city water utility, except as permitted by obtaining a water resale permit, under section 11-1-16, "Permit To Sell Water," B.R.C. 1981.

11-1-34 Meter And Appurtenances To Be Purchased By User.

(a) The city shall furnish to property owners at the owner's expense all meters, meter pit covers, meter yokes, and all other appurtenances.

(b) The city shall furnish to property owners at the owner's expense all pits for meter installations less than one and one-half inches in diameter.

(c) The owner shall furnish at the owner's expense pits for meter installations one and one-half inches or larger in diameter in accordance with the City of Boulder *Design and Construction Standards*.

11-1-35 Meter Size Requirements.

(a) The meter provided shall be of a size so that the largest instantaneous demand required, without regard to ditch or well water rights, does not exceed eighty percent of the rated capacity of the water meter for peak flows, or fifty percent of the rated capacity of the water meter for continuous flows, as set forth in *Sizing Water Service Lines and Meters*, Manual M22 of the American Water Works Association, 1975.

(b) All irrigation connections, except those for single-family residences, shall be separately metered and shall be sized based on the maximum gallons per minute demand at any one time.

(c) The largest meter for a detached single-family residence is one inch, unless otherwise approved by the city manager.

Ordinance Nos. 5526 (1992); 5760 (1995).

11-1-36 Location And Installation Of Meters; Maintenance Of Access To Meters.

(a) All water meters shall be installed in either public rights-of-way or easements in a location specified by the city manager. Before the city sets the meter, all pits shall be installed at the depth required by the City of Boulder *Design and Construction Standards*, with the yoke at the required depth measured from the final elevation of the finished surface of the ground. The pit shall be placed and maintained so that it is readily accessible to water utility personnel, and away from trees and bushes and outside fences. Only city water utility personnel shall set a water meter two inches or smaller in capacity or a remote meter. The owner or person in possession of the property to be served by such a meter shall pay the meter installation fees prescribed in section 4-20-23, "Water Permit Fees," B.R.C. 1981. The owner or person in possession of the property to be served by a meter larger than two inches shall purchase the meter from the city and have it installed in compliance with the City of Boulder *Design and Construction Standards* by a licensed right-of-way contractor in a pit meeting the requirements of this subsection.

(b) No person owning or possessing the property on which a meter pit is located shall fail to maintain landscaping around the meter pit to provide at least three feet of unobstructed access to the meter from the public right-of-way and at least five feet of vertical clearance above the meter pit.

(c) No person owning or possessing the property on which a meter pit is located shall restrict direct access to the meter pit from the public right-of-way by a fence, hedge, or any other obstruction.

(d) No person owning or possessing the property on which a meter pit is located shall fail to assure that landscape materials that are taller than four inches are no closer than one foot to the back edge of the meter pit or shall allow any landscaping materials to cover any part of the meter pit lid.

(e) No person owning or possessing property shall landscape it so as to change the elevation of the land around the meter pit in any way.

(f) If the city manager finds that any person has failed to comply with any of the requirements of subsection (b), (c), (d), or (e) of this section, the manager shall notify the owner or possessor of the property by hand delivery or mail to comply with the requirements within fifteen days of the date of delivering or mailing the notice.

(1) If the person so notified fails to comply with the requirements of this notice, the manager may cause the work to be done and charge the costs thereof, together with an amount up to $25.00 for administrative costs, to the person so notified.

(2) If the person fails or refuses to pay when due any charge imposed under this section, the manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes on such property are collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance Nos. 5425 (1991); 5526 (1992).

11-1-37 **Meter Maintenance.**

The water utility shall maintain, test, and repair all meters as required. Any water user who causes damage to a water meter shall pay the cost of repair, which shall be added to the charge for water service.

11-1-38 **Interfering With Or By-Passing Water Meters.**

(a) No person shall tamper or interfere with any meter or meter seal or so arrange water service or piping so that the use of water will not actuate the meter. The water utility shall discontinue water service to any user who violates the provisions of this section until satisfactory payment has been made for all water used, all repairs to the meter, and all fees for terminating and resuming water service. The water utility may not discontinue water service until it has afforded a water user an opportunity for a hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, but the hearing may be held within forty-eight hours of service of notice upon the water user.

(b) No person shall make any tap or install any device or plumbing connection within the meter pit without written permission from the city manager.

11-1-39 **Location Of Water Mains.**

All water mains shall be installed only in the dedicated public streets or alleys or in easements that grant to the city rights that are at least equal to rights it would enjoy in the dedicated streets or alleys.

11-1-40 **Size Of Water Mains.**

The city manager shall determine the size of water mains required to serve any part of the city or any area outside the city that is served by the water utility in accordance with the master plan of the water utility. No main less than eight inches in diameter shall be placed in the water utility system unless specifically authorized by the manager.

11-1-41 **Extensions Of Water Mains.**

(a) All water main extensions shall be constructed to the farthest point of the property to be served thereby, unless additional development of adjacent property is not contemplated within five years under the Boulder Valley Comprehensive Plan, in which case the property owner shall reserve an easement for a future main extension. If such an extension creates a dead-end main longer than six hundred feet, the distance in excess of the six hundred feet shall not be available for use.

(b) All on-site water mains required to serve a development or a platted subdivision shall be installed at the cost of the developer or subdivider.

(c) All off-site and perimeter water main extensions required to serve a development or a platted subdivision shall be installed and paid for by the developer or subdivider, who may be reimbursed for all or part of the cost as prescribed by section 11-1-43, "Reimbursement Of Costs For Water Main Extension," B.R.C. 1981.

(d) Any developer or subdivider required to construct a connecting loop necessary to provide two sources of water to a development or platted subdivision or to avoid a dead-end main longer than six hundred feet shall pay for such a loop.

11-1-42 **Agreement To Extend Water Mains.**

(a) Prior to the approval of plans for the extension of any water main that is not entirely within a single development or platted subdivision and for which the developer or subdivider expects to receive reimbursement for part or all of the costs of the main extension, the developer or subdivider shall enter into a "main extension agreement" with the city, which contains the legal description of the property to be served, a description of the main extension, the name of the developer or subdivider of the property, the terms of reimbursement to the developer or subdivider, the time period for reimbursement to the developer or subdivider, and an agreement by the developer or subdivider to provide to the city, within sixty days of the date of preliminary construction acceptance by the city, its costs for such work and to provide to the city a current address during the term of the agreement.

(b) If a developer or subdivider fails to comply with the main extension agreement, such person forfeits any right to reimbursement under section 11-1-43, "Reimbursement Of Costs For Water Main Extension," B.R.C. 1981.

11-1-43 Reimbursement Of Costs For Water Main Extension.

(a) Developers or subdividers who have paid the costs of a water main extension and have entered into a "main extension agreement" with the city may be reimbursed part or all of the costs as provided in this subsection.

(1) At the time of annexation, subdivision, redevelopment, building permit issuance, or connection, whichever occurs first, the city manager shall collect a charge per adjusted front foot based upon the original construction costs of the main and shall reimburse the original developer or subdivider for its original construction costs, to the extent of the collection so made.

(2) In no event shall the actual amount so paid to the developer or subdivider by the city exceed the total original cost of the water main extension. After the expiration of the period of reimbursement prescribed by subsection (c) of this section, the city shall retain any such monies so collected.

(3) If the developer or subdivider fails to supply its construction costs to the city within sixty days of preliminary construction acceptance of the water main, the manager may estimate the costs of such extension for purposes of charging persons who thereafter connect to the water main. The city shall retain any such monies so collected.

(b) When mains larger than twelve inches in diameter are required by the city and are determined not to be required to serve the demands of the property owner or subdivision benefitted thereby, the property owner or subdivider benefitted shall enter into a main extension agreement with the city whereby the city agrees to pay the difference in construction costs between those of the main constructed and those of a twelve-inch main, based on their respective unit costs.

(c) The term for which the developer or subdivider is entitled to reimbursement under the "main extension agreement" between the developer or subdivider and the city is ten years from the date of the execution of the contract or until the total original construction cost has been reimbursed, whichever occurs first.

(d) At the time of annexation, subdivision, redevelopment, building permit issuance, or connection to the main, whichever occurs first, the city manager shall collect a charge per front foot based upon the original construction cost.

(e) Property abutting any existing water main, for which original construction costs cannot be determined, and which has not been assessed or charged for its proportionate share of the cost of the construction of such water main, shall pay the city prior to annexation, subdivision, redevelopment, building permit issuance, or connection to the main, whichever occurs first, a charge based upon an estimate of the original construction cost of the existing main, up to and including a twelve inch diameter system, and the adjusted front footage of the property to be served, as determined by the city manager.

Ordinance Nos. 4969 (1986); 5526 (1992).

11-1-44 Water User Charges.

(a) The water utility shall bill water users once a month. Failure by the water utility to so notify a water user shall not constitute a waiver of any fee or charge imposed by this chapter.

(b) Charges for water service consist of a monthly service charge and a quantity charge as prescribed by section 4-20-25, "Monthly Water User Charges," B.R.C. 1981. For those

customers served by more than one meter, the appropriate service charge shall be applied to each meter. Monthly service charges shall be billed to each meter in use regardless of whether any quantity charge is made. A meter is considered to be in use as long as it is in place.

(c) If water users institute or terminate service or when the ownership of the property is transferred on other than established billing dates, the water utility shall prorate the charges for water services. When the ownership of the property is transferred, the established customer class average winter consumption will be used to calculate water charges until the next average winter consumption calculation period.

(d) For all water supplied by the city to the Boulder Valley School District No. RE 2 or to any of the properties that are located within the boundaries of the former Boulder Valley Water and Sanitation District, the inside city water rates apply.

(e) For all water supplied by the city outside of the city limits used for firefighting training purposes by bona fide and legally constituted firefighting units located in Boulder County, the inside city water rates apply.

(f) If any meter fails to register in any billing period, the water user shall be charged according to the average quantity of water used in a similar period as shown by the meter when in order.

(g) Billing for water service and any other notices relating to the water utility are effective on the date that they are deposited in the mail addressed to the last known address of the water user as shown on the records of the city water utility.

(h) All charges for the use of water prescribed by this section are due and payable within ten days after the date of the bill.

Ordinance Nos. 5068 (1987); 5106 (1988); 5526 (1992).

11-1-45 **Water To Be Shut Off For Failure To Pay.**

(a) If any person fails or refuses to pay all charges prescribed by this chapter, or fails or refuses to comply with the provisions of this chapter or the regulations of the water or wastewater utility promulgated pursuant to this chapter, the water utility may discontinue water service until all charges, plus the charge for discontinuing and resuming water service, interest accrued, and the cost of collecting the charges, are paid or until the requirements of this chapter or any regulations promulgated pursuant thereto are met. But the water utility may not discontinue water service until it has afforded such person an opportunity for a hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(b) For condominiums to which water is furnished by means other than by metering the consumption of each individual condominium unit, each owner of a condominium unit is liable for the payment of the water and sewer charges for water and sewer services furnished to the condominium. The city shall issue only one statement or bill including all charges for the total amount of water and sewer services furnished to such condominium. If such bill is not paid when due or if anyone using services at the condominium fails or refuses to comply with this chapter or any rules and regulations of the water or wastewater utility, the city may discontinue all water service to the condominium until such charges are paid in full or until the requirements of this chapter or the rules and regulations of the water or sewer utility are met. Any act or omission by any person that results in the city discontinuing water service to a condominium to which water is furnished by means other than metering

the consumption of each individual condominium unit constitutes a joint act of all owners of condominium units and all other persons receiving water at such condominium units.

(c) No person who has complied with the rules and regulations of the water or wastewater utility or who has paid a proportionate or other share of the charges outstanding or remaining unpaid may file a claim for damages against the city because water service has been discontinued under this section.

(d) If more than one lot, house, building, or dwelling unit is served by a common meter, the city shall issue only one statement or bill including all charges for water and wastewater services. If that bill is not paid when due or if anyone served through such common meter fails to comply with the provisions of this chapter or any rules or regulations of the water or sewer utility, the city may discontinue all water service through said meter and to the premises receiving water through said meter until such charges, together with costs and interest, if any, are paid in full or the requirements of this chapter and rules and regulations are met. Any act or omission by any person that results in the city discontinuing water service to any premises served by common meter constitutes a joint act of all persons who are served through such common meter.

11-1-46 Charges For Terminating And Resuming Water Service.

(a) When water service is once initiated to any premises, the charge for terminating such service, and once terminated, the charge for resuming the service, are those prescribed by section 4-20-24, "Water Service Fees," B.R.C. 1981.

(b) If a meter is removed because of nonpayment of water bills, discontinuance of service, or a request not to be charged the monthly minimum fee, the user shall pay the removal and reinstallation charge as prescribed by section 4-20-24, "Water Service Fees," B.R.C. 1981.

11-1-47 Water Charges Are Lien On Property And Liability Of Owner.

(a) Except as provided in subsection (d) of this section, the owner of every premises, building, lot, house, or dwelling unit is liable for all charges for water and sewer services furnished to the said premises, building, lot, house, or dwelling unit.

(b) All water and wastewater service charges prescribed by sections 4-20-23, "Water Permit Fees," 4-20-24, "Water Service Fees," 4-20-25, "Monthly Water User Charges," 4-20-26, "Water Plant Investment Fees," 4-20-27, "Wastewater Permit Fees," 4-20-28, "Monthly Wastewater User Charges," and 4-20-29, "Wastewater Plant Investment Fees," B.R.C. 1981, together with interest and the cost of collecting them, if any, are a lien that is prior and superior to all other liens, claims, titles, and encumbrances, whether prior in time or not, except liens for general taxes, and remain a lien upon the property to which water is delivered from the date such charges, together with interest and the cost of collecting them, if any, become due until they are paid.

(c) The city may enforce the lien against the property or the liability against the owner in an action at law or an action to enforce the lien. If any person in possession of any premises, building, lot, house, or other dwelling unit pays the entire charges due and owing, the payment relieves the owner from such liability and the premises, building, lot, house, or dwelling unit from the lien. But the city is not required to look to any person other than the owner of the premises, building, lot, house, or other dwelling unit for the payment of the charges.

(d) For condominiums to which water is furnished by means other than by metering the consumption of each condominium unit, the lien for the unpaid water and sewer service charges, interest, and costs, if any, imposed by subsection (a) of this section attaches upon each condominium unit in an amount computed by dividing the total amount of the lien by the number of condominium units.

(e) No change of ownership or occupation shall be deemed to affect the application of this chapter or any of its provisions. The failure of any owner to learn that the owner purchased any property against which a lien for water and sewer services exists does not affect the owner's liability for such payment in full and is not a basis for any claim of any kind whatsoever against the city for refusing to turn on water service until the charges have been paid in full.

11-1-48 **Water Conservation Program.**

(a) The purpose of this section is to create incentives for water conservation by users of the water supply of the city, to prevent unnecessary depletion of the raw and treated water supply of the city, to attempt to supply a continuing level of satisfactory service to existing water utility customers, and to insure the city's ability to meet the present and future basic water needs of the city's residents.

(b) The provisions of this section apply to all users of water supplied through the water utility of the city, including, without limitation, customers of any water and sanitation district or any public or private water supply company to which the city provides water.

(c) The city manager may implement the water conservation measures under this section after twenty-four hours' public notice, or upon publication in a newspaper of daily circulation in the city, whichever occurs first, whenever in the manager's reasonable judgment such measures are necessary to maintain, conserve, replenish, or protect the water supply of the city. The manager shall determine the extent and duration of any water conservation measures implemented. Nothing in this section shall be deemed to limit or restrict the emergency powers of the city manager under section 11-1-27, "Water Restrictions In Case Of Emergency," B.R.C. 1981.

Ordinance Nos. 5068 (1987); 5426 (1991); 5526 (1992); 7010 (1999).

11-1-49 **Water Conservation Measures.**

(a) The city manager may prohibit or restrict the use of water from the water utility or from any other source of water owned by the city.

(b) The city manager may impose water conservation measures, including, without limitation, the following:

(1) Restrictions limiting water which may be used for lawn irrigation or other purposes outside a residence, apartment, commercial, or industrial building or any other structure on a schedule established by the manager.

(2) Restrictions on filling swimming pools.

(3) Restrictions on vehicle washing, including, without limitation, the restriction that vehicles may be washed only with a bucket or a hose running with an automatic shut-off nozzle but not with any free-running hose.

(4) Restrictions on the hours during which water may be utilized for outside irrigation of lawns, gardens, or landscaping.

(5) A moratorium on out-of-city water permits under which no new permits to take or use water from the water utility of the city to serve property located outside the city's corporate limits are issued, notwithstanding the provisions of section 11-1-15, "Out-Of-City Water Service," B.R.C. 1981.

(6) If the city manager imposes a moratorium on out-of-city water permits, the manager may, upon recommendation of the director of public works for utilities, permit special requests to the city council and only upon a written finding of extreme hardship resulting in immediate danger to life or property. The manager may impose such reasonable conditions upon the grant of any exception authorized herein as the manager deems advisable.

Ordinance Nos. 5068 (1987); 5426 (1991); 7010 (1999); 7215 (2002); 7270 (2003).

11-1-50 **Special Permits.**

(a) If the city manager imposes daily or hourly watering restrictions, the manager may issue special permits, upon recommendation of the director of utilities, as follows:

(1) For watering newly sodded lawns, each day for a period not exceeding fourteen consecutive days;

(2) For watering newly seeded lawns, each day for a period not exceeding twenty-five consecutive days;

(3) For period watering of outside stock at nurseries, greenhouses, and stores;

(4) When there are circumstances that do not permit a water user to deliver three-fourths of an inch of water per week on landscaped grounds of the user's premises, if the water user submits a plan describing the area to be served and the method to be used to deliver an adequate amount of water; and

(5) For water schedules otherwise prohibited, in cases of a clear and present hardship.

(b) An applicant for a special permit shall pay the special permit fee prescribed by section 4-20-23, "Water Permit Fees," B.R.C. 1981, and apply in writing on forms provided by the city manager that contain the following information: the reasons for requesting the permit; the period of time for which the permit is requested; the area or address of the premises to which such permit applies; for requests for additional watering times, a plan describing the area for which the permit is requested and a description of the method to be used to deliver an adequate amount of water to the area; and such other applicable information as the manager may reasonably request in order to review the application.

(c) The application shall be submitted to the director of utilities, who shall review all requests for special permits and forward a copy of the application and a recommendation thereon to approve, deny, or approve with conditions to the city manager for final review, approval, denial, or approval with conditions. If the manager denies the application or approves it with conditions, the applicant may, within five days of receiving the decision, request a hearing before the manager under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall hold the hearing within twenty-one days of the date of the applicant's written request. The hearing officer shall not be the same person who denied the application.

(d) The holder of each special permit shall post the permit in a conspicuous place on the premises to which the permit applies so that it is readily visible from the street in front of or abutting the premises.

(e) No person who holds a special permit shall transfer that permit from the premises for which the permit is issued to any other premises or location. Any attempt to do so voids the permit.

(f) If any person holding a permit under this section violates any condition of the permit, the city manager may revoke the permit, after affording the permittee an opportunity for a hearing under chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Before such hearing, the manager may suspend the permit for up to twenty days, if the manager finds that the public health, safety, and welfare requires such suspension.

(g) The city manager may establish such additional procedures as deemed necessary for the review and processing of special permit applications.

(h) The city manager may establish a moratorium on the issuance of some or all of the special permits authorized by this section.

Ordinance Nos. 5425 (1991); 7215 (2002).

11-1-51 **Enforcement Of Water Conservation Measures.**

No owner and no occupant of a premises receiving municipal water shall fail to comply with the provisions of sections 11-1-25, "Duty To Maintain Service Lines And Fixtures," 11-1-48, "Water Conservation Program," 11-1-49, "Water Conservation Measures," and 11-1-50, "Special Permits," B.R.C. 1981. Violations of the provisions of these sections during any time when water conservation measures have been imposed by the city manager pursuant to section 11-1-49, "Water Conservation Measures," B.R.C. 1981, are subject to imposition of the following penalties:

(a) Administrative Charges:

(1) For a first violation within a twelve-month period, the city manager shall notify the owner in writing of the violation and that a $50.00 water waste charge is due, payable, and collectable pursuant to the provisions of this chapter within ten days of the date of the notice.

(2) For a second violation within a twelve-month period at the same premises, the city manager shall notify the owner in writing of the violation and that a $100.00 water waste charge is due, payable, and collectable pursuant to the provisions of this chapter within ten days of the date of the notice.

(3) For a third or any subsequent violation within a twelve-month period at the same premises, the city manager shall notify the owner in writing of the violation and that a $300.00 water waste charge is due, payable, and collectable pursuant to the provisions of this chapter within ten days of the date of the notice.

(4) The notice of the water waste charge shall be served no later than thirty days after the city manager learns of the violation and the identity of the owner of the property. Service shall be upon the owner of the property in person or by first class or certified mail addressed to the last known owner of the property on the records of the Boulder County Assessor. The manager may send copies of the notice to such occupants of the property or agents of the owner as the manager deems useful. The notice shall advise the owner of the right to a hearing under paragraph (a)(5) of this section, and that if payment of the water waste charge is not received by the city or a hearing requested within the ten days, the water waste

charge, together with a $15.00 administrative processing fee, will appear on the next regular water bill.

(5) The owner of the property notified of a water waste charge, or any agent of the owner authorized in writing by the owner, may file a written request for a hearing regarding the factual basis for imposing the charge with the municipal court within ten days of the date of the notice. The request must identify the notice being appealed by attaching a copy or otherwise identifying it, and shall contain the name, address, and telephone number of the person to whom notice of the date, time, and place of the hearing should be given. Filing occurs when the municipal court receives the request. The hearing shall be conducted in accordance with chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, before a judge or a hearing officer appointed by the presiding judge of the municipal court. The city bears the burden of establishing the factual basis for imposing the water waste charge by a preponderance of the evidence, and if that basis is established the hearing officer shall order the charge paid within ten days, subject to the $15.00 administrative fee and the collection procedures of this chapter if not paid within that time. Failure to request a hearing within the time provided or attend any such hearing constitutes a waiver of the right to such hearing and a determination of all issues then existing as supporting the factual basis for imposing the water waste charge.

(b) Additional Remedies: After three notices of a water waste charge have been served upon an owner for violation of any of the provisions of subsection 11-1-25(a), B.R.C. 1981, concerning the duty to maintain service lines and fixtures, or sections 11-1-48, "Water Conservation Program," and 11-1-49, "Water Conservation Measures," B.R.C. 1981, within any twelve-month period, in addition to or in lieu of a further notice of a water waste charge the city manager may, in the manager's discretion:

(1) Cut Off Water: Suspend water service to the premises for a period of time not to exceed thirty days after giving notice and an opportunity for a hearing in accordance with chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The owner of the premises is responsible for paying the charges prescribed by section 4-20-24, "Water Service Fees," B.R.C. 1981, for termination of service and for resumption of service before service, if suspended, is resumed. The manager may reduce the period of suspension or hold a threatened suspension in abeyance if the owner presents and implements a plan acceptable to the manager to prevent further violations; and

(2) Criminal Penalties: Prosecute violators in municipal court pursuant to the provisions of section 5-2-4, "General Penalties," B.R.C. 1981, and the normal procedures of a municipal court prosecution.

(3) Proof Of Evidence: In order for the manager to proceed under this subsection it is sufficient that the manager prove, by a preponderance of the evidence, that the three predicate notices were properly served and that they were for alleged violations which all took place within twelve months of each other.

Ordinance Nos. 5068 (1987); 5875 (1997); 7010 (1999); 7215 (2002).

11-1-52 **Water Plant Investment Fee.**

(a) Applicability: Any applicant desiring to take and use water from the water utility of the city shall pay to the city a water plant investment fee pursuant to the schedule of fees prescribed by section 4-20-26, "Water Plant Investment Fees," B.R.C. 1981, in addition to all other charges relating to water service elsewhere described in this chapter.

(1) Applicants desiring to take and use water from the water utility of the city for a structure proposed to be built within the city limits shall pay such fee prior to the scheduling of final building inspection.

(2) Applicants desiring to take and use water from the water utility of the city for an existing structure within the city limits or any structure outside the city limits, whether existing or proposed, and applicants for irrigation use shall pay such fee prior to the time of issuance of water utility connection permit or permit to enlarge existing water service and meter.

(3) Applicants desiring to change or enlarge the use of water to an existing structure that requires an additional plant investment fee shall pay such fee prior to issuance of the building permit.

(b) Residential Uses: For purposes of this section, residential uses include, without limitation, single-unit and multi-unit dwellings, limited living units, mobile home dwellings, townhouses and rooming units. All other utility customers are "other than residential uses," including, without limitation, business, commercial, industrial, and institutional connections; landscape irrigation service lines; and recreational facilities appurtenant to residential developments.

(c) Combined Uses: Developments with combined residential and nonresidential uses in the same structure shall pay a plant investment fee based on the individual uses within the structure. The "other than residential" portion of the developments shall be assessed in accordance with the "other than residential" fee schedule. The residential portion shall be assessed in accordance with the residential fee schedule.

(d) Permanently Affordable Units: The plant investment fee for each permanently affordable unit which is subject to concept review under section 9-2-13, "Concept Plan Review And Comment," B.R.C. 1981, and was reviewed by the planning board before September 16, 1999, the effective date of this ordinance, shall be set at the fee level in effect at the time of the final approval of the concept plan for the residential development, including such unit.

(e) Condominium Type Developments: Nonresidential developments designed to be sold and occupied in a manner similar to residential condominiums shall be assessed a plant investment fee (based on the entire building) pursuant to the schedule of fees for other than residential uses. Any installation of additional plumbing fixtures in one of the privately owned units may require an additional plant investment fee to be paid by the owner of the individual unit.

(f) Landscape Irrigation Systems: All utility customers (except owners of single-unit dwellings and townhouse units) who desire to install landscape irrigation systems, including the developer of a townhouse complex or an association of townhouse owners desiring to install a landscape irrigation system on a portion of the commonly owned land, shall install a separate meter and pay a water plant investment fee based on the schedule of fees.

(g) Information Required: All applicants except those connecting three-fourths-inch meters for detached residential dwelling units shall provide all pertinent information that the city manager may require to determine the plant investment fee, including, without limitation, a set of plans certifying the number and type of plumbing fixtures and the maximum design and demand in gallons per minute of any desired landscape irrigation system, signed by a registered professional engineer.

(h) Changes To Water Use: No customer of the water utility or a water district obtaining service under contract with the city shall make any changes or additions to the property that would affect the use of water without first obtaining permission to make such changes and a new

permit for the use of the water under section 11-1-14, "Permit To Make Water Main Connections," B.R.C. 1981, and paying the plant investment fee. The city manager shall credit such user an amount equal to the plant investment fee that would have been charged before the change or addition, but if the credit is less than the amount previously paid for a water plant investment fee, the amount paid shall be allowed as a credit. The credit shall be based upon documented historic water use data or other available, relevant data. But no credit shall be allowed for a plant investment fee collected from out-of-city customers that exceeds that charged to in-city customers. No refund shall be paid to any water user who obtains permission to decrease the demand for service. No cash refunds shall be paid for allowable credit exceeding the new plant investment fee. The credit prescribed by this subsection applies to only the property served by the existing water service line and to only water plant investment fees owed to the city and not to other utility fees or charges. Credit will not be allowed for service line stubs or for services not in use for a continuous period of five years or more. Prior to the expiration of the five years, the applicant may request an extension of time to receive a credit for water plant investment fees owed to the city. The city manager may grant such extensions based on a showing of good cause by the applicant.

(i) Collection Of Fee: The city may look only to the owner and the owner's successors in interest of each premises, building, lot, house, or dwelling unit desiring water service for the payment of the assessed water plant investment fee.

(j) Processing Of Requests: All building permit applications and other requests for water service received by the water utility will be processed in compliance with the plant investment fee schedule prescribed by section 4-20-26, "Water Plant Investment Fees," B.R.C. 1981 in effect as of the date of submission.

(k) Access To Premises: The city manager may have access at reasonable times to all premises of water utility users for purposes of counting and verifying existence of fixtures to determine plant investment fees.

(l) Special Agreements And Contracts: Any applicant desiring to use water from the water utility, if such water use demand is greater than the water use demand anticipated for the property and use, based on land use zoning and approved utility master planning, shall enter into a special agreement with the city and shall pay a water plant investment fee pursuant to section 4-20-26, "Water Plant Investment Fees," B.R.C. 1981. Such special agreement shall contain the legal description of the property, the use to be served, and a description of the instantaneous peak, daily peak, and annual water demand for the property and use, a description of the water use demand as anticipated by the city, and terms of the PIF payment. In addition, such special agreement may also contain financing, connection and monitoring provisions to accommodate equitably the needs of the user, and no statement contained in this chapter shall be construed as prohibiting such provisions. A copy of each proposed special agreement shall be placed on a city council agenda prior to execution, so that the council has an opportunity to call the agreement up for council review.

(m) Business Incentive Rebates: The city manager may grant rebates of PIF payments paid by primary employers in connection with equipment acquisition, construction projects, construction equipment and construction materials when, in the judgment of the city manager, the rebate will serve the economic interests of the city by helping attract or retain a primary employer which contributes to a socially sustainable community. The city manager may promulgate interpretive guidelines to define more specifically the circumstances under which rebates may be granted and to establish application procedures or other matters necessary or desirable for implementation of this subsection. Any taxes rebated pursuant to this subsection shall be deemed payable by the city's general fund. This subsection shall be repealed and no longer in effect after December 31, 2007, unless extended by action of the city council.

Ordinance Nos. 5075 (1987); 5106 (1988); 5499 (1992); 5526 (1992); 5760 (1995); 5769 (1996); 5845 (1996); 6093 (1999); 7478 (2006).

11-1-53 Use Of Fees.

The water utility shall hold all monies received by the city as water plant investment fees pursuant to this chapter and make expenditures thereof only for the purpose of water utility capital improvements, reconstruction or expansion of the water utility, or other purposes related to the foregoing functions of the water utility system.

11-1-54 Certification Of Unpaid Charges To County Treasurer.

If any person fails or refuses to pay when due any charge imposed under this chapter, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property is collected, as provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

11-1-55 Water Utility Enterprise.

In addition to any of the powers it may have by virtue of any of the applicable provisions of state law, the city charter, and this code, the water utility enterprise shall have the power under this chapter:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better and to extend water facilities, wholly within or wholly without the city or partially within and partially without the city, and to acquire in the name of the city by gift, purchase, or the exercise of the right of eminent domain water rights, lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities for its or the city's own use and for the use of public and private consumers and users within and without the territorial boundaries of the city;

(c) To accept federal funds under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities;

(d) To accept federal funds under any federal law in force for the construction of necessary water facilities;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities, whether acquired or constructed by the water utility enterprise or the consumer, and to accept grants and contributions from consumers for the construction of water facilities;

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of or any commodity from such water facilities; and in anticipation of the collection of revenues of such facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of such facilities; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or of wastewater facilities under chapter 11-2, "Wastewater Utility," B.R.C. 1981, including the revenues of improvements, betterments or extensions thereto thereafter constructed or acquired, as well as the revenues from existing water or wastewater facilities;

(h) To enter into and perform contracts and agreements with other governmental entities and utility enterprises for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities and the maintenance and operation thereof;

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section or elsewhere in state law, the city charter, or this code, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the water utility enterprise or city is recreated thereby, and if no property, other than money, of the water utility enterprise or city is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the utility enterprise or city is thereby incurred in any manner for any purpose; and

(j) To issue refunding bonds pursuant to this code or other applicable law to refund, pay, or discharge all or any part of its outstanding revenue bonds issued under this article or under any other law, including any interest thereon in arrears or about to become due or yield reduction payments required to be made to the federal government to maintain the tax-exemption of interest on the refunding or refunded bonds, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or in the related utility rates to be charged, affecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water and wastewater facilities.

Ordinance No. 5601 (1993).

11-1-56 **Revenue Bonds.**

(a) In accordance with and through the provisions of this section, the water utility enterprise, through its governing body, is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of such enterprise or from any other available funds of such enterprise. Such bonds or other obligations shall be authorized by ordinance, adopted by the city council in the same manner as other ordinances of the city. Such bonds or other obligations may be issued without voter approval provided that, during the fiscal year of the city preceding the year in which the bonds or other obligations are authorized, the water utility enterprise received under ten percent of its annual revenue in grants or, during the current fiscal year of the city, it is reasonably anticipated that such enterprise will receive under ten percent of its revenue in grants. Nothing in this section shall be construed so as to require voter approval where such approval is not otherwise required by the constitution and laws of the state or the charter of the city including, without limitation, refunding bonds.

(b) The terms, conditions, and details of said bonds, or other obligations, and the procedures related thereto shall be set forth in the ordinance authorizing said bonds or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purpose for which the same be issued shall not be so limited and except that said bonds, or other obligations must be sold at public sale in accordance with the provisions of the city charter. Notice of public sale shall comply with the requirements of the city and need not comply with paragraph 31-35-404(2)(c), C.R.S. Each bond, note, or other obligation issued

under this section shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable from the revenues and other available funds of the water utility enterprise and the wastewater utility enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds or other obligations may be issued to mature at such times and shall bear interest at such rates as shall be determined by the city council. Refunding bonds of the water utility enterprise need not comply with section 31-35-412, C.R.S. but shall be issued as provided in part 1 of article 56 of title 11, C.R.S. or any other applicable law. The powers provided in this section to issue bonds, or other obligations are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this section shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly. Bonds, notes, or other obligations may be issued pursuant to this section without regard to the provisions of any other law. Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall control with regard to any bonds lawfully issued pursuant to this section.

(c) Any pledge of revenue or other funds of the water utility enterprise shall be subject to any limitation on future pledges thereof contained in any ordinance of the governing body of the water utility enterprise or of the city authorizing the issuance of any outstanding bonds or other obligations of the water utility enterprise or the city payable from the same source or sources. Bonds or other obligations, separately issued by the city and the water utility enterprise but secured by the same revenues or other funds shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

Ordinance No. 5601 (1993).

11-1-57 **Governing Body.**

For all purposes under the city charter and this code, the governing body of the water utility enterprise shall be the city council. The governing body shall be subject to all of the applicable laws, rules, and regulations pertaining to the city council. Whenever the city council is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the city council, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the water utility enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the city council for the same or similar matters.

Ordinance No. 5601 (1993).

11-1-58 **Maintenance Of Enterprise Status.**

The water utility enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of article X, section 20 of the Colorado Constitution. Specifically, but not by way of limitation, the water utility enterprise is not authorized and shall not receive ten percent or more of its annual revenue in grants.

Ordinance No. 5601 (1993).

11-1

APPENDIX A

Demand Equation for Predominately Flush Valves:

For fixture unit counts 9 or less GPM is given to be zero.

For fixture units between 10 and 999 use the following equation (Fixture units = X):

$$GPM = (0.000006 * X^3) - (0.0029 * X^2) + (0.664 * X) + 1.349$$

For fixture units = 1000 or greater use the following equation (Fixture units = X):

$$GPM = (0.000000008 * X^3) - (0.00006 * X^2) + (0.2424 * X) + 17.451$$

Demand Equation for Predominately Flush Tanks:

For fixture unit counts 7 or less GPM is given to be zero.

For fixture units between 8 and 224 use the following equation (Fixture units = X):

$$GPM = (0.000006 * X^3) - (0.0029 * X^2) + (0.664 * X) + 1.349$$

For fixture units = 225 or greater use the following equation (Fixture units = X):

$$GPM = (0.000000008 * X^3) - (0.00006 * X^2) + (0.2424 * X) + 17.451$$

11-1

P.I.F. COMPUTATION SHEET

Date: _____ **Calculation Done by:** _____

Existing Meter Size: _____

Applicant: _____ **Exist Water Stub Size:** _____

Property Address: _____ **Quarter Section:** _____

Lot: **Block:** **Subdivision:**

Existing Use: **Proposed Use:**

CIRCLE ONE: Single Family Attached Residential Commercial

Type of Fixture	Fixture Units Private	Fixture Units Public	Number of **Existing** Fixtures	Number of **Proposed** Fixtures	New Total of Plumbing Fixtures	Total **WATER** Fixture Units	Total **SEWER** Fixture Units
Water Closet (Toilet - Tank)	3	5					
Water Closet (Toilet - Flush Valve)		8					
Urinal		5					
Bathtub or Bathtub Shower Combo	2						
Shower Stall	2	4					
Shower Gang (Per Head)	2	4					
Lavatories (Bathroom Sinks)	1	2					
Sink (Kitchen or Compartment type)	2	4					
Sink (Bar or Hand type)	1	2					
Sink (Service, Mop, Janitor type)		4					
Lab Sink		2					
Clothes Washer (Per each pair of faucets)	2	4					
Laundry Tub (Per each pair of faucets)	2	4					
Dishwasher	2	4					
Drinking Fountains (Each Head)		1					
Hose Bibb/Sill Cock	3	5					
Floor Drain		2					
Floor Sink		2					
Beverage Hookup (Pop/Coffee/Ice Tea)		1					
Ice Machine, _____" line size							
Dip Wells		1					
Interceptor (Grease/Oil/Solids)		3					
Interceptor (Sand/Autowash)		6					
Bidet	2						

TOTAL FIXTURE UNITS

	Water	Sewer
Existing Fixture Unit Total:		
Existing GPM:		

	WATER	SEWER
New GPM		
P.I.F. Total		
P.I.F. Credit		

NET P.I.F. DUE		

Ordinance No. 7024 (1999).

TITLE 11 UTILITIES AND AIRPORT

Chapter 2 Wastewater Utility[1]

Section:

11-2-1 Legislative Intent.

(a) The purpose of this chapter is to define the wastewater utility of the city, to set forth the responsibility of sanitary sewer users, and to promote the public health, safety and welfare

[1]Adopted by Ordinance No. 4672. Derived from Ordinance Nos. 2444, 2693, 2780, 2872, 2944, 3083, 3192, 3422, 3446, 3456, 3478, 3560, 3601, 3672, 3725, 3745, 3761, 3930, 4027, 4031, 4119, 4123, 4335, 4351, 4365, 4366, 4412, 4584, 4664.

by adopting a system of plant investment fees that insures that each new user of city sanitary sewer services pays its proportionate share of the current replacement cost of wastewater system facilities. The plant investment fees in this chapter reflect varying service requirements of residential users and are designed to encourage the construction of moderate income housing.

(b) Utilities should be extended outside the city limits of Boulder consistent with the Boulder Valley Comprehensive Plan and the city charter requirements. The comprehensive plan projects extension of urban services, including utilities, in an orderly fashion in order to insure the most efficient and cost effective service to the existing utility system.

(c) The city council finds and determines that the city has historically provided and will continue to provide wastewater services by means of an enterprise, as that term is defined by Colorado law. The city council further declares its intent that the city's wastewater utility enterprise be operated and maintained so as to exclude its activities from the application of article X, section 20 of the Colorado Constitution.

Ordinance No. 5601 (1993).

11-2-2 Sanitary Sewer Customer Agrees To The Rules Of The Wastewater Utility, Penalty For Breach.

(a) No person may be served by the wastewater utility unless such person agrees to abide by all provisions of this code, all applicable ordinances of the city, and all the rules and regulations of the city pertaining to the wastewater utility.

(b) If any wastewater utility customer fails to pay the wastewater service charges when due or fails to comply with any provision of this code, any applicable ordinance of the city, or regulations issued thereunder, the city may discontinue wastewater water service until the customer has paid the required charges or is in compliance with all requirements of this code, any ordinance of the city, or regulations issued thereunder. But the wastewater utility may not discontinue such service until it has afforded the customer an opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

11-2-3 Composition Of The Wastewater Utility.

All sanitary sewers, sewage treatment works, equipment, materials, and supplies used by the city to collect and treat sewage from property in the city and property served by city sewers outside the city constitute the "wastewater utility."

11-2-4 Records And Reports.

The city manager shall keep such records and prepare such reports concerning the wastewater utility as the manager deems appropriate. The manager shall advise the city council of the operations, financial conditions, and future needs of the wastewater utility.

11-2-5 Damage To Property And Equipment Of Wastewater Utility.

No person shall in any way damage any property, equipment, or appliance constituting or being a part of the wastewater utility.

11-2-6 Trespass And Interference With Wastewater Utility Prohibited.

No person shall trespass upon the property of the wastewater utility, tap a sanitary sewer main, make any connections therewith, or in any manner interfere with the wastewater utility or the property, equipment, mains, manholes, or any other appliances of the wastewater utility.

11-2-7 Injurious Deposit Into Wastewater Utility Prohibited.

No person shall deposit in any part of the wastewater utility any substance or material that will in any manner injure or obstruct it or any material or substance that would tend to contaminate or interfere with the bacterial action in the treatment process.

11-2-8 When Connections With Sanitary Sewer Mains Required.

(a) All property located within the city or annexed to the city on which there is located a structure or dwelling that requires the use of a waste disposal system shall be connected with the wastewater utility of the city. The owner of such property, the owner's agent or another person having charge of or receiving the rent, or a tenant of the property shall pay all applicable fees and charges when the city manager notifies such person that connection is required. The manager shall serve such notice upon the owner of such property by registered mail to address of the owner on the records of the Boulder County Assessor and upon the person in possession of such property by mail to the property address. Connection to the wastewater utility is immediately required only where there exists a city sanitary sewer main abutting or adjacent to any portion of the boundaries of the property upon which there is an existing structure or a proposed structure requiring the use of a waste disposal system or where there is an existing waste disposal system located on the property that is not operating in a manner satisfactory to the Boulder County Health Department. The owner of such an unsatisfactory system may not replace or repair it if there is an existing city sanitary sewer main abutting or adjacent to the property but shall connect to the city sanitary sewer main.

(b) No person shall make any connection to or uncover or open any city sanitary sewer main that forms a part of the wastewater utility of the city except pursuant to and in accordance with a permit prescribed by this chapter. Only city sewer utility personnel shall install a tap on such a main after it has been accepted by the city manager as part of the wastewater utility.

Ordinance No. 5425 (1991).

11-2-9 Permit To Make Sanitary Sewer Connection[1].

(a) Any person desiring to make a connection to the wastewater utility shall apply to the city manager for one of the following permits, on forms provided by the manager, pay the fee prescribed by section 4-20-27, "Wastewater Permit Fees," B.R.C. 1981, and meet the conditions prescribed:

(1) A permit to construct a sanitary sewer service line stub from a wastewater utility main to the property line, only required if the stub is not installed at the time of construction of the main;

(2) A permit to connect to the wastewater utility to dispose of wastes from normal municipal purposes[2]. At the time this permit is granted, the applicant shall pay all costs and fees,

[1]See section 11-2-17, "Extending Sanitary Sewer Service Line From One Property To Another," B.R.C. 1981.
[2]See chapter 11-3, "Industrial And Prohibited Discharges," B.R.C. 1981.

including those for tap installation as prescribed in section 4-20-27, "Wastewater Permit Fees," B.R.C. 1981, inspection of service line installation as provided in section 4-20-27, "Wastewater Permit Fees," B.R.C. 1981, plant investment fees on existing structures, prescribed by section 4-20-29, "Wastewater Plant Investment Fees," B.R.C. 1981; main assessments, as prescribed by section 11-2-27, "Reimbursement Of Costs For Sanitary Sewer Main Extension," B.R.C. 1981; and any other outstanding assessments;

(3) A permit to enlarge the size of the existing sanitary sewer service line because of increased demand upon the wastewater utility due to the addition of fixtures; an applicant for this permit shall pay the fees and costs set forth in paragraph (a)(2) of this section;

(4) A permit to renew any of the sewer service lines provided for in this subsection.

(b) The city manager shall sign all permits issued under this title and shall include the name of the person to whom the permit is issued, the date of the permit, the address and legal description of the premises served by the sanitary sewer service, the size of the service line, and the fees and costs paid for the permit.

(c) The city shall not issue a permit for new service to a property previously receiving service until the property owner has arranged to have the existing service plugged within five feet of the property line.

Ordinance No. 5425 (1991).

11-2-10 **Out-Of-City Sewer Service.**

(a) Any person outside of the city limits desiring to make a connection to the wastewater utility shall apply to the city manager for a revocable out-of-city wastewater permit, which may be issued after approval of the city manager if the manager finds that the application meets the following conditions:

(1) The property is located within Area II of the Boulder Valley Comprehensive Plan, unless the facility to be served is a publicly owned facility that because of its nature is most appropriately located outside Area II and because of the general public interest should be served by wastewater service;

(2) There is no main extension involved for such service beyond one hundred feet;

(3) The city planning department has determined that this proposal does not constitute new urban development and is consistent with the comprehensive plan;

(4) The city has referred the application to the Boulder County Planning Department under the referral provisions of the comprehensive plan;

(5) The service is to be extended to a structure, which contains a legal use, that existed on the effective date of this chapter or to a platted single-family lot existing on the effective date of this chapter;

(6) The property is located below the "Blue Line;" and

(7) The property owner agrees in an agreement running with the land to annex to the city as soon as the property is eligible for annexation.

(b) If the city manager issues a permit under this section, it will become effective thirty days after the date of its issuance unless the city council schedules a hearing thereon. After

issuing the permit, the manager shall promptly notify the council of the permit and within ten days of the date of issuance shall publish notice thereof in a newspaper of general circulation in the city. Before the effective date of the permit, the council may schedule a de novo hearing thereon to determine whether the application meets the standards prescribed by this section.

(c) If the city manager denies the permit, the applicant may, within sixty days of the date of the denial, appeal the denial to the city council, which shall schedule a hearing thereon to determine whether the application meets the standards prescribed by this section.

(d) Nothing in this section shall be deemed to invalidate out-of-city wastewater permits existing at the effective date of this chapter, including those on property currently under development.

(e) If a permit to connect a sewer service line to the wastewater utility to serve property situated outside the corporate limits of the city is approved under this section the applicant shall agree:

(1) To use the service only for the qualifying use and to make no enlargement thereto without obtaining a permit therefor under this section and section 11-2-9, "Permit To Make Sanitary Sewer Connection," B.R.C. 1981.

(2) To make the connection at such point or points as the city manager prescribes;

(3) To pay all of the costs, if any, of extending a sanitary sewer main under the terms of a main extension agreement[1] in accordance with the plans and specifications as approved by the city manager;

(4) Prior to connecting to the wastewater utility, to pay the fees prescribed in this chapter, the estimated cost of connecting the service, and the costs for extending the main to serve the applicant's property or existing main assessments;

(5) To pay the outside city rates until such time as the property is annexed;

(6) To install and maintain the devices necessary to measure the use of the services for the purposes of assessing the charges therefor, if the city manager finds it is necessary;

(7) To furnish a current title memorandum showing that title to the property is vested in the applicant's name or to reimburse the city for obtaining such title memorandum and to pay any recording costs incurred;

(8) To sign an agreement evidencing an understanding that these wastewater services are provided under a revocable permit, the rates for the said service may be increased and if they are, the applicant will pay them, and that the services may be discontinued if the applicant fails to perform as required or if the needs of city residents for such services require.

(f) If a permittee under this section does not connect to the wastewater utility within six months after the issuance of the out-of-city wastewater permit, the permit expires.

11-2-11 No Sanitary Sewer Connection Permit Issued Before Mains Accepted.

The city manager may not issue permits to connect new wastewater utility customers to newly constructed wastewater mains until the manager has determined that all such mains and

[1]See section 11-2-26, "Agreement To Extend Sanitary Sewer Mains," B.R.C. 1981.

appurtenances thereto have been constructed in accordance with the engineering plans therefor approved by the city and the standards prescribed by the City of Boulder *Design and Construction Standards* and until the manager has issued a preliminary construction acceptance for the mains.

11-2-12 Change Of Sanitary Sewer Use Outside City Limits Prohibited.

Outside of the corporate limits of the city, no person shall alter, change, enlarge, or extend in any manner whatsoever the use for which the connection was made to the wastewater utility as of the date of connection or the date of issuance of the revocable permit, whichever is later, without a permit under this chapter.

11-2-13 Taps Or Connections To Sanitary Sewer Mains.

(a) No person not authorized by the city manager shall tap or connect to any part of the wastewater utility.

(b) No person shall fail to make authorized taps or connections to the wastewater utility in accordance with the terms and conditions of the permit issued therefor.

(c) No person requesting or required to make taps or connections to the wastewater utility shall fail to pay the costs for such taps or connections.

11-2-14 Sanitary Sewer Service Lines.

(a) No person other than a contractor in the public right-of-way licensed under chapter 4-6, "Contractor In The Public Right-Of-Way License," B.R.C. 1981, or a person authorized by the city manager, shall install a sanitary sewer service line.

(b) No person shall install a sanitary sewer service line without first obtaining written permission from the city and unless service lines are made from materials prescribed by and installed in accordance with City of Boulder *Design and Construction Standards.*

(c) No person other than sanitary sewer utility personnel or licensed contractors working under their direction shall install sanitary sewer service lines in public streets, alleys, or easements after the date of preliminary construction acceptance.

(d) The owner of any property who desires to disconnect from the wastewater utility may do so by requesting that the city plug the service line at the property line. The city shall not resume sanitary sewer service until all permits have been issued and all fees paid.

(e) All service lines shall be installed in accordance with the City of Boulder *Design and Construction Standards.*

11-2-15 Excavation And Backfilling Sanitary Sewer Service Lines.

(a) No person except an employee of the city or a person licensed as a contractor in the public right-of-way under chapter 4-6, "Contractor In The Public Right-Of-Way License," B.R.C. 1981, shall excavate in public streets or alleys. Such persons shall obtain a permit from the city manager and comply with all applicable provisions of this code, other ordinances of the city and the *Work Area Traffic Control and Safety Handbook,* City of Boulder Department of Public Works, July 1981.

(b) No person shall backfill any trenches under city streets and sidewalks except in accordance with the City of Boulder *Design and Construction Standards.*

11-2-16 Sanitary Sewer Service Line To Be Installed Before Street Or Alley Paving.

(a) Before the city paves or overlays any street or alley containing a sanitary sewer main, the wastewater utility shall, at the expense of the abutting property owner, install service line stubs between the city sanitary sewer main and the property line for all vacant property abutting the street or alley in a size the city manager determines to be necessary to serve the property when fully developed.

(b) Whenever the council authorizes paving a street or alley under the provisions of chapter 8-1, "Local Improvements," B.R.C. 1981, it may order the owners of abutting properties to connect their premises with the sanitary sewer mains or with any other utility in the street or alley abutting their premises. If such property owner fails or refuses to make such connection for twenty days after such order, the city manager may cause the connections to be made under such conditions as the manager prescribes and shall charge the entire cost of such connection against the property with which the connection is made. Such cost is a lien upon the property enforceable under the procedures prescribed by sections 11-1-47, "Water Charges Are Lien On Property And Liability of Owner," and 11-1-54, "Certification Of Unpaid Charges To County Treasurer," B.R.C. 1981.

11-2-17 Extending Sanitary Sewer Service Line From One Property To Another.

Each property shall be served by its own service line, and no person shall make a connection with the wastewater utility by extending the service line from one property to another property. If service lines have been so extended from one property to another property, persons may continue to use such extension only until sanitary sewer mains are laid that abut such other property, at which time the other property shall be connected to the sanitary sewer main at the expense of the owner of such other property served by such extension, and such extended service line shall be disconnected and plugged at the owner's expense.

11-2-18 Building Permit Issuance.

No building permit or wastewater utility connection permit may be issued until all water and wastewater utility requirements have been met.

11-2-19 Duty To Maintain Service Lines And Fixtures.

(a) No owner of any property connecting to the wastewater utility shall fail to maintain the service line from the city sanitary sewer main to the structure being served or to keep the line in good condition at the owner's expense. No owner of such property shall fail to keep all pipes, fixtures, and appliances on the property tight and in good working order so as to prevent unnecessary discharge of water into the wastewater utility.

(b) If a property owner or an agent thereof requests that the wastewater utility perform work on a sanitary sewer service line in the right-of-way, the utility shall perform such work only at the owner's expense.

11-2-20 Permit Required For Changing Or Increasing Fixtures[1].

No plumber or wastewater utility system user shall install or replace any plumbing fixture discharging into the wastewater utility without first obtaining a plumbing permit therefor that states the number and character of each fixture, appliance, or apparatus to be installed or replaced.

11-2-21 Use Of Sanitary Sewer By Other Than Wastewater Utility Customers.

No person using the wastewater utility under this chapter shall permit any other person to use the sanitary sewer on such first person's property.

11-2-22 Connection Of Sanitary Sewer With Storm Drains, Downspouts, Steam Exhausts Prohibited.

No person shall connect any storm water drains, downspouts, subsurface drainage systems, steam exhausts, or blow off from a steam boiler to the sanitary sewer system except as provided by special agreement pursuant to section 11-3-12, "Special Agreements And Contracts," B.R.C. 1981.

Ordinance No. 5397 (1991).

11-2-23 Location Of Sanitary Sewer Mains.

All sanitary sewer mains shall be installed only in the dedicated public streets or alleys or in easements that grant to the city rights that are at least equal to rights it would enjoy in the dedicated streets or alleys.

11-2-24 Size Of Sanitary Sewer Mains.

The city manager shall determine the size of sanitary sewer mains required to serve any part of the city or any area outside the city that is served by the wastewater utility in accordance with the master plan of the wastewater utility. No main less than eight inches in diameter shall be placed in the wastewater utility system unless specifically authorized by the manager.

11-2-25 Extensions For Sanitary Sewer Mains.

(a) All sanitary sewer main extensions shall be constructed to the farthest point of the property to be served thereby unless additional development of adjacent property is not contemplated within five years under the Boulder Valley Comprehensive Plan, in which case the property owner shall reserve an easement for a future main extension.

(b) All on-site sanitary sewer mains required to serve a development or a platted subdivision shall be installed and paid for by the developer or subdivider.

(c) All off-site and perimeter sanitary sewer mains required to serve a development or a platted subdivision shall be installed and paid for by the developer or subdivider, who may be reimbursed for all or part of the cost as prescribed by section 11-2-27, "Reimbursement Of Costs For Sanitary Sewer Main Extension," B.R.C. 1981.

[1]See section 11-2-9, "Permit To Make Sanitary Sewer Connection," B.R.C. 1981.

11-2-26 Agreement To Extend Sanitary Sewer Mains.

(a) Prior to the approval of plans for the extension of any sanitary sewer main that is not entirely within a single development or platted subdivision and for which the developer or subdivider expects to receive reimbursement for part or all of the costs of the main extension, the developer or subdivider shall enter into a "main extension agreement" with the city, which contains the legal description of the property to be served, a description of the main extension, the name of the developer or subdivider of the property, the terms of the reimbursement to the developer or subdivider, the time period for reimbursement to the developer or subdivider, and an agreement by the developer or subdivider to provide to the city, within sixty days of the date of preliminary construction acceptance by the city, its costs for such work and to provide to the city a current address during the term of the agreement.

(b) If a developer or subdivider fails to comply with the main extension agreement, such person forfeits any right to reimbursement under section 11-2-27, "Reimbursement Of Costs For Sanitary Sewer Main Extension," B.R.C. 1981.

11-2-27 Reimbursement Of Costs For Sanitary Sewer Main Extension.

(a) Developers or subdividers who have paid the costs of a sanitary sewer main extension and have entered into a "main extension agreement" with the city may be reimbursed part or all of the costs as provided in this section.

(1) At the time of annexation, subdivision, redevelopment, building permit issuance, or connection, whichever occurs first, the city manager shall collect a charge per adjusted front foot based upon the original construction cost and shall reimburse the original developer or subdivider for its original construction costs, to the extent of the collection so made.

(2) In no event shall the actual amount so paid to the developer or subdivider by the city exceed the total original cost of the sanitary sewer main extension. After the expiration of the period of reimbursement prescribed by subsection (c) of this section, the city shall retain any such monies so collected.

(3) If the developer or subdivider fails to supply its construction costs to the city within sixty days of preliminary construction acceptance of the sanitary sewer main, the city manager may estimate the costs of such extension for purposes of charging persons who thereafter connect to the main. The city shall retain any such monies so collected.

(b) When mains larger than twelve inches in diameter are required by the city and are determined not to be required to serve the demands of the property owner or subdivision benefited thereby, the property owner or subdivider benefitted shall enter into a main extension agreement with the city whereby the city agrees to pay the difference in construction costs between those of the main constructed and those of a twelve inch main, based on their respective unit costs.

(c) The term for which the developer or subdivider is entitled to reimbursement under the "main extension agreement" entered into between the developer or subdivider and the city is ten years from the date of the execution of the contract or until the total original construction cost has been reimbursed, whichever occurs first.

(d) At the time of annexation, subdivision, redevelopment, building permit issuance, or connection to the main, whichever occurs first, the city manager shall collect a charge per front foot based upon the original construction cost.

(e) Property abutting any existing sanitary sewer main, for which original construction costs cannot be determined and which has not been assessed or charged for its proportionate share of the cost of the construction of such sanitary sewer main, shall pay to the city prior to annexation, subdivision, redevelopment, building permit issuance, or connection to the main, whichever occurs first, a charge based upon the estimated original construction cost of the existing main, up to and including a twelve inch diameter system, and the adjusted front footage of the property to be served as determined by the city manager.

Ordinance No. 5526 (1992).

11-2-28 **Pumping Stations.**

When pumping stations are required, the cost of their construction is the responsibility of the owner of the property served thereby. If it appears likely that a pump station may serve more than one platted subdivision, the city may require a larger capacity than that necessary to serve the initial development. Where such larger capacity is required, the wastewater utility shall pay the additional cost and thereafter collect it from other property owners or subdividers connecting to lines served by the pump station before making any connections.

11-2-29 **Force Mains.**

Force mains required to serve an area not otherwise able to enter the city wastewater utility system shall be constructed at the expense of the owners of the property to be served thereby.

11-2-30 **Preservation Of Gravity System.**

If pumping stations and force mains are required, the wastewater utility system shall be designed to permit an eventual connection into a gravity system with a minimum of expense. Where practicable, property owners shall provide easements and construct lines to tie into the gravity system. Where the city manager deems necessary, the manager may require deposits from the property owners requiring said force system to insure the eventual construction of gravity lines.

11-2-31 **Wastewater User Charges.**

(a) Charges for sewer utility service consist of a monthly service charge that varies with water meter size and a quantity charge that varies with strength of waste and quantity of waste discharged into the sanitary sewer system, as prescribed by section 4-20-28, "Monthly Wastewater User Charges," B.R.C. 1981.

(b) The wastewater utility shall review the total annual cost of operation and maintenance as well as each customer class' estimated contribution no less often than every two years and revise the charges as necessary to assure equity of the service charge system established herein and assure that sufficient funds are obtained adequate to operate and maintain the sanitary sewers and wastewater treatment works. When ownership of a property is transferred, the established customer class average winter consumption will be used to calculate wastewater charges, until the next average winter consumption calculation period.

(c) The city will notify each customer at least annually as part of a regular bill of the rate and that portion of the user charges that are attributable to sanitary sewer and wastewater treatment services. Failure to so notify a customer shall not constitute a waiver of any fee or charge imposed by this chapter.

(d) For use of the wastewater utility of the city by the Boulder Valley School District No. RE 2 or by its properties that are located within the boundaries of the former Boulder Valley Water and Sanitation District, the inside city sewer service rates apply.

(e) Sewer charges shall be included on the utility bill. Failure to so bill a wastewater user shall not constitute a waiver of any fee or charge imposed by this chapter.

(f) All charges for sewer services prescribed by this chapter are due and payable within ten days after the date of the sewer bill.

Ordinance Nos. 5068 (1987); 5106 (1988); 5526 (1992).

11-2-32 Sewer Service Charges Are Lien On Property.

(a) The wastewater service charges prescribed by this chapter shall be paid with the water bill, and the city shall not accept payment of the water bill unless the payment for wastewater services is included therewith.

(b) No person shall use water from the water utility if the wastewater service charges provided for by this chapter have not been paid.

(c) The provisions of section 11-1-47, "Water Charges Are Lien On Property And Liability Of Owner," B.R.C. 1981, establishing liens on property for water charges apply to this chapter and establish liens on property for wastewater charges.

Ordinance No. 4879 (1984).

11-2-33 Wastewater Plant Investment Fee.

(a) Any applicant desiring to connect to the wastewater utility of the city shall pay to the city a wastewater plant investment fee pursuant to the schedule of fees prescribed by section 4-20-29, "Wastewater Plant Investment Fees," B.R.C. 1981, in addition to all other charges relating to sanitary sewer service elsewhere described in this chapter.

(1) Applicants desiring to connect to the wastewater utility of the city for a structure proposed to be built within the city limits shall pay such fee prior to the scheduling of final building inspection.

(2) Applicants desiring to connect to the wastewater utility of the city for an existing structure within the city limits or any structure outside the city limits, whether existing or proposed, shall pay such fee prior to the time of issuance of a wastewater utility connection permit.

(3) Applicants desiring to change or enlarge the use of a sanitary sewer main by an existing structure that requires an additional plant investment fee shall pay such fee prior to issuance of the building permit.

(b) For purposes of this section, residential uses include, without limitation, single-unit and multi-unit dwellings, limited living units, mobile home dwellings, townhouses, and rooming units. For purposes of this section, nonresidential uses include, without limitation, business, commercial, industrial, and institutional connections and recreational facilities appurtenant to residential developments.

(c) Developments with combined residential and nonresidential uses in the same structure shall pay a plant investment fee based on the individual uses within the structure. The other than residential portion of the development shall be assessed in accordance with the "other than residential" fee schedule. The residential portion shall be assessed in accordance with the residential fee schedule.

(d) The plant investment fee for each permanently affordable unit which is subject to concept review under section 9-2-13, "Concept Plan Review And Comment," B.R.C. 1981, and was reviewed by the planning board before September 16, 1999, the effective date of this ordinance, shall be set at the fee level in effect at the time of the final approval of the concept plan for the residential development, including such unit.

(e) Nonresidential developments designed to be sold and occupied in a manner similar to residential condominiums shall be assessed a plant investment fee based on the entire building pursuant to the schedule of fees for other than residential uses. Any increase resulting from the installation of additional plumbing fixtures in one of the privately owned units may require, an additional plant investment fee to be paid by the owner of the individual unit.

(f) All applicants except those connecting three-quarter inch meters for detached residential dwelling units shall provide all pertinent information that the city manager may require to determine the plant investment fee including without limitation, a set of plans certifying the number and type of plumbing fixtures signed by a certified professional engineer.

(g) No customer of the wastewater utility or a sanitary sewer district obtaining service under contract with the city shall make changes or additions to the property that would affect demand on the sanitary sewer system without first obtaining permission to make such changes and a new permit for the use of the sewer under section 11-2-9, "Permit To Make Sanitary Sewer Connection," B.R.C. 1981, and paying the plant investment fee. The city manager shall credit such user an amount equal to the fee that would have been charged before the change or addition, but if the credit is less than the amount previously paid for a sanitary sewer plant investment fee, the amount paid shall be allowed as a credit. The credit shall be based upon documented historic water or sewage discharge data or other available, relevant data. But no credit shall be allowed for a plant investment fee collected from out-of-city customers that exceeds that charged to in-city customers. No refund shall be paid to any sanitary sewer customer who obtains permission to decrease the demand for service. No cash refunds shall be paid for allowable credit exceeding the new sewer plant investment fee. The credit prescribed by this subsection applies only to the property served by the existing sanitary sewer service line and only to sanitary sewer plant investment fees owed to the city and not to other utility fees or charges. Credit will not be allowed for service line stubs or for services not in use for a continuous period of five years or more. Prior to the expiration of the five years, the applicant may request an extension of time to receive a credit for sanitary sewer plant investment fees owed to the city. The city manager may grant such extensions based on a showing of good cause by the applicant.

(h) The city may look only to the owner and the owner's successors in interest of each premises, building, lot, house, or dwelling unit desiring wastewater service for the payment of the assessed sanitary sewer plant investment fee.

(i) All building permit applications or requests for sanitary sewer service received by the wastewater utility will be processed in compliance with the plant investment fee schedule prescribed by section 4-20-29, "Wastewater Plant Investment Fees," B.R.C. 1981 in effect as of the date of submission.

(j) The city manager may have access at reasonable times to all premises of water utility users for purposes of counting and verifying the existence of fixtures to determine plant investment fees.

(k) Any applicant desiring to discharge wastewater into the wastewater utility, if such wastewater discharge (quantity or quality) is greater than that anticipated for the property and use, based upon land use zoning and approved utility master planning, shall enter into a special agreement with the city and shall pay a wastewater plant investment fee pursuant to section 4-20-29, "Wastewater Plant Investment Fees," B.R.C. 1981.

Ordinance Nos. 5075 (1987); 5106 (1988); 5526 (1992); 5760 (1995); 5769 (1996); 5845 (1996); 6093 (1999).

11-2-34 Use Of Fees.

The wastewater utility shall hold all monies received by the city as sanitary sewer plant investment fees pursuant to this chapter and make expenditures thereof only for the purpose of wastewater utility capital improvements, reconstruction or expansion of the wastewater utility, or other purposes related to the foregoing functions of the wastewater utility system of the city.

11-2-35 Certification Of Unpaid Charges To County Treasurer.

If any person fails or refuses to pay when due any charge imposed under this chapter, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property is collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

11-2-36 Wastewater Utility Enterprise.

In addition to any of the powers it may have by virtue of any of the applicable provisions of state law, the city charter, and this code, the wastewater utility enterprise shall have the power under this chapter:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better and to extend wastewater facilities, wholly within or wholly without the city or partially within and partially without the city, and to acquire in the name of the city by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain wastewater facilities for its or the city's own use and for the use of public and private consumers and users within and without the territorial boundaries of the city;

(c) To accept federal funds under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of wastewater facilities;

(d) To accept federal funds under any federal law in force for the construction of necessary wastewater facilities;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning wastewater facilities, whether acquired or constructed by the wastewater utility enterprise or the consumer, and to accept grants and contributions from consumers for the construction of wastewater facilities;

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of or any commodity from such wastewater facilities; and in anticipation of the collection of revenues of such facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of such facilities; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the wastewater facilities or of water facilities under chapter 11-1, "Water Utility," B.R.C. 1981, including the revenues of improvements, betterments or extensions thereto thereafter constructed or acquired, as well as the revenues from existing wastewater or water facilities;

(h) To enter into and perform contracts and agreements with other governmental entities and utility enterprises for or concerning the planning, construction, lease, or other acquisition and the financing of wastewater facilities and the maintenance and operation thereof;

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section or elsewhere in state law, the city charter, or this code, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the wastewater utility enterprise or city is recreated thereby, and if no property, other than money, of the wastewater utility enterprise or city is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the utility enterprise or city is thereby incurred in any manner for any purpose; and

(j) To issue refunding bonds pursuant to this code or other applicable law to refund, pay, or discharge all or any part of its outstanding revenue bonds issued under this article or under any other law, including any interest thereon in arrears or about to become due or yield reduction payments required to be made to the federal government to maintain the tax-exemption of interest on the refunding or refunded bonds, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or in the related utility rates to be charged, affecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water and wastewater facilities.

Ordinance No. 5601 (1993).

11-2-37 **Revenue Bonds.**

(a) In accordance with and through the provisions of this section, the wastewater utility enterprise, through its governing body, is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of such enterprise or from any other available funds of such enterprise. Such bonds or other obligations shall be authorized by ordinance, adopted by the city council in the same manner as other ordinances of the city. Such bonds or other obligations may be issued without voter approval provided that, during the fiscal year of the city preceding the

year in which the bonds or other obligations are authorized, the wastewater utility enterprise received under ten percent of its annual revenue in grants or, during the current fiscal year of the city, it is reasonably anticipated that such enterprise will receive under ten percent of its revenue in grants. Nothing in this section shall be construed so as to require voter approval where such approval is not otherwise required by the constitution and laws of the state or the charter of the city including, without limitation, refunding bonds.

(b) The terms, conditions, and details of said bonds, or other obligations, and the procedures related thereto shall be set forth in the ordinance authorizing said bonds or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purpose for which the same be issued shall not be so limited and except that said bonds, or other obligations must be sold at public sale in accordance with the provisions of the city charter. Notice of public sale shall comply with the requirements of the city and need not comply with paragraph 31-35-404(2)(c), C.R.S. Each bond, note, or other obligation issued under this section shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable from the revenues and other available funds of the wastewater utility enterprise and the water utility enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds or other obligations may be issued to mature at such times and shall bear interest at such rates as shall be determined by the city council. Refunding bonds of the wastewater utility enterprise need not comply with section 31-35-412, C.R.S. but shall be issued as provided in part 1 of article 56 of title 11, C.R.S. or any other applicable law. The powers provided in this section to issue bonds, or other obligations are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this section shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly. Bonds, notes, or other obligations may be issued pursuant to this section without regard to the provisions of any other law. Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall control with regard to any bonds lawfully issued pursuant to this section.

(c) Any pledge of revenue or other funds of the wastewater utility enterprise shall be subject to any limitation on future pledges thereof contained in any ordinance of the governing body of the wastewater utility enterprise or of the city authorizing the issuance of any outstanding bonds or other obligations of the utility enterprise or the city payable from the same source or sources. Bonds or other obligations, separately issued by the city and the wastewater utility enterprise but secured by the same revenues or other funds shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

Ordinance No. 5601 (1993).

11-2-38 Governing Body.

For all purposes under the city charter and this code, the governing body of the wastewater utility enterprise shall be the city council. The governing body shall be subject to all of the applicable laws, rules, and regulations pertaining to the city council. Whenever the city council is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the city council, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the wastewater utility enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the city council for the same or similar matters.

Ordinance No. 5601 (1993).

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11-2-39 **Maintenance Of Enterprise Status.**

The wastewater utility enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of article X, section 20 of the Colorado Constitution. Specifically, but not by way of limitation, the wastewater utility enterprise is not authorized and shall not receive ten percent or more of its annual revenue in grants.

Ordinance No. 5601 (1993).

TITLE 11 UTILITIES AND AIRPORT

Chapter 3 Industrial And Prohibited Discharges[1]

Section:

11-3-1 Legislative Intent.

(a) This chapter sets forth uniform requirements for direct and indirect discharges into the city wastewater collection and treatment system and enables the city to comply with all applicable federal and state laws. The chapter is necessary to protect the health, safety, and welfare of the residents of the city. This chapter authorizes the issuance of industrial discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for equitable fees to fund the program established herein.

(b) The purposes of the chapter are to:

(1) Provide for and promote the general health, safety, and welfare of the citizens residing within the city and downstream water users and residents;

[1]Adopted by Ordinance No. 4667. Amended by Ordinance No. 6087. Derived from Ordinance Nos. 3836, 4412, 4446.

(2) Prevent the introduction of pollutants into the publicly owned treatment works (POTW) that will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system or interfere with beneficial uses of the receiving waters;

(3) Prevent the introduction of pollutants into the POTW that will interfere with the operation of the system, including interference with its use or disposal of biosolids;

(4) Improve the opportunity to recycle and reclaim wastewaters and biosolids from the system;

(5) Provide for equitable distribution of cost of the wastewater utility among users[1];

(6) Protect city personnel who may work with wastewater and biosolids in the course of their employment;

(7) Prevent the introduction of wastes that may adversely affect the environment or may cause a violation of the city's National Pollution Discharge Elimination System ("NPDES") permit or may contribute to the need for modification of that permit;

(8) Provide revenues derived from the application of this section to defray the city's cost of operating and maintaining adequate wastewater collection and treatment systems and to provide funds for capital outlay, bond debt service costs, capital improvements, and depreciation for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW; and

(9) Promote pollution prevention through source reduction and waste minimization.

Ordinance No. 5771 (1995).

11-3-2 **Application Of Chapter.**

The provisions of this chapter apply equally to all users of the city wastewater utility, including, without limitation, the POTW, whether inside or outside the city. The city may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, which are discharged to the POTW by users.

Ordinance Nos. 5397 (1991); 5771 (1995).

11-3-3 **Definitions.**

(a) The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Act" or "the act" means the Federal Water Pollution Control Act. P.L. 92-500, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

"Ammonia" (NH_3-N) means the measure of the total nitrogen component of ammonia expressed in milligrams per liter measured in accordance with procedures set forth in the most recent edition of the EPA *Methods for Chemical Analysis of Water and Wastes*.

"Authorized representative of industrial user" means either a principal executive officer of at least the level of vice president, if the industrial user is a corporation; a general partner or

[1]40 C.F.R. 403.2.

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proprietor, if the industrial user is a partnership or proprietorship; or a duly authorized representative, if such representative is responsible for the overall operation of the facilities from which any direct or indirect discharge originates.

"Average strength sewage" means sewage containing wastes in amounts less than or equal to two hundred thirty mg/l BOD or four hundred ninety mg/l COD, and two hundred twenty mg/l TSS, and twenty-five mg/l NH_3-N.

"Biochemical Oxygen Demand (BOD)" means the quantity of oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Celsius expressed in milligrams per liter.

"Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.

"Categorical standard" - see definition of "federal categorical pretreatment standard."

"Chemical Oxygen Demand (COD)" means the measure of the oxygen equivalent to the portion of organic matter in a sample that is susceptible to oxidation by a strong chemical oxidant under laboratory procedures, expressed in milligrams per liter.

"City manager" means the city manager or his or her designee.

"Commercial facility" means a place or structure(s) having an address where business is conducted for profit, and such business is neither classified as a significant industrial user nor as a categorical industry.

"Compatible pollutants" or "conventional pollutants" means biochemical oxygen demand (BOD), total suspended solids (TSS), pH, fecal coliform and oil and grease (O/G), plus additional pollutants identified in the city's NPDES permit if the POTW is designed to treat such pollutants, and in fact does remove such pollutants to a substantial degree.

"Composite sample" means a representative flow-proportioned or time-proportioned sample collected within a twenty-four hour period composed of a minimum of four individual grab samples collected at equally spaced intervals and combined according to flow or in equal volumes.

"Contributor" means any person who contributes or causes the contribution of wastewater to the wastewater utility.

"Cooling water" means the water discharged from any use such as air conditioning, cooling, or refrigeration, or to which the only pollutant added is heat.

"Daily maximum" is the average concentration measured over a twenty-four hour period.

"Deleterious substance" means any substance capable of causing physical, chemical or biological contamination or degradation to the environment; a deleterious (acute or chronic) effect on fish, bird, wildlife, plant life; or that would otherwise interfere with the beneficial use of receiving waters.

"Dilution" means to alter or reduce the concentration of any wastewater stream by adding water or by mixing it with other waste streams.

"Direct discharge" means the discharge of treated or untreated wastewater or any other pollutant directly to waters of the state.

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"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment or to the POTW.

"Discharger" means any person who discharges or causes the discharge of wastewater to the wastewater utility.

"Domestic wastes" means liquid wastes: 1) from the noncommercial preparation, cooking, and handling of food, or 2) containing only human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities, and institutions.

"Enforcement response plan" ("ERP") means a written plan which contains detailed procedures indicating how the city manager will investigate and respond to instances of user noncompliance.

"Environmental Protection Agency (EPA)" means the U.S. Environmental Protection Agency, or where appropriate, the administrator or other duly authorized official of the agency.

"Excess user charge" means the rate system used to charge significant industrial users whose sewage strength is higher than average strength sewage.

"Facility" means any building, structure, installation, equipment, pipe or pipeline including, without limitation, any pipe into a sanitary sewer or any portion of the POTW, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft.

"Federal categorical pretreatment standard" or "categorical standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of users, which currently appear in 40 C.F.R. subchapter N.

"Flow" means volume of wastewater.

"Flow recorder" means a device installed on a user's wastewater discharge line in such a manner as to accurately determine wastewater flow entering the POTW.

"Four day average limit" means the average of any four consecutive days of sampling and analysis collected during a given period of time (week, month, quarter, etc.) for specified industrial sources, e.g., electroplating.

"Garbage" means putrescible animal or vegetable waste from the preparation, cooking, and serving of food or the storage or sale of produce.

"Grab sample" means a sample taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

"Grease/sand interceptor" means a tank that holds a minimum of seven hundred fifty gallons and that serves one or more fixtures and is remotely located. Interceptors include, without limitation, tanks that capture wastewater from dishwashers, floor drains, pot and pan sinks and trenches, or wastewater from vehicle maintenance facilities, car washes or activities with a petroleum wash away byproduct.

"Grease trap" means a device designed to retain grease from one to a maximum of four fixtures. A grease trap is not appropriate for use on heated water fixtures, including, without limitation, dishwashers, or those fixtures connected prior to waste disposal units, including, without limitation, garbage disposals and grinders.

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"Hauled waste" means any waste transported and discharged to the POTW from the place of origin or storage via rail, truck, or other mode of transportation.

"Hazardous pollutants" means any constituent or combination of constituents that is classified as hazardous under state or federal regulations or is included on the federal list of toxic pollutants as currently specified in 40 C.F.R. part 122, appendix D.

"Hazardous waste" means a waste that is classified as hazardous under federal regulations or is included in the federal list of hazardous waste as currently specified in 40 C.F.R. 261, subparts C and D.

"Holding tank waste" means any waste from holding tanks such as vessels, truck tanks, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

"Incompatible pollutant" means any waste product that cannot be easily or adequately treated by the city wastewater utility, including, without limitation, non-biodegradable dissolved solids.

"Indirect discharge" means the discharge or the introduction of pollutants from any source, including, without limitation, those regulated under section 307(b) or (c) of the Act (33 U.S.C. 1317), into the POTW. The term "indirect discharge" also includes holding tank wastes discharged into the POTW.

"Industrial" means of or pertaining to industry, manufacturing, commerce, trade, or business, as distinguished from domestic or residential.

"Industrial category" means any of industrial groups designated by the EPA under section 307 of the Act.

"Industrial discharge permit" means the document issued to a user by the city in accordance with the terms of this chapter.

"Industrial waste" or "wastewater" means all water-carried wastes and wastewater derived from any producing, manufacturing, processing, institutional, commercial, agricultural, or other non-domestic operation. Industrial wastewater may also include wastes of human origin similar to domestic wastewater which have been mixed with industrial wastes or wastewater prior to discharge to the POTW. Only wastes and wastewater derived solely from residential uses are excluded from this definition.

"Instantaneous maximum allowable discharge limit" means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

"Interceptor" means a containment device designed to intercept, trap or otherwise prevent grease, sand, flammable liquids, or other substances potentially harmful to the POTW from entering a sanitary sewer.

"Interference" means an act that harms or disrupts the facilities, processes, or operations; or has an adverse effect on the quality of the effluent, biosolids, air emissions, or other residuals generated by the POTW; or has an adverse effect on the receiving waters; or is likely to endanger life, health, or property or otherwise cause a nuisance; or results in violation of the city's NPDES permit or other permits; or, in the opinion of the city manager, otherwise adversely affects the city's ability to meet the objectives of this chapter.

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"Mass discharge rate" means the weight of material discharged to the POTW during a given time interval. Unless otherwise specified, the mass discharge rate shall mean pounds per day of a particular constituent or combination of constituents.

"Mass limitations" means any EPA limit imposed pursuant to section 307(b) of the Act on discharge of pollutant mass or mass limits deemed necessary by the city manager to meet NPDES permit requirements.

"Maximum daily concentration" means the maximum allowable discharge of a pollutant during a calendar day. Where daily maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where maximum limitations are expressed in terms of concentration, the daily discharge is the arithmetic average of the pollutant concentration derived from all measurements taken on that day.

"National Pollutant Discharge Elimination System (NPDES)" means the program for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into navigable waters or the contiguous zone and the oceans pursuant to section 402 of the Act.

"National Pollutant Discharge Elimination System (NPDES) permit" means a permit issued under the National Pollutant Discharge Elimination System for discharge of wastewaters to the navigable waters of the United States pursuant to the Act.

"National pretreatment standard," "pretreatment standard," or "standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. 1317), which applies to wastewater. This term includes prohibitive discharge limits established pursuant to 40 C.F.R. 403.5.

"New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to such source if such standards are thereafter promulgated, provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing facility, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

"Pass through" means the discharge of pollutants through the wastewater utility into the receiving stream in quantities or concentrations that are a cause of or significantly contribute to a violation of any requirements contained in the city NPDES permit.

"pH" means the intensity of acid or base condition of the solution expressed as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution.

"Phenols" means total hydroxy derivatives of benzene and its condensed nuclei (including phenol, chlorinated phenols, nitrophenols and chlorinated cresols) identified in table 1, section 307 of the Act which are detectable by EPA approved methods.

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"Pollutant" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, biosolids, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

"Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

"Pollution prevention" means the application of source reduction and recycling during day-to-day operations which reduces the need for treatment and disposal of wastes without transferring contamination to air, water, solid waste, or hazardous waste.

"POTW" or "publicly owned treatment works" means the city's wastewater treatment system. This includes, without limitation any device and system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes without limitation the wastewater treatment plant, sewers, pipes, and other conveyances that convey wastewater to the POTW treatment plant.

"Premises" means a parcel of real estate including any improvements thereon which is determined by the city to be a single user for purposes of receiving, using, and paying for wastewater utility services.

"Pretreatment" or "treatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of the pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the wastewater utility, which may be obtained by physical, chemical, or biological processes or other means not including dilution.

"Pretreatment requirement" or "requirement" means any substantive or procedural pretreatment requirement other than a national pretreatment standard.

"Priority pollutants" means any of the toxic compounds designated by EPA, pursuant to section 307 (a) of the Act, that can reasonably be expected in the discharges from industries.

"Process water" means water used in any manufacturing, forming or thermal process, or any other operation during which its characteristics are modified.

"Receiving waters" means lakes, rivers, streams, or other watercourses that receive treated or untreated wastewater.

"Revoke" or "revocation of permit" means the cancellation or nullification of the user's permit, which effectively terminates all rights and privileges of the user to discharge to the POTW on a permanent basis.

"Sanitary sewer" means a sewer which is designed to carry wastewater discharges from residential, commercial and industrial businesses to the POTW.

"Septic tank waste" means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

"Service line" or "private sewer" means a sewer line commencing at and collecting wastewater from a structure or facility and intended for discharging wastewater into the city wastewater utility.

"Significant change" means an increase or decrease in wastewater volume, concentration of materials or substance, or changes in types of wastes.

"Significant noncompliance" means:

(1) A chronic violation of wastewater discharge limits. For the purposes of this chapter, a chronic violation occurs when, during any six month period, at least sixty-six percent of all sampling requirements exceed the daily maximum or average limit for the same pollutant parameter.

(2) A technical review criteria (TRC) violation. For the purposes of this chapter, a TRC violation occurs when, during any six month period, thirty-three percent or more of all sampling requirements for each pollutant parameter either equals or exceeds the daily maximum or average limit times the applicable TRC. TRC = 1.4 for BOD, TSS, fats, oil, and grease; and 1.2 for all other pollutants except pH.

(3) A violation of a pretreatment effluent limit (daily maximum or long-term average) that the city manager determines has caused, alone or in combination with other discharges, interference with the wastewater treatment process, or endangered the health of city employees or the general public.

(4) A discharge of a pollutant that has caused imminent endangerment to human health, welfare, or the environment, or has resulted in the wastewater utility's exercise of its emergency authority.

(5) Failure to meet, within ninety days, a compliance schedule as set forth in an enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide all required reports within thirty days after their due date.

(7) Failure to accurately report noncompliance.

(8) Any other violation which the city manager determines will adversely affect the operation of the pretreatment program or implementation of chapter 11-3, "Industrial And Prohibited Discharges," B.R.C. 1981.

"Significant user" means:

(1) A user whose discharge is subject to categorical pretreatment standards; or

(2) A user who either discharges on average at least twenty-five thousand gallons of process water (excluding sanitary, non-contact cooling and boiler blowdown wastewater) per day to the POTW; or contributes process water amounting to at least five percent of the average dry weather hydraulic or organic capacity of the wastewater treatment plant; or

(3) A user who is designated as such by the city manager on the basis that the user's discharge can adversely affect the wastewater utility's operation or that the industrial user violated any pretreatment standard or requirement.

"Slug" or "slug load" means any discharge of sewage or industrial waste that in concentration or mass of any given constituent exceeds for any one period of duration longer than fifteen minutes more than five times the average twenty-four hour or normal working period concentration or mass.

"Slug discharge" means any discharge of a non-routine, episodic nature, including, without limitation, an accidental spill or non-customary or unapproved batch discharge or any discharge of water or wastewater in which the concentration of any given constituent or the quantity of flow exceeds for any period of duration longer than fifteen minutes more than

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five times the average twenty-four hour concentration or flow rate during normal operation or adversely affects the POTW.

"Source reduction" or "waste minimization" means any action which causes a net reduction in the generation of waste.

"Standard Industrial Classification (SIC)" means a classification pursuant to the most recent edition of the *Standard Industrial Classification Manual* issued by the Executive Office of the President - Office of Management and Budget.

"State" means the State of Colorado.

"State waters" or "waters of the state" means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

"Storm sewer" or "storm water sewer" means sewers, pipes and other conveyances which collect and convey storm waters, surface runoff, and other drainage.

"Storm water" means any flow occurring during or following any form of natural precipitation and resulting therefrom.

"Surcharge" means a charge for service in addition to the basic sewer user and debt service charge, for those users whose contribution contains biochemical oxygen demand (BOD), chemical oxygen demand (COD), total suspended solids (TSS), or ammonia nitrogen (NH_3-N) in concentrations which exceed limits specified herein for such pollutants.

"Suspension of services" or "suspension" means a temporary physical interruption of sewer services without revoking the permit itself.

"Total metals" means the sum of the concentrations of copper, nickel, total chromium, zinc, and cadmium.

"Total Suspended Solids (TSS)" means the total suspended matter, expressed in milligrams per liter, that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and that is removable by laboratory filtering in accordance with procedures set forth in EPA *Methods for Chemical Analysis of Water and Wastes*.

"Toxic pollutants" means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provisions of section 307(a) of the Act (33 U.S.C. 1317) or other acts.

"User" means any person who discharges, contributes or causes the contribution of wastewater into the POTW, storm water sewer system, stream, ditch, or other watercourse.

"Waste" means any solid, liquid, semi-solid, or gaseous material or substance which has been discarded for any reason.

"Waste minimization" - see definition of "source reduction."

"Waste stream" means the liquid- or water-carried wastes from individual or combined sources from a residential, commercial, industrial, or institutional establishment.

"Wastewater" means the liquid- and water-carried industrial, domestic, or other polluted wastes or water from dwellings, commercial buildings, industrial plants, institutions,

persons, or from other means, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which is contributed into or may enter the POTW, storm water sewer system, stream, ditch, or other watercourse.

"Wastewater classification survey" means the questionnaire that each industrial user must complete and have on file at the city manager's office.

"Wastewater constituents and characteristics" means the individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate, and such other parameters that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.

"Wastewater Ordinance" means chapter 11-3, "Industrial And Prohibited Discharges," B.R.C. 1981.

"Wastewater system," "wastewater treatment system," or "wastewater utility" means any devices, facilities, structures, equipment, or works owned or used by the city for the purpose of the transmission, storage, treatment, recycling, or reclamation of wastewaters from within or without the city and includes land or sites that may be acquired or used, that will be an integral part of the treatment process, or that are used for ultimate disposal of residues resulting from such treatment.

"Watercourse" means a natural or artificial channel for the passage of water either continuously or intermittently.

(b) The following abbreviations have the following meanings:

"BOD" means biochemical oxygen demand.

"°C" means degrees Celsius.

"CFR" means the Code of Federal Regulations.

"COD" means chemical oxygen demand.

"EPA" means the United States Environmental Protection Agency.

"l" means liter.

"lbs" means pounds.

"LEL" means lower explosive limit.

"mg" means milligrams.

"NH_3-N" means the total nitrogen component of ammonia.

"NPDES" means national pollutant discharge elimination system.

"PCB" means polychlorinated biphenyl.

"TOC" means total organic carbon.

"TSS" means total suspended solids.

Ordinance Nos. 5397 (1991); 5526 (1992); 5677 (1994); 5771 (1995).

11-3-4 General Prohibitions.

(a) No user or other person, whether or not subject to federal categorical pretreatment standards, shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater that may interfere with the operation or performance of the wastewater utility or pass through the treatment system untreated[1]. These general prohibitions apply to all users of the POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.

(b) No user or other person shall discharge any sewage, other polluted waters, or other deleterious substance from any premises within the city into or upon any public highway, street, sidewalk, alley, land, public place, stream, ditch, or other watercourse or into any cesspool, storm or private sewer, or natural water outlet, except where suitable treatment has been provided in accordance with provisions of applicable federal, state, and local laws.

(c) No user or other person shall discharge any sewage, polluted waters, or other deleterious substances in violation of an industrial discharge permit.

(d) No user or other person shall discharge into the POTW the following substances or any amounts of substances exceeding the following limits:

(1) Any liquids, solids, or gases that, by reason of their nature or quantity, are or may be sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater utility. At no time may two successive readings on any explosion hazard meter, at the point of discharge into the sewer, or at any point in the system, be more than five percent, nor may any single reading exceed ten percent, of the lower explosive limit of the meter. Wastewaters discharged into a public sewer may not have a flash point lower than 187°F, as determined by analytical methods approved by the city manager. Prohibited materials include, without limitation, gasoline, fuel oils, mineral oil, lubricating oil, benzene, naphtha, ethers, carbides, perchlorates, and xylene[2];

(2) Any wastewater having a pH less than 5.5 or greater than 10.5 or wastewater having any other corrosive property capable of causing damage or hazard to structures, operations, or personnel of the wastewater utility[3];

(3) Solid or viscous substances that may obstruct the flow or interfere with the operation of the POTW, including, without limitation, cinders, sand, mud, cement, plaster, lime slurry or sludge, stone or marble dust, asphalt residues, tar, wax, paraffin, paint, chemical sludges or residues, metals, glass, plastics, wood, shavings, wastepaper, paunch manure, excessive manure, hair and fleshings, blood, intestinal contents, animal hooves or toenails, bones, hog bristles, hides or parts thereof, excessive amounts of animal fat or flesh or particles of such materials larger than will pass through a quarter inch screen, poultry entrails, heads, feet, or feathers, food processing bulk solids, or garbage that has not been ground or comminuted to a diameter of less than one-half inch[4];

(4) Any pollutant, including oxygen-demanding pollutants (BOD, COD, and TOC), released in a discharge at a flow rate or pollutant concentration that will interfere with the ability of the wastewater treatment plant to meet NPDES permit requirements[5];

(5) Wastewater having a temperature that will cause the temperature of the wastewater plant influent to exceed 40°C (104°F) or will inhibit the biological activity of the wastewater treatment[6];

[1] 40 C.F.R. 43.5(a).
[2] 40 C.F.R. 403.5(b)(1).
[3] 40 C.F.R. 403.5(b)(2).
[4] 40 C.F.R. 403.5(b)(3).
[5] 40 C.F.R. 403.5(b)(4).
[6] 40 C.F.R. 403.5(b)(5).

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(6) Any storm waters, including, without limitation, surface runoff, roof leaders, catch basins, or any other source;

(7) Any wastewater containing radioactive wastes or isotopes of a half-life or concentration that exceeds provisions stated in *Rules and Regulations Pertaining to Radiation Control,* Colorado Department of Public Health and Environment, State of Colorado, 2001. Facilities with one discharge shall meet the state standards at the single discharge location. If discharges from multiple locations contain radioactive waste, the sum of all discharges shall meet the state standards;

(8) Any wastewater containing free, floating, or insoluble oil or oil or grease that will solidify or become discernibly viscous at temperatures between 0°C (32°F) and 65°C (150°F). In no case may wastewater contain concentrations of oils, fats, or grease that exceed 100 mg/l as determined by analytical methods approved by the city manager;

(9) Any wastewater with objectionable color not removable in the treatment process, including, without limitation, dye wastes, paint pigments, and vegetable tanning solutions;

(10) Any malodorous liquids, gases, or solids that either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or to prevent entry into the sewers for maintenance and repair or for sampling;

(11) Any wastewater containing BOD, suspended solids, or total solids of such character or quantity that unusual attention or expense is required to handle such materials at the wastewater treatment plant; but a user may be permitted by specific, written agreement with the city to discharge such materials and pay for costs incurred in the treatment of such wastes;

(12) Any substance that may cause the effluent or any other product of the wastewater treatment plant, such as sludges, scums, and residues, to be unsuitable for reclamation and reuse. In no case may a substance discharged into the POTW cause the wastewater treatment plant to fail to comply with NPDES permit requirements, receiving-water quality standards, or biosolids use and disposal criteria[1];

(13) Any subsurface drainage, including, without limitation, groundwater, water from underground drains, sump discharges, natural springs, water accumulated in excavations, or any other drainage associated with construction except for groundwater accepted into the POTW pursuant to section 11-3-12, "Special Agreements And Contracts," B.R.C. 1981, and rules issued by the city manager pursuant to section 11-3-24, "Rules," B.R.C. 1981;

(14) Any wastes or pollutants transported by truck or otherwise hauled into the city, except at a discharge point designated by the city manager;

(15) Any discharges which produce toxic gases, vapors, or fumes that may endanger the health or safety of POTW workers;

(16) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause "interference" or "pass through" as defined in section 11-3-3, "Definitions," B.R.C. 1981; or

(17) Any hazardous waste as defined under federal or state laws.

(e) No user or other person shall discharge into the POTW any material or substance not specifically mentioned in this section that in itself is corrosive, irritating, or noxious to human beings or animals or that by interaction with other water or waste in the public

[1]See section 11-3-12, "Special Agreements And Contracts," B.R.C. 1981.

sewer system could produce undesirable effects or create any other condition deleterious to structures, treatment processes, and the quality of the receiving stream.

(f) No user or other person shall make any false statement, representation, or certification, knowing it to be false, in any application, record, plan, data, or document filed or required to be maintained pursuant to this chapter.

(g) No user or other person shall falsify, tamper with, or knowingly render inaccurate any monitoring device or method required under this chapter.

(h) The city manager may require any user or other person discharging a deleterious substance to connect discharges legally to the POTW before continuing to generate said deleterious substances.

Ordinance Nos. 5397 (1991); 5771 (1995); 7346 (2004).

11-3-5 Specific Pollutant Limitations And Maximum Allowable Industrial Loadings.

No user of the wastewater utility shall discharge wastewater containing pollutants in excess of the following specific pollutant limitations, based on a sampling methodology that is most representative of the actual discharge. The city manager may also prohibit in writing any pollutant discharged into the wastewater utility that is within the concentration limitations but that interferes with the wastewater treatment plant process.

SPECIFIC POLLUTANT LIMITATIONS

(a) Flash Point (closed cup method)
Minimum = 187 degrees F
pH*** Minimum = 5.5

Maximum = 10.5
Oil and grease = 100 mg/l
BTEX = 750 ug/l
Benzene = 50 ug/l
Explosion Meter
Continuous Reading

One Reading Maximum = 10%
Lower Explosive Limit (LEL)
Two Successive Readings = 5%
Lower Explosive Limit (LEL)

***When pH is monitored continuously it shall be a permit violation if there are any continuous excursions of more than five minutes where the pH is either greater than 10.5 or less than a pH of 5.5, unless otherwise stated in the industrial discharge permit. Excursions of less than 5.0 are violations regardless of duration.

(b) Maximum Allowable Industrial Loadings (lbs./day)

The city manager shall establish Maximum Allowable Industrial Loadings (MAILs) which are protective of wastewater treatment plant, Boulder Creek and/or wastewater biosolids. MAILs shall be established in accordance with 40 C.F.R. 403 and may evaluate loadings based on all applicable criteria including, but not limited to, biosolid regulations, NPDES permit requirements, in-stream water quality standards, and designated stream uses. The city

manager shall apportion MAILs to permitted significant industrial users within the users Industrial Wastewater Discharge Permit. Apportioned MAILs issued under Industrial Wastewater Discharge Permits shall be considered Pretreatment Standards, and as such are enforceable. The sum of all apportioned MAILs may not exceed the total MAILs listed below. The city manager may assign additional limits as deemed necessary to be protective of the wastewater treatment system.

Maximum Allowable Industrial Loadings to be apportioned to permitted users (pounds per day)

Arsenic:	0.86
Cadmium:	0.57
Chromium - Total:	31.72
Chromium - Hex:	6.32
Copper:	5.36
Lead:	2.29
Mercury:	0.043
Molybdenum:	2.09
Nickel:	3.53
Selenium:	1.67
Silver:	0.64
Zinc:	27.32

Ordinance Nos. 5397 (1991); 5677 (1994); 5771 (1995); 7346 (2004).

11-3-6 Preemption By State Or Federal Standards Unless City Standards More Stringent.

(a) The national categorical pretreatment standards as currently set forth in 40 C.F.R. parts 405-471, are incorporated into these regulations and are adopted by reference.

(b) If the federal government issues federal categorical pretreatment standards for an industrial category that are more stringent than the standards prescribed by this chapter, such federal standards supersede the standards prescribed by this chapter.

(c) The city manager reserves the right to establish discharge limitations more stringent than federal and state requirements, or limitations contained herein, if deemed necessary to comply with objectives of this chapter.

Ordinance Nos. 5771 (1995); 7346 (2004).

11-3-7 Dilution Of Discharge.

No user shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with any applicable limitations[1]. The city manager in consultation with the user shall determine whether a dilution has occurred.

Ordinance No. 5771 (1995).

[1]40 C.F.R. 403.6(d).

11-3-8 Accidental Discharges.

(a) Each user shall ensure that the POTW is protected from accidental discharge of prohibited materials or other substances regulated by this chapter which are discharged by or from the user's facilities. Such protection shall be provided and maintained by the user at the owner's or user's own cost and expense. Upon request by the city, a user may be required to submit detailed plans including procedures for handling accidental discharges of materials or substances regulated by this chapter to the POTW.

(1) Each user shall permanently post a spill prevention and notification procedure in compliance with this section on its bulletin board and prominently display the procedure at each area of possible accidental discharge.

(2) In the case of an accidental discharge, no user shall fail to notify immediately by telephone the superintendent or supervisor at the city's wastewater treatment plant of the location of discharge, type of waste, concentration, volume, and corrective actions. In addition to taking any other remedies for a failure to report accidental discharges, the city manager may revoke any discharge permit issued to the user.

(3) Within five working days following an accidental discharge, the user shall submit to the city manager a detailed written report describing the cause of the discharge and measures to be taken by the user to prevent similar future occurrences. Such notification does not relieve the user of any expense, loss, damage, or liability that may be incurred from damage to the wastewater utility or quality of receiving stream or any other damage to persons or property. Such notification shall not relieve the user from any fines, civil penalties, or other liability that may be imposed by this chapter or other applicable law.

(b) The city manager may require installation, operation, and maintenance of facilities to prevent accidental discharge of such materials or substances, at the user's expense.

Ordinance No. 5771 (1995).

11-3-9 Septage Tank Waste.

Discharge of septage tank waste must follow requirements set forth in *City of Boulder Policy and Procedure for Septage Waste Dumping,* City of Boulder Wastewater Utility, February, 2002.

Ordinance Nos. 5677 (1994); 7346 (2004).

11-3-10 Grease/Sand Interceptors And Grease Traps.

(a) No person operating a filling station, garage, or similar facility having wash or grease racks shall discharge into the wastewater utility unless such person has installed and properly maintains a grease/sand interceptor or grease trap of a size and construction approved by the city manager, for such facility.

(b) No person operating a restaurant or food preparation establishment discharging wastewater containing greater than one hundred mg/l of oil and grease or that causes grease buildup or blockage of the POTW shall fail to install a grease/sand interceptor or grease trap.

(c) All grease/sand interceptors or grease traps shall be properly inspected and serviced at a minimum of once every six months, and as additionally required to prevent excessive grease or sand from entering the POTW. Excessive grease is any discharge containing grease in excess of one hundred mg/l or which causes grease buildup or blockage of the POTW.

Excessive sand is any discharge of sand which causes a blockage or obstruction of the POTW. Records of maintenance and service shall be kept on file by the owner or operator for a minimum of three years and shall be made available for review by the city manager.

Ordinance No. 5771 (1995).

11-3-11 **Photographic Material Processing.**

(a) No person operating photographic material processing equipment including, without limitation, the development of silver bearing film, x-ray film, or photographic paper, shall discharge silver bearing photographic solutions into the wastewater utility at a level of silver concentration in excess of one hundred mg/l. This limit shall become effective on December 31, 1999.

(b) All photographic processors shall either recover silver from spent solutions as set forth in subsection (a) of this section, or utilize off-site disposal in a manner consistent with federal, state, and local, laws and regulations.

(c) Photographic material processing equipment users that recover silver from spent solutions must properly maintain each silver recovery system at a minimum of once every six months. Additional periodic maintenance shall be required as recommended by the manufacturer, and as necessary to meet the limitations set forth in subsection (a) of this section. Records of maintenance and service shall be kept on file by the owner or operator for a minimum of three years and such records shall be made available for review upon request by the city manager.

(d) The owner or operator of photographic material processing equipment that chooses off site disposal of silver bearing solutions shall keep records of purchases and disposals on file for a minimum of three years and such records shall be made available for review upon request by the city manager.

(e) Sampling to determine compliance with this section shall be at a location immediately following treatment for silver removal and prior to dilution or mixing with other waste streams.

11-3-12 **Special Agreements And Contracts.**

(a) No statement contained in this chapter shall be construed as prohibiting special written agreements between the city and any user allowing wastes of unusual strength or character to be admitted to the wastewater utility.

(1) A special written agreement may include groundwater, but shall not include domestic wastes.

(2) Except as set forth below, agreements shall require treatment consistent with, or similar to, federal, state, and local, laws and regulations.

(3) The user shall compensate the city for any additional costs of treatment and for any other costs incurred by the city as determined by the city manager including, without limitation, the following:

(A) Costs associated with review and issuance of the permit or agreement consistent with hourly review rates for city staff as outlined in section 4-20-43, "Development Application Fees," B.R.C. 1981;

(B) Costs associated with ongoing monitoring; and

(C) Indemnification of the city, its officers, employees, and agents, for any costs to such parties, including staff time and attorney's fees, for damages, judgments, fines, settlements, costs, and expense which may in any manner accrue against such party as a consequence of the grant of such permit.

(b) The city manager may execute an agreement to exceed any specific pollutant limitations required by this chapter, only if the manager finds that:

(1) The user is making reasonable progress toward eliminating the violation;

(2) Compliance with the specific pollutant limitation during a time period agreed upon for installation of proper pretreatment equipment would impose undue hardship; and

(3) Acceptance of the discharge does not adversely affect the wastewater utility nor cause violation of the city's NPDES discharge permit and applicable federal and state laws.

Ordinance Nos. 5397 (1991); 7400 (2004).

11-3-13 Wastewater Classification Survey[1].

(a) Sixty days prior to discharge into the city wastewater utility, all users, required by the city manager, shall pay the filing fee prescribed by section 4-20-31, "Wastewater Classification Survey Filing Fee And Industrial And Groundwater Discharge Permit Fees And Charges," B.R.C. 1981, and complete and file with the city manager a wastewater classification survey containing the following information:

(1) Name and facility address;

(2) Type of services rendered and products produced;

(3) Principal raw materials and catalysts used;

(4) Plant operational characteristics;

(5) Water use information;

(6) Wastewater discharge information;

(7) Wastewater generation;

(8) Wastewater quantities and constituents;

(9) Wastewater pretreatment;

(10) Non-discharge wastes and their disposal;

(11) SIC number according to the *Standard Industrial Classification Manual*, Bureau of the Budget 1987 or the North American Industry Classification System (NAICS);

(12) Documented average daily and thirty minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any;

[1] 40 C.F.R. 403.8(f)(2)(i).

(13) Site plans, floor plans, mechanical and plumbing plans, and details to show all known sewers, sewer connections and appurtenances by the size, location, and elevation;

(14) Description of activities, facilities, and plant processes on the premises, including all materials which are or could be discharged;

(15) Each product produced by type, amount, process or processes, and rate of production;

(16) Type and amount of raw materials processed (average and maximum per day);

(17) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;

(18) Waste minimization information as requested by the city manager; and

(19) Any additional information determined to be relevant by the city manager.

(b) All users obtaining a building permit for initial construction or for building expansion or remodeling shall complete and submit the survey to the city manager for review prior to approval of the building or remodeling permit.

(c) All users shall update the wastewater classification survey on file with the city manager whenever significant changes are made in the wastewater discharge. Significant changes include, without limitation, an increase or decrease in wastewater volume, concentration of materials or substances, or changes in types of wastes that will last for a period exceeding normal wastewater production variations. If the normal quantity or quality of the discharge has changed, the user shall so notify the city manager by letter. The city manager may request a new submittal of the wastewater classification survey as deemed necessary.

Ordinance Nos. 5771 (1995); 7346 (2004).

11-3-14 **Industrial Discharge Permit**[1].

(a) A user shall obtain an industrial discharge permit if the user:

(1) Has a monthly process water contribution to the POTW over seven hundred fifty thousand gallons;

(2) Is subject to an excess user charge for TSS, NH_3-N, BOD, or COD as provided in this chapter;

(3) Is subject to federal categorical pretreatment standards;

(4) Is determined by the city manager to have significant impact, or the potential to have impact based on the characteristics of the potential discharge or the operation and management practices of the user, either singly or in combination with other contributing industrial users, on the quality of the wastewater treatment plant's effluent, biosolid, scum, or residues or on the treatment process or facilities; or

(5) Is determined by the city manager to violate any of the provisions of sections 11-3-4, "General Prohibitions," and 11-3-5, "Specific Pollutant Limitations And Maximum Allowable Industrial Loadings," B.R.C. 1981, or have the potential to violate any such provisions based on the characteristics of the potential discharge or the operation and management practices of the user; or

[1] 40 C.F.R. 403.8(f)(1)(iii).

(6) Is a "significant user" as defined in subsection 11-3-3(a), B.R.C. 1981.

(b) Users required to have an industrial discharge permit shall apply for a permit at least sixty days prior to discharging into the POTW.

(c) Industrial discharge permits are subject to all provisions of this chapter and all other applicable regulations, user charges, and fees established by the city. Permits may contain, without limitation, the following:

(1) Limits on the average and maximum concentration or mass of wastewater constituents and characteristics;

(2) Limits on average and maximum rate and time of discharge or requirements for flow regulation and equalization;

(3) Schedules for installation of pretreatment equipment to bring discharge into compliance with applicable regulations[1];

(4) Requirements for installation and maintenance of inspection and sampling facilities;

(5) Specifications for monitoring programs that include sampling locations; frequency of sampling; number, type and standards for tests; and reporting schedules;

(6) Requirements for submission of technical reports, discharge reports, and compliance progress reports[2];

(7) Requirements for maintaining and retaining records relating to wastewater discharge as specified by the city and affording city access thereto[3];

(8) Requirements for notification of slug loads;

(9) Requirements for notification of the city of the new introduction of wastewater constituents or any change in character of the wastewater constituents or average volume being introduced into the wastewater utility[4];

(10) Compliance schedules;

(11) A requirement that industrial waste be discharged into the sanitary sewer by a connection separate from that by which domestic waste from the same premises is discharged, except that a single connection discharging both industrial waste and domestic waste may be used when it has been determined by the city manager that:

(A) Industrial waste is a minor and acceptable portion of the sewage;

(B) Industrial waste can be kept separate in the user's facility and pretreated to meet effluent limits before combining with the domestic waste; and

(C) Combined sewage can be pretreated to meet effluent limits;

(12) A requirement that each person discharging industrial waste into the POTW construct suitable sampling and gauging stations or provide such inspection facilities as may be required by the city manager;

[1] 40 C.F.R. 403.8(f)(1)(iv).
[2] 40 C.F.R. 403.8(f)(1)(iv)(B).
[3] 40 C.F.R. 403.8(f)(1)(v).
[4] 40 C.F.R. 403.8(f)(1)(i).

(13) A requirement that each person discharging industrial waste into the POTW, at the user's own expense, provide and maintain continuously such pretreatment as may be required by this chapter;

(14) A provision that the city manager, at any time before or after granting a permit, require additional pertinent information from each person discharging industrial waste into the POTW;

(15) A requirement that the user will indemnify, to the extent legally permissible, the city, its officers, employees and agents for damages, judgments, costs and expense which may in any manner accrue against the city in consequence of the grant of such permit;

(16) A requirement that all new laterals connecting to the main sanitary sewer and all new sanitary sewers and extensions must be designed and constructed in accordance with the city's standard specifications;

(17) A requirement that all permittees are subject to the administrative and civil enforcement provisions of this code, and, to the extent permitted by law, the city's criminal jurisdiction as well; and

(18) Other conditions as deemed necessary by the city manager to enforce the provisions of this chapter.

(d) The city manager shall issue industrial discharge permits for a specified time period not to exceed five years. The user shall apply for permit reissuance at least sixty days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the city manager during the term of the permit if limitations or requirements are modified, if necessary to meet requirements of the city's NPDES discharge permit, or if there is other good cause. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(e) No permittee shall violate the terms and conditions of the permittee's industrial discharge permit.

(f) An applicant for a permit shall pay the fees prescribed by section 4-20-31, "Wastewater Classification Survey Filing Fee And Industrial And Groundwater Discharge Permit Fees And Charges," B.R.C. 1981.

(g) An industrial discharge permit may not be sold, traded, assigned, sublet, or otherwise transferred. Any new significant industrial user must obtain an industrial discharge permit regardless of whether a permit previously existed for the same premises.

Ordinance Nos. 5397 (1991); 5526 (1992); 5771 (1995); 7346 (2004).

11-3-15 **Monitoring Facilities.**

(a) Whenever the city manager finds it necessary, a user shall provide and operate, at its expense, monitoring equipment and facilities sufficient to allow inspection, sampling, and flow measurements of the private sewer or internal drainage system. The owner of any new building constructed or proposed to be constructed in an industrially zoned area with a floor space of greater than five thousand square feet or with a water meter size of greater than three-fourths inch shall install a monitoring facility prior to final building inspection approval.

(b) The monitoring facility shall normally be situated outside of the building on the user's premises. If the user's service line ties into an existing city utility access point and such utility access point allows for safe sampling and isolation of the user's discharge, the city manager may allow the utility access point to serve as the user's monitoring facility, but the city manager may require that the user provide and operate an alternate monitoring facility, if the city manager finds it is necessary.

(c) Whenever required by the city manager, any significant user or user discharging prohibited substances or specific pollutants serviced by a private sewer carrying non-residential wastewater shall install a monitoring facility for each separate discharge that the city manager finds necessary to monitor. Each separate monitoring facility shall meet requirements set forth by the city manager with safe and independent access for city personnel at all times.

(d) The user shall maintain the utility access point or facility to allow for accurate sampling and preparation of samples for analysis. The user shall maintain the facility it owns and operates and all sampling and measuring equipment at all times in a safe and proper operating condition at the user's expense.

(e) Whether constructed on public or private property, the user shall construct the sampling and monitoring equipment and facilities in accordance with monitoring requirements and all applicable city construction standards and specifications within sixty days following written notification by the city manager or before final building inspection approval.

(f) All users shall provide safe access to sampling and monitoring sites and pretreatment facilities at all times for authorized city personnel.

Ordinance No. 5771 (1995).

11-3-16 **Sampling And Analysis.**

(a) All users shall obtain city manager approval for all sampling and measuring equipment prior to its installation or use. All measuring, tests, and analyses and all sampling shall be at the expense of the industrial user.

(b) All measurements, tests, and analyses of the characteristics of water and wastes shall be determined in accordance with the techniques and procedures prescribed in 40 C.F.R. part 136 or with any other test procedures approved by the EPA or the city manager. Samples shall be taken from the utility access point, or other specified location as described in the permit. The city manager may direct a user to save a sample split of any reported sample and to deliver the sample to the water quality laboratory for analytical verification.

(c) The city manager shall determine the frequency of sampling, measuring, and analyses and include them as conditions of the user's industrial discharge permit. The city manager may impose mass limitations on industrial users that use flow equalization to meet applicable standards or requirements or in other cases where imposition of mass limitations are appropriate.

(d) The city manager shall have the authority to sample and inspect each significant industrial user at least once a year, and more often as necessary, and to inspect any other industrial user as needed to insure compliance with this chapter.

(e) Whenever sampling and analysis is utilized for determining compliance with this chapter, a violation of any limitation required by this chapter shall occur at discharge monitoring points designated in an industrial discharge permit or at a representative sampling point, if

there is no industrial discharge permit. Violations at such monitoring points shall constitute violations of the industrial discharge permit or this chapter.

(f) The city manager shall have the authority to require users to conduct groundwater and soil sampling when there is probable cause to believe that any surface or groundwater on or emanating from the property violates any federal, state, or local regulations including:

(1) Colorado Department of Public Health and Environment, Basic Standards for Surface Water[1].

(2) Colorado Department of Public Health and Environment, Basic Standards for Groundwater[2].

(3) Federal listing of hazardous wastes[3].

Ordinance Nos. 5397 (1991); 5677 (1994); 5771 (1995).

11-3-17 **Reporting Requirements[4].**

(a) All significant users and all users required to have a permit, shall submit reports to the city manager at least once every six months or as required by the permit. Reports shall contain information and data as required by the permit and shall be signed by an authorized representative of the user.

(b) Industries subject to federal categorical pretreatment standards shall also comply with the reporting requirements set forth in 40 C.F.R. section 403.12.

(c) Reports shall be signed by an authorized representative and shall include the following statement: "I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my examination of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

(d) Any user may be required to submit periodic self-monitoring reports to the city manager if such reporting is deemed necessary in order to assess the potential impact of a discharge into the POTW. This includes, but is not limited to, the discharge of toxic pollutants by the user. Permittees and users may also be required to submit reports concerning non-compliance with industrial discharge permits or this chapter. Any report submitted pursuant to this section shall follow the signatory and certification requirements set forth in this chapter.

Ordinance Nos. 5397 (1991); 5771 (1995).

11-3-18 **Suspension And Revocation Of Permit.**

(a) The city manager may suspend or revoke an industrial discharge permit and the permission of such user to discharge industrial waste or wastewater into the POTW when such suspension or revocation is necessary, in the opinion of the city manager, in order to stop any

[1]3.11.0 et seq. (5 CCR 1002-8), as amended.
[2]3.11.0 et seq. (5 CCR 1002-8), as amended.
[3]40 C.F.R. section 261.
[4]40 C.F.R. 403.8(f)(1)(iv)(B).

discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment, causes interference to the POTW, or causes the city to violate any condition of its NPDES permit.

(b) Any person notified of a suspension or revocation of the industrial discharge permit shall immediately stop or eliminate the discharge of all industrial waste or wastewater into the POTW. In the event of a failure of the person to comply with the suspension or revocation order, the city manager shall take such steps as deemed necessary, including immediate severance of the sanitary sewer connection, to prevent or minimize damage to the POTW or endangerment of any individuals. The city may reinstate the industrial discharge permit upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city manager within thirty days of the date of occurrence.

(c) In addition to, or in lieu of, any other penalties imposed by this section, the city manager may seek the suspension or revocation of any permit issued pursuant to this chapter if the user:

(1) Violates any condition of the permit;

(2) Violates any of the provisions of this chapter or applicable state and federal regulations;

(3) Fails to report factually the wastewater constituents and characteristics of the discharge;

(4) Fails to report significant changes in operations or wastewater constituents and characteristics;

(5) Knowingly makes a false statement in the wastewater survey;

(6) Obtains the permit fraudulently or by making a misrepresentation;

(7) Tampers with, disrupts, or damages city monitoring and sampling equipment or facilities;

(8) Refuses reasonable access to the user's premises for the purpose of inspection or monitoring; or

(9) Fails to pay fees or charges timely.

(d) Whenever the city manager finds that any user has violated or is violating any provisions of this chapter, including, without limitation, any provision of an industrial discharge permit, the city manager may serve upon such person a written notice stating the nature of the violation and providing a reasonable time, not to exceed forty-five days, for the satisfactory correction thereof. The user may request a meeting with the city manager to discuss the violation or the correction schedule.

(e) If the city manager finds one of the grounds in subsection (a), (b), or (c) of this section or any other ground for suspension or revocation in this code, the city manager shall determine whether to revoke the license for the remainder of its term or suspend it for any shorter period according to severity of the disqualification, its effect on public health, safety, and welfare, and the time during which the disqualification can be remedied if at all.

(f) Before the hearing required by subsection (g) of this section, the city manager may suspend a permit for up to twenty days, if the city manager determines that the suspension is necessary to prevent an imminent danger to the public health, safety, and welfare. The city

manager may include in the temporary suspension reasonable orders or conditions with which the permittee shall comply to protect the public health and safety. Any breach of such conditions or orders is an independent ground for revocation of the permit.

(g) Except for such emergency suspension authorized by subsection (f) of this section, no such suspension or revocation shall be final until the permittee has been given the opportunity for a hearing to contest the suspension or revocation under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(h) If, after a hearing, the suspension or revocation is upheld, the city manager may include reasonable orders or conditions with which the person whose license has been suspended or revoked shall comply to protect the public health, safety, and welfare.

(i) The user shall pay all costs and expenses associated with any such suspension and restoration of service.

(j) The city manager is authorized to seek a temporary restraining order and an injunction to halt or abate any dangerous discharges immediately.

Ordinance Nos. 5677 (1994); 5771 (1995).

11-3-19 Civil And Criminal Liability For Expenses And Fines.

(a) Any user violating provisions of this chapter shall be liable under any applicable federal, state, or local law for any expense, loss, or damage caused the city by reason of such violation, including the increased costs for managing effluent, sludge, or operations when such increases are the result of the user's discharge.

(b) If a user discharges such pollutants that cause the city to violate any condition of its NPDES permit and to be fined by EPA or the state for such violation, such user is fully liable for the total amount of the fine assessed against the city, including, without limitation, all legal, sampling, and analytical testing costs.

(c) The penalty for violation of any provision of this chapter is a fine of not more than $1,000.00 per violation per day, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

(d) For the purposes of this chapter a single violation consists of a violation of any provision of this chapter including, without limitation, any provision of an industrial discharge permit or any of the specific pollutant limitations contained in section 11-3-5, "Specific Pollutant Limitations And Maximum Allowable Industrial Loadings," B.R.C. 1981. The city manager may pursue, singly or in combination, any remedies provided by this chapter.

Ordinance No. 5397 (1991).

11-3-20 Injunctive Relief.

If any user discharges into the city wastewater utility in violation of this code, federal or state law or regulations, or any order of the city, the city attorney may commence an action for legal or equitable relief, including a petition in a court of appropriate jurisdiction for a temporary restraining order and preliminary and permanent injunctions against the violation.

11-3-21 Administrative Enforcement Remedies.

(a) Notice Of Violation: Whenever the city manager finds that any user or other person has violated or is violating this chapter, or a permit or administrative order issued hereunder, the city manager may have served upon said user an administrative notice of violation. The notice may require an explanation of the violation and the submission of a satisfactory plan for the correction and prevention thereof. Submission of the plan and completion of any related actions shall not relieve the user or other person of liability for any violations of this chapter occurring before or after receipt of the notice or prevent the city manager from taking any other enforcement action authorized under this chapter.

(b) Administrative Orders: Whenever the city manager finds that any user or other person has violated or is violating this chapter, or a permit or administrative order issued hereunder, the city manager may have served upon said user or other person an administrative order. Such order may be a compliance order, a show cause order, a cease and desist order, or an order assessing an administrative fine. Compliance with an administrative order shall not relieve the user or other person of liability for any violations occurring before or after the issuance of the administrative order or prevent the city manager from taking any other enforcement action authorized under this chapter.

(c) Consent Orders: The city manager is authorized to enter into consent orders establishing an agreement with any user or other person responsible for non-compliance with the provisions of this chapter, or of a permit or administrative order issued under this chapter. Such orders shall include specific action to be taken to correct the non-compliance within a time period also specified by the order.

(d) Hearings:

(1) Whenever the city manager finds that any user or other person has violated or is violating this chapter, or a permit or administrative order issued hereunder, the city manager may hold a show cause hearing. A show cause order specifying the time and place of the hearing, the reason for the hearing, any proposed enforcement action, and a request that the user or other person show cause why the proposed enforcement action should not be taken, shall be served on the user or other person. The show cause order shall be served on the user or other person at least ten days prior to the hearing. Whether or not a duly notified user or other person appears or is represented at the hearing, the city manager may immediately pursue any other enforcement action authorized under this chapter.

(2) Any user or other person that has been served with an administrative order may request, within fourteen days of receipt of such administrative order, an administrative hearing to be conducted by the city manager. The city manager shall hold a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, within twenty-one days of such request.

(e) Administrative Fines: Whenever the city manager finds that any user or other person has violated or is violating this chapter, or a permit or administrative order issued hereunder, the city manager may issue and serve on the user or other person an administrative order assessing an administrative fine against the user or other person. The city manager may assess an administrative fine of up to $1,000.00 for each violation of this chapter and for each violation of any section or individual constituent of an industrial discharge permit. Each day on which violations continue shall be deemed to be separate and distinct violations. In addition, the city manager may assess a charge to recover costs incurred by the city to investigate and prosecute the alleged violations. Such assessed fines may be added to the user's or other person's next scheduled sewer service charges and if not paid may be collected as other delinquent utility charges under this chapter. Such unpaid fines shall also constitute a perpetual lien as provided against the real property to which the sewer service is provided. Payment of an administrative fine shall not relieve the user or other person of any

other liability provided for under this chapter or prevent the city manager from taking any other enforcement action authorized under this chapter.

(f) Administrative Appeal Procedure: Any user or other person affected by and dissatisfied with any decision, action, administrative order, assessment of administrative fine, or determination made and issued by the city manager in interpreting, enforcing or implementing the provisions of this chapter, or the provisions of any permit or administrative order issued under this chapter, may file with the city manager a written request for reconsideration. Such request shall be filed within fourteen days of such decision, action, administrative order or determination and shall set forth in detail the facts supporting the request. The city manager shall hold a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, within twenty-one days of such request and shall issue a decision within twenty-one days from the date of the hearing. The original decision, action, administrative order or determination shall remain in effect during the reconsideration period.

(g) Modification Of Requirements: The parties may agree to modify the time requirements in this section.

11-3-22 **Public Notification**[1].

The city manager shall annually publish in a newspaper of general circulation in the city a list of all users that are in "significant noncompliance" as defined in subsection 11-3-3(a), B.R.C. 1981, during the twelve previous months and a summary of any enforcement actions taken against such users during the twelve month period.

Ordinance No. 5397 (1991).

11-3-23 **Excess User Charges.**

(a) Users required to obtain an industrial discharge permit and discharging wastes in excess of average strength sewage (230 mg/l BOD, 220 mg/l TSS, 25 mg/l NH_3-N, or 490 mg/l COD) shall pay excess user charges in addition to wastewater utility fees prescribed by section 4-20-28, "Monthly Wastewater User Charges," B.R.C. 1981.

(b) Sampling, analyses, and reporting requirements to determine the excess user charge are a condition of the user's industrial discharge permit and shall be carried out in accordance with procedures contained in this chapter.

(c) On discharges of consistent strength, the city manager may compute a standard excess user charge based on average strength of the user's discharge. The user shall sample, analyze, and report discharge strengths on a periodic basis to ensure consistency of sewage strength.

Ordinance Nos. 4879 (1985); 5158 (1988); 5526 (1992); 5771 (1995).

11-3-24 **Rules.**

(a) The city manager may promulgate such rules as the manager considers necessary to implement and enforce this chapter.

(b) No person shall violate any rule issued by the city manager under this section.

Ordinance No. 5397 (1991).

[1] 40 C.F.R. 403.8(f)(2)(vii).

11-3-25 Notification Of Hazardous Waste.

Any user who discharges a characteristic or listed hazardous waste, as defined by federal law[1], shall promptly notify the city manager in writing of the discharge. Notification, as required by this section, shall contain such information as required by federal law[2].

Ordinance No. 5397 (1991).

11-3-26 Disconnection And Reconnection.

Upon the suspension of services or revocation of any permit issued pursuant to these regulations, the city manager may disconnect from the sewer system any user's premises if the user has failed to make such disconnection or comply with these provisions. Whenever a sewer has been disconnected by the city manager for failure to comply with these provisions, reconnection may be made only upon written authorization or of issuance of a new permit by the city manager. Before such permit is issued, the applicant shall pay the city for the cost of the disconnection made and for the anticipated cost of the reconnection.

Ordinance No. 5771 (1995).

11-3-27 City's Right Of Revision.

The city reserves the right to establish more stringent limitations or requirements on discharges to the POTW at any time.

Ordinance No. 5771 (1995).

11-3-28 Fees And Charges.

All users shall pay fees as set forth in section 4-20-28, "Monthly Wastewater User Charges," B.R.C. 1981.

Ordinance No. 5771 (1995).

11-3-29 Inspection.

(a) The city manager shall have access to and shall be allowed to inspect the facilities and records of any user to ascertain whether the purposes of this chapter are being met and whether all requirements are being satisfied. Occupants of premises where wastewater is created or discharged shall allow the city manager ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling records examination, taking photographs, and copying, or the performance of any of the city manager's duties under this chapter. The city, state and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and metering operations.

(b) If a user has security measures in force which would require proper identification and clearance before entry into the user's premises, the user shall make necessary arrangements with its security guards so that upon presentation of suitable identification, personnel from

[1] 40 C.F.R. 261.
[2] 40 C.F.R. 403.12(p).

the city or the EPA will be permitted to enter, without delay, for the purposes of performing their responsibilities under this chapter.

Ordinance No. 5771 (1995).

11-3-30 **Pretreatment Facilities.**

(a) Users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the city manager shall be operated and maintained at the user's expense.

(b) Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city manager for review, and must be certified as acceptable to the city manager before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city manager under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and must be certified as acceptable to the city manager prior to the user's initiation of the changes.

(c) All preliminary studies, plans and specifications must be prepared by a registered professional engineer retained by the discharger and the plans shall be reviewed and must be approved by the city manager prior to construction of the facility.

Ordinance No. 5771 (1995).

11-3-31 **Confidential Information.**

Any user submitting information to the city manager pursuant to this chapter may claim it to be confidential if the user demonstrates to the satisfaction of the city manager that release of such information would divulge information, processes, or methods of production entitled to protection as the user's trade secrets[1].

(a) The user must assert such claim at the time of submission by stamping the words "confidential business information" on each page containing such information. If no such claim is made at the time of submission, the city manager may make information available to the public without further notice[2].

(b) The city manager shall not publicly disclose such confidential information. Such information shall be available for use by the city manager or any federal or state agency in judicial review or enforcement efforts and proceedings involving the user furnishing the information.

(c) The city manager may provide confidential information to governmental agencies upon written request for uses directly related to enforcement of this chapter. But the city manager shall not transmit information accepted by the city as confidential to any governmental agency until the city manager has provided fourteen days' written notification to the user.

(d) Effluent or discharge data is not confidential unless the city manager agrees it is of a proprietary nature.

Ordinance No. 5771 (1995).

[1]40 C.F.R. 403.8(f)(1)(vii).
[2]40 C.F.R. 403.14.

TITLE 11 UTILITIES AND AIRPORT

Chapter 4 Airport[1]

Section:

11-4-1 Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by providing procedures for the operation of the municipal airport and standards to regulate fixed-base operators conducting business at the airport. It is also the city council's intention that the standards and regulations provided in this chapter and any lease agreements executed hereunder be subordinate to existing or future agreements between the city and the United States Federal Aviation Administration (FAA) or any other agency of the United States.

11-4-2 Fixed-Base Operators, Activities, And Responsibilities.

(a) A fixed-base operator is a person providing one or more of the following services on, or connected with, the property of the Boulder Municipal Airport:

(1) Transporting passengers by aircraft for hire;

(2) Providing flight instruction for hire;

(3) Transporting parcels or freight for hire;

(4) Towing gliders for hire;

(5) Renting aircraft;

(6) Renting hangar space for storage of aircraft;

(7) Servicing, repairing, rebuilding, or remodeling aircraft for hire;

(8) Selling gasoline or other aviation fluid products;

(9) Selling aircraft, aircraft parts, or other aircraft accessories; or

(10) Engaging in other commercial activities or services connected with or related to aviation or other aeronautical activities.

(b) No person shall engage in one or more activities of a fixed-base operator at the Boulder Municipal Airport unless such person:

[1]Adopted by Ordinance No. 4695. Derived from Ordinance Nos. 2771, 3763, 4283.

(1) Executes a lease with the city;

(2) Agrees to pay a minimum monthly rent, a percentage of gross income, or a combination thereof in an amount to be determined by agreement with the city;

(3) Agrees to provide sufficient and appropriate liability insurance subject to approval of the city manager; and

(4) Keeps true and accurate records of the operation that are available for inspection and examination by the city during ordinary business hours.

(c) Subject to approval by the city manager[1] and the FAA, a fixed-base operator may provide one or more of the services prescribed by subsection (a) of this section, which shall be set forth specifically in the lease. Two or more fixed-base operators may not combine or offer from the same building any of the services of a fixed-base operator without first obtaining approval therefor from the manager and prescribing those activities in each respective lease.

(d) The city manager is authorized to supervise and control the operation of each fixed-base operator at the airport, consistent with regulations and requirements of the FAA.

11-4-3 Aircraft Permitted At Airport.

(a) No person shall operate a device at the Boulder Municipal Airport or take off from or land at the airport unless such device is an aircraft.

(b) For purposes of this section, an aircraft does not include motorized hang gliders or "ultra light" vehicles, balloons, kites, or unmanned rockets.

11-4-4 Special Airport Activity Permits.

(a) No person shall conduct any activity at the Boulder Municipal Airport, other than through a lease as provided in section 11-4-2, "Fixed-Base Operators, Activities, And Responsibilities," B.R.C. 1981, without first obtaining a permit therefor from the city manager under this section.

(b) A nonprofit organization may apply to the city manager for a one day permit to conduct a special activity or exhibition relating to airport or aircraft activity at the Boulder Municipal Airport, by filing an application at least one week before the activity, paying a deposit of $25.00, and providing evidence of insurance coverage as prescribed by subsection 4-1-8(b), B.R.C. 1981.

(c) Before issuing a permit under this section, the city manager shall consult with the city police department and environmental protection and transportation divisions to determine whether the permit meets the requirements of this code and other ordinances of the city. The manager shall issue such permit upon a finding that in view of the type of activity and hours of operation, the activity complies with all ordinances of the city and would not constitute an obstruction of public property or a public health or safety hazard. The manager may impose reasonable conditions in the permit to assure the use of public property and protect the public health, safety, and welfare.

(d) The permittee is responsible for any damage to public property and for the cost of city police, fire, environmental protection, or cleaning services provided at the activity.

[1]Leases for three years or more must be approved by the city council, subsection 2-2-8(a), B.R.C. 1981.

11-4-5 Airport Construction Standards.

(a) All buildings, hangars, structures, or other improvements placed on the grounds connected with the Boulder Municipal Airport shall comply with the city building and zoning codes[1] and with all other applicable provisions of this code and other ordinances of the city. Before constructing or placing any building, hangar, structure, or other improvement on the airport grounds, the plans and specifications for any such structure shall be submitted to, and approved by, the city manager.

(b) All buildings, hangars, structures, or other improvements placed on the grounds connected with the Boulder Municipal Airport shall be subject to a lease with the city and comply with all requirements of the United States Aviation Agency or any other federal agency or board having jurisdiction over the airport.

11-4-6 Requirements For Air Carriers.

(a) No person shall operate an air carrier or regularly scheduled air taxi service from the Boulder Municipal Airport or use any facilities of the airport while operating such a carrier or service unless the carrier or service complies with the following conditions:

(1) An air carrier pays for each landing at the airport the fee prescribed in section 4-20-22, "Air Carrier Landing Fee," B.R.C. 1981. Fee payment shall be on such schedule as the city manager by regulation may prescribe.

(2) Each air carrier or air taxi service has insurance coverage meeting the current minimum requirements of the Civil Aeronautics Board, but in no event less than public liability insurance with minimum limits of $150,000.00 for any one person and $600,000.00 for any one accident and public property damage insurance with a minimum limit of $100,000.00 for any one accident.

(b) Each air carrier or air taxi service using the Boulder Municipal Airport shall file with the city manager a certificate signed by a qualified agent of an insurance company evidencing the existence of valid and effective policies of public liability and damage insurance required by paragraph (a)(2) of this section, the limits of each policy, the policy number, the name of the insuror, the effective date and expiration date of each policy, and a copy of the endorsement placed on each policy requiring ten days' notice by mail to the manager before the insuror may cancel the policy for any reason.

(c) Nothing in this section applies to aircraft belonging to or operated by any federal, state, or local government at the Boulder Municipal Airport.

Ordinance Nos. 5012 (1986); 5517 (1992).

11-4-7 Hangar And Tie Down Fees.

Airport users shall pay the hangar and tie down fees prescribed in section 4-20-1, "Airport Fees," B.R.C. 1981.

Ordinance No. 5425 (1991).

[1]Chapters 10-5 through 10-10, and title 9, "Land Use Code," B.R.C. 1981. (Ordinance No. 4803-1984).

TITLE 11 UTILITIES AND AIRPORT

Chapter 5 Storm Water And Flood Management Utility[1]

Section:

11-5-1 Legislative Intent.

(a) Purpose: The purpose of this chapter is to protect the public health, safety, and welfare:

(1) From damage from storm water runoff and floods by requiring that property owners in the city pay for a share of the cost of the drainage facilities necessary to manage such storm waters and floods; and

(2) By protecting and enhancing the water quality of the local receiving waters in a manner consistent with the federal Water Pollution Control Act, 33 U.S.C. section 1251, et seq., and the state Water Quality Control Act, C.R.S. section 25-8-101, et seq., through the regulation of non-storm water discharges to the municipal storm sewer system.

(b) Intent: It is the intent of the city council in enacting this chapter:

(1) To promote public health, safety, and welfare by permitting the movement of emergency vehicles during flooding periods and minimizing flood losses and the inconvenience and damage resulting from uncontrolled and unplanned storm water runoff in the city;

(2) To establish a master plan for storm water and flood management and its implementation, including, without limitation, a coordinated program of creating upstream ponding or temporary detention of storm waters;

(3) To establish a storm water and flood management utility to coordinate, design, construct, manage, operate, and maintain the storm water and flood management system;

[1]Adopted by Ordinance No. 4749. Derived from Ordinance Nos. 3927, 3943, 4335.

(4) To establish reasonable storm water and flood management fees based on the use of storm water and flood drainage facilities;

(5) To encourage and facilitate urban water resources management techniques, including, without limitation, detention of storm water and floods, reduction of the need to construct storm sewers, reduction of pollution, and enhancement of the environment;

(6) To prevent the introduction of pollutants to the municipal storm sewer system;

(7) To establish standards for permanent storm water runoff controls; and

(8) To establish requirements for the long-term responsibility for maintenance of structural storm water control improvements and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained, and do not threaten public safety.

(c) Findings: The city council finds and determines that the city has historically provided and will continue to provide storm water and flood management services by means of an enterprise, as that term is defined by Colorado law. The city council further declares its intent that the city's storm water and flood management utility enterprise be operated and maintained so as to exclude its activities from the application of article X, section 20 of the Colorado Constitution.

Ordinance Nos. 5601 (1993); 7400 (2004); 7417 (2005).

11-5-2 **Definitions.**

The following words used in this chapter have the following meanings, unless the context clearly indicates otherwise:

"Facilities" means all structures and equipment and all uses of land that are made in conjunction with or that are related or incidental to the construction, installation, or use of the structures and equipment necessary to contain and control storm water including, without limitation, conduits, channels, bridges, pipes, and detention ponds.

"Grant" means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid. "Grant" does not include:

(a) Any indirect benefit conferred upon the utility enterprise from the state or any local government in Colorado;

(b) Any revenues resulting from rates, fees, assessments, or other charges imposed by the utility enterprise for the provision of goods or services by such enterprise; or

(c) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by the utility enterprise; or

(d) Any other receipt of revenues excluded from the definition of "grant" under Colorado constitution or law.

"One hundred-year floodplain" means the area that would be inundated by a flood having a one percent chance of being equalled or exceeded in one year.

"Pollutant" means dredged spoil, dirt, sediment, slurry, solid waste, incinerator residue, sewage, biosolids, garbage, trash, chemical waste, biological nutrient, biological material, radioactive

material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

"Storm water and flood management utility enterprise" means the storm water and flood management utility business owned by the city, which business receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this code or any other applicable law.

"Storm water quality best management practices" means practices intended to prevent or reduce the discharge of pollutants directly or indirectly to storm water including, without limitation, schedules of activities, prohibitions of practices, pollution prevention and educational practices, maintenance procedures, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, drainage from raw materials storage and other receiving waters, or storm water conveyance systems. Storm water quality best management practices include the practices, facilities, or improvements identified in the City of Boulder *Design and Construction Standards*.

Ordinance Nos. 5601 (1993); 7400 (2004).

11-5-3 **Master Drainage Plan.**

(a) The city manager shall develop a master drainage plan for the city, based on engineering studies, that indicates the location of all drainage facilities in the city, including those facilities that currently exist and those determined to be needed and that are intended to be constructed in the future. The plan shall include all major drainage ways that directly or indirectly affect drainage within the city, all drainage basins in the city, and all natural drainage courses and other drainage facilities required to provide for the drainage and management of surface waters within the drainage ways and basins and to carry such waters to designated points without overflow or discharge. The plan may also show any other information that the manager deems desirable. The city manager shall solicit public participation during the formulation of the master drainage plan and other phases of implementation of the storm drainage and flood management program provided in this chapter.

(b) The purpose of the master drainage plan prescribed by this section is to identify and alleviate present and future drainage and flooding problems in the city by means of presenting in an orderly fashion the general data and information essential in understanding the relationship between rainfall and storm runoff. The master drainage plan serves as the official designation of drainage facilities and drainage ways and basins shown thereon and may be altered from time to time to conform to existing conditions.

(c) Any time a project is proposed by the city to implement the master drainage plan, the city manager shall hold a public hearing in the neighborhood where the project is to be constructed, after publishing notice in a newspaper of general circulation.

(d) The city manager may undertake supplementary studies to determine the estimated cost of constructing the drainage facilities shown on the master drainage plan, including the expense of any necessary land acquisition.

(e) The city council shall adopt the master drainage plan by motion. No substantial modifications thereof may be made unless the council first approves them.

(f) After adoption of the master drainage plan, the city clerk shall retain a copy on file for public inspection during normal business hours.

(g) In the annual proposed city budget, the city manager shall submit to the city council a proposed budget for construction of drainage facilities, containing a statement of all amounts currently in the storm water and flood management account, an estimate of anticipated revenues for the ensuing budget year, and a list of the proposed projects to be constructed or developed.

11-5-4 Connections To The Storm Water Utility System.

(a) Connections By Authorized Personnel: No person not authorized by the city manager shall tap or connect to any part of the storm water and flood control utility.

(b) Connections Made In Compliance With Approval: No person shall fail to make authorized connections to the storm water and flood control utility in accordance with the terms and conditions of the permit or approval issued therefor and the City of Boulder *Design and Construction Standards*.

(c) Costs Of Connection: No person requesting or required to make connections to the storm water and flood control utility shall fail to pay the costs for such connections.

(d) Prohibited Connections: No person shall make, maintain, or use any illicit connection to the city's storm water and flood control utility, including, without limitation, illicit connections made in the past. No person shall fail to remove any such prior connection within sixty days of adoption of this section.

Ordinance No. 7400 (2004).

11-5-5 Discharges To The Storm Water Utility System.

(a) Discharges Prohibited: No user or other person shall discharge any sewage, other polluted waters, or other deleterious substance from any premises within the city into or upon any public highway, street, sidewalk, alley, land, public place, stream, ditch, or other water-course or into any cesspool, storm or private sewer, or natural water outlet, except where suitable treatment has been provided in accordance with provisions of applicable federal, state, and local laws.

(b) Cleaning Of Hard Surfaces: The owner of any paved parking lot, street or drive shall clean the pavement as necessary to prevent the buildup and discharge of pollutants. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this chapter, or other applicable federal, state, and local laws.

(c) Material Storage: No person shall store materials including, without limitation, stockpiles used in construction and landscaping activities, in a manner which may cause discharge or threatened discharges of pollutants into the storm sewer system or receiving water.

(d) Exemptions: The following discharges are exempt from the discharge permit requirements established by this chapter:

(1) Landscape irrigation and lawn watering associated with single-family detached or duplex development, uncontaminated groundwater from an individual single-family residential detached or duplex foundation drainage system, individual residential car washing or car washing of less than two consecutive days in duration for charity or nonprofit fundraising, dechlorinated swimming pool discharges, water line and fire hydrant flushing, firefighting activities, or street cleaning operations conducted by the city; or

(2) Any discharge that is authorized by the city manager.

Ordinance No. 7400 (2004).

11-5-6 Master Drainage Plan, Land Development, And Discharges Into The Storm Water System.

(a) Drainage Facilities Required: No developer of land in the city shall fail to provide on such person's property all reasonably necessary drainage facilities to ensure adequate drainage and management of storm waters and floods falling on or flowing onto the property.

(b) Storm Water And Flood Control Management Plan Required: Before the city manager issues a city building permit for the construction of any building or structure other than a single-family dwelling and appurtenant structures, the property owner or building permit applicant shall submit to the manager a detailed storm water and flood management plan that meets state and federal requirements, this chapter, and the City of Boulder *Design and Construction Standards*. A permit will not be issued until the manager determines, based upon generally accepted engineering principles in storm and drainage control, that the plan meets the requirements of this chapter and the provisions of the master drainage plan that relate to the drainage basin in which the property is located.

(1) Storm Water And Flood Management Plan Required: The storm water and flood management plan shall establish, locate, or otherwise define the alignment and boundary of any natural drainage way, drainage facility, or subdrainage area on the property; include drawings, profiles, and specifications for the construction and installation of channels, conduits, reservoirs, culverts, bridges, easements, storm water quality improvements and storm water quality best management practices, and all other drainage facilities reasonably necessary to ensure that storm waters and floods (including drainage from other lands that will contribute runoff to the property) will be controlled, as provided in the City of Boulder *Design and Construction Standards*; and contain a schedule of the estimated dates of completion of construction for all drainage facilities shown on the plan.

(2) Compliance With Approved Plan Required: No person shall fail to comply with an approved storm water and flood management plan submitted under this section.

(3) Plan Required With Development Application: No person shall receive an approval for a subdivision, or site review under this code or any ordinance of the city unless the person submits and obtains approval of the storm water and flood management plan required by this section.

(4) On-Site Detention And Water Quality Improvements Required: On-site detention storage and water quality improvements shall be provided in accordance with the reasonable requirements of urban hydrology and the standards established in the City of Boulder *Design and Construction Standards*.

(c) General Requirements For All Construction Activities: No person shall fail to follow or otherwise violate the erosion control practices in the City of Boulder *Design and Construction Standards*. All such controls shall be installed and maintained in conformity with the standards in the City of Boulder *Design and Construction Standards*.

(d) Maintenance Of Water Quality Improvements: No person shall fail to maintain any improvement that is required as part of a storm water and flood management plan. Any improvement associated with storm water quality best management practices shall be properly inspected and serviced, if necessary, at least once per year or as approved in the storm water and flood management plan to ensure proper function of such improvement. Records of

maintenance and service shall be kept on file by the owner for a minimum of three years and shall be made available for review by the city manager.

(e) Waiver Of Requirements: The city manager may waive any or all of the requirements of this section for particular developments or impose additional requirements, if such waiver or additional requirement is reasonably necessary due to the existence of special geological or topographical conditions and meets the purposes of this chapter prescribed by section 11-5-1, "Legislative Intent," B.R.C. 1981, or as may be allowed under the City of Boulder *Design and Construction Standards*.

(f) Easement Requirements: No owner of a parcel of land through which a natural drainage way flows as shown on the master drainage plan shall obtain a building permit to develop the property, unless the person first grants to the city at no charge a permanent easement to construct, maintain or reconstruct the channel along the drainage way.

(g) Financial Guarantee: In order to guarantee the construction of any drainage facility shown on an approved storm water and flood management plan submitted under this section, the owner of the land shall submit to the city a financial guarantee in a form satisfactory to the office of the city attorney for the construction of the facility, before any building permit is issued.

Ordinance No. 7400 (2004).

11-5-7 Permit To Discharge Groundwater Into The Storm Sewer System.

(a) Permit Required: No person shall fail to obtain a groundwater discharge permit prior to discharging any groundwater in the storm sewer system except as authorized by this chapter.

(b) Application And Fee: An applicant for a groundwater discharge permit shall pay the fee prescribed by section 4-20-31, "Wastewater Classification Survey Filing Fee And Industrial And Groundwater Discharge Permit Fees And Charges," B.R.C. 1981, and shall complete an application form provided by the city manager. Any person required to have a groundwater discharge permit shall apply for and receive a permit prior to discharging into the storm sewer system.

(c) Requirements: Groundwater discharge permits are subject to all provisions of this chapter and all other applicable regulations and user charges. Permits shall meet the following standards and may contain conditions including, without limitation:

(1) Limits on the concentration of chemical constituents and physical characteristics based on State of Colorado Department of Human Health and Environment stream standards;

(2) Limits on rate and time of discharge or requirements for flow regulation and equalization;

(3) Requirements for installation and maintenance of treatment equipment, and inspection and sampling facilities;

(4) Specifications for monitoring program that include sampling locations; frequency of sampling; number, type and standards for tests; and reporting schedules;

(5) Requirements for submission of technical reports, discharge reports, and compliance progress reports;

(6) Requirements for maintaining and retaining records relating to groundwater discharge;

(7) Requirements for notification of the city in the event that the permittee violates permit conditions and standards;

(8) Requirements for notification of the city of the new introduction of constituents or any change in character of the discharge or average volume being introduced into the storm sewer system;

(9) Requirements that groundwater discharges are kept separate in the permittee's facility and pretreated, if necessary, to meet permit limits before combining with the storm water or other site discharges;

(10) A requirement that the permittee will indemnify the city, its officers, employees and agents for damages, judgments, costs and expense which may in any manner accrue against such party as a consequence of the grant of such permit; and

(11) Other conditions as deemed necessary by the city manager to enforce the provisions of this chapter.

(d) Duration Of Discharge Permit: A groundwater discharge permit will be issued for the specified time period needed, not to exceed five years. The permittee shall reapply for the renewal of a permit at least ninety days prior to the expiration of the permittee's existing permit.

(e) Modification Of The Discharge Permit: The terms and conditions of the permit may be subject to modification by the city manager during the term of the permit if limitations or requirements are modified, if necessary to meet requirements of the city's National Pollutant Discharge Elimination System discharge permit, or if there is other good cause. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(f) Violations Prohibited: No person shall violate the terms and conditions of the groundwater discharge permit.

(g) Discharge Permit Annual Fee: A permittee shall pay the fees prescribed by section 4-20-31, "Wastewater Classification Survey Filing Fee And Industrial And Groundwater Discharge Permit Fees And Charges," B.R.C. 1981, based on gallons per day of flow for industrial discharge and a flat-fee rate for groundwater discharge.

(h) Permit Not Assignable: A groundwater discharge permit may not be sold, traded, assigned, sublet, or otherwise transferred. Any new user must obtain a groundwater discharge permit regardless of whether a permit previously existed for the same premises.

Ordinance Nos. 7400 (2004); 7417 (2005).

11-5-8 Special Agreements And Permits.

(a) Agreements Or Permits: No statement contained in this chapter shall be construed as prohibiting special written agreements, contracts, or permits between the city and any person allowing wastes to be admitted to the storm water sewer system.

(1) A special written agreement or permit may include groundwater, but shall not include domestic wastes.

(2) Except as set forth below, the agreement or permit shall require monitoring and treatment consistent with, or similar to, federal, state, and local laws and regulations.

(3) The applicant shall demonstrate to the city manager that there is adequate capacity in the storm water drainage system, considering, without limitation, the design capacity for storm events and present and future development in areas served by the storm water drainage system.

(4) The user or beneficiary of such agreement or permit shall compensate the city for any additional costs of treatment and for any other costs incurred by the city as determined by the city manager, including, without limitation:

(A) Costs associated with review and issuance of the permit or agreement consistent with hourly review rates for city staff as outlined in section 4-20-43, "Development Application Fees," B.R.C. 1981;

(B) Costs associated with ongoing monitoring; and

(C) Indemnification of the city, its officers, employees, and agents, for any costs to such parties, including staff time and attorney's fees, for damages, judgments, fines, settlements, costs, and expense which may in any manner accrue against such party as a consequence of the grant of such permit.

(b) Polluted Discharge Agreement Or Permit: The city manager may execute an agreement or issue a permit to exceed any specific pollutant limitations required by federal, state or local law only if the manager finds that:

(1) The user is making reasonable progress toward eliminating the violation;

(2) Compliance with the specific pollutant limitation during a time period agreed upon for installation of proper pretreatment equipment would impose undue hardship; and

(3) Acceptance of the discharge does not adversely affect the storm water utility nor cause violation of the city's National Pollutant Discharge Elimination System discharge permit and applicable federal and state laws.

(c) Violation Of Agreement Or Permit Prohibited: No person shall violate the terms and conditions of an agreement or permit issued under this section.

Ordinance No. 7400 (2004).

11-5-9 **Storm Water And Flood Management Utility.**

(a) There is hereby created a storm water and flood management utility in the department of public works under the control of the city manager, empowered to implement the provisions of this chapter.

(b) Except as provided in subsection (c) of this section, the owner of each parcel of land in the city shall pay the storm water and flood management fee prescribed by section 4-20-45, "Storm Water And Flood Management Fees," B.R.C. 1981, for the construction, operation, maintenance, and replacement of the storm water and flood management system.

(c) Since the basis of the fee is determined according to the anticipated use of drainage facilities according to improvements made on the property, no fee will be charged for any parcel of land that is entirely undeveloped.

Ordinance No. 7400 (2004).

11-5-10 Use Of Fees.

(a) The storm water and flood management utility shall hold all monies received by the city under this chapter in a separate account and make expenditures thereof only for the purpose of:

(1) Development review, administration, storm water quality, inspection, construction, installation, repair, maintenance, improvement, replacement, and reconstruction of drainage facilities in the city and all other facilities necessary adequately to handle storm waters and floods in the city; and

(2) The purchase of interests, including, without limitation, ownership and easements, in land that may be necessary to implement the purposes of this chapter, including, without limitation, land for installation and construction of drainage facilities that are reasonably required for the proper handling of storm waters and floods in the city.

(b) The city may pledge storm water and flood management fees collected under this chapter and those anticipated to be collected to the retirement of the principal and interest of revenue or general obligation bonds issued by the city for financing any of the activities set forth in subsection (a) of this section.

Ordinance Nos. 5190 (1989); 7400 (2004).

11-5-11 Storm Water And Flood Management Utility Plant Investment Fee.

(a) Any person desiring to develop property in the city or to annex developed property into the city shall pay a storm water and flood management plant investment fee pursuant to the schedule of fees set forth in section 4-20-46, "Storm Water And Flood Management Utility Plant Investment Fee," B.R.C. 1981.

(1) In the case of annexation of developed property, the plant investment fee prescribed by this section shall be paid prior to the second reading of the annexation ordinance annexing the property into the city.

(2) In the case of development on previously undeveloped property, the plant investment fee prescribed by this section shall be paid prior to issuance of a certificate of occupancy by the city for that property.

(3) In the case of a change or addition to developed property, the plant investment fee prescribed by this section shall be paid prior to issuance of a building permit by the city for that property.

(b) In calculating the plant investment fee, the city manager shall credit each developed property with an amount equal to the fee that would have been charged before the change or addition, but if the credit is less than the amount previously paid for a storm water and flood utility plant investment fee, the amount paid shall be allowed as a credit. For purposes of determining credits against plant investment fee charges, "developed property" shall be defined as those properties billed a monthly storm water and flood management fee at the time of the building permit application. The credit prescribed by this subsection applies only to the property served and only to storm water and flood management utility plant investment fees owed to the city and not to other utility fees or charges. No credit shall be given to any property at time of annexation. No refund shall be paid to any person.

(c) The city may look to the owner and the owner's successors in interest of each property, building, lot, house, or dwelling unit located upon the particular property for payment of the assessed storm water and flood management utility plant investment fee.

(d) All building permit applications and annexation requests submitted to the storm water and flood management utility shall be subject to the plant investment fee prescribed by section 4-20-46, "Storm Water And Flood Management Utility Plant Investment Fee," B.R.C. 1981, in effect as of the date of submission.

(e) The plant investment fee for each permanently affordable unit which is subject to concept review under section 9-2-13, "Concept Plan Review And Comment," B.R.C. 1981, and was reviewed by the planning board before September 16, 1999, the effective date of this ordinance, shall be set at the fee level in effect at the time of the final approval of the concept plan for the residential development, including such unit.

(f) The city manager may have access at reasonable times to all premises for purposes of verifying the existence of developed property and to determine plant investment fees.

(g) The storm water and flood management utility shall hold all monies received by the city as storm water and flood management plant investment fees pursuant to this chapter and make expenditures thereof only for the purpose of storm water and flood management utility capital improvements, reconstructions or expansions.

Ordinance Nos. 5190 (1989); 5526 (1992); 5769 (1996); 6093 (1999); 7400 (2004).

11-5-12 **Billing And Payment Of Fees.**

(a) The city manager shall send bills for the storm water and flood management fee no less often than once every three months and no more often than once every month. Failure to so notify a customer shall not constitute a waiver of any fee or charge imposed by this chapter. The fee may be included on the same bill that includes water or wastewater service charges as provided in chapters 11-1, "Water Utility," and 11-2, "Wastewater Utility," B.R.C. 1981.

(b) The fee charged in each billing period and any notices relating to the storm water and flood management utility are effective upon mailing the bill or notice to the last known address of the utility user shown on the records of the utility.

(c) All charges for the use of the utility prescribed by this chapter are due within ten days after the date of the bill and are payable at the office of the director of finance and record, ex-officio city clerk.

(d) All utility payments received without qualification shall be applied first to satisfy miscellaneous utility billing charges, thereafter to satisfy storm water and flood management charges, thereafter to satisfy wastewater service charges, and finally to satisfy water service charges.

Ordinance Nos. 5190 (1989); 7400 (2004).

11-5-13 **Certification Of Unpaid Charges To County Assessor.**

If any person fails or refuses to pay when due any charge imposed under this chapter, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, as

provided in section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

Ordinance No. 7400 (2004).

11-5-14 Charges Are Lien On Property.

(a) No owner of a parcel of land in the city using the storm water and flood management system shall fail to pay any storm water and flood management fee prescribed by this chapter.

(b) All fees, interest, and the cost of collecting them, if any, are a lien that is prior and superior to all other liens, claims, titles, and encumbrances, whether prior in time or not, except liens for general taxes, and remain a lien upon the property from the date that the fees, interest, and collection costs, if any, are due until the time they are paid.

(c) The city may enforce the lien against the property or the liability against the owner in an action at law or an action to enforce the lien.

Ordinance No. 7400 (2004).

11-5-15 Flood Channel Maintenance.

No owner, occupant, lessee, agent, or other person in control of property located within a flood channel shall fail to maintain such property free of garbage and rubble.

Ordinance Nos. 5199 (1989); 7400 (2004).

11-5-16 Flood Channel Maintenance Powers Of The City Manager.

(a) If the city manager finds that conditions exist on any property in violation of section 11-5-15, "Flood Channel Maintenance," B.R.C. 1981, the manager shall request that the owner, occupant, lessee, agent, or other person in control of the property correct the violation and bring the property into conformity with the standards of that section. The city manager shall notify the owner, occupant, lessee, agent or other person in control of such property that garbage or rubble must be removed as provided by section 11-5-15, "Flood Channel Maintenance," B.R.C. 1981, within seven days, or such longer time as the manager finds appropriate in view of the nature and extent of the violation. Notice under this section is sufficient if it is deposited in the mail addressed to the last known owner of the property listed on the records of the Boulder County Assessor or to the last known address of the occupant, lessee, agent or other person in control of the property.

(b) If any person notified fails to correct the violation as required by the notice prescribed by subsection (a) of this section, the city manager may correct the violation by removing garbage or rubble and shall charge the costs thereof, plus an additional amount of $25.00 for administrative costs, to the owner, occupant, lessee, agent or other person in control of the property.

(c) If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, And Assessments To County Treasurer For Collection," B.R.C. 1981.

(d) Notwithstanding the foregoing provisions, if the city manager finds that conditions exist on any property in violation of section 11-5-15, "Flood Channel Maintenance," B.R.C. 1981, and further finds such conditions constitute an immediate hazard, the city manager may correct the violation without notice to the owner, occupant, lessee, agent, or other person in control of such property and enforce the provisions of subsections (b) and (c) of this section, after providing the owner, occupant, lessee, agent, or other person in control of the property an opportunity for hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

Ordinance Nos. 5199 (1989); 7400 (2004).

11-5-17 **Storm Water And Flood Management Utility Enterprise.**

In addition to any of the powers it may have by virtue of any of the applicable provisions of state law, the city charter, and this code, the storm water and flood management utility enterprise shall have the power under this chapter:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better and to extend storm water and flood management facilities, wholly within or wholly without the city or partially within and partially without the city, and to acquire in the name of the city by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain storm water and flood management facilities for its or the city's own use and for the use of public and private consumers and users within and without the territorial boundaries of the city;

(c) To accept federal funds under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of storm water and flood management facilities;

(d) To accept federal funds under any federal law in force for the construction of necessary storm water and flood management facilities;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning storm water and flood management facilities, whether acquired or constructed by the storm water and flood management utility enterprise or the consumer, and to accept grants and contributions from consumers for the construction of storm water and flood management facilities;

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of or any commodity from such storm water and flood management facilities; and in anticipation of the collection of revenues of such facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of such facilities; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the storm water and flood management facilities including the revenues of improvements, betterments or extensions thereto thereafter constructed or acquired, as well as the revenues from existing storm water and flood management facilities;

(h) To enter into and perform contracts and agreements with other governmental entities and utility enterprises for or concerning the planning, construction, lease, or other acquisition and the financing of storm water and flood management facilities and the maintenance and operation thereof;

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section or elsewhere in state law, the city charter, or this code, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the storm water and flood management utility enterprise or city is recreated thereby, and if no property, other than money, of the storm water and flood management utility enterprise or city is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the utility enterprise or city is thereby incurred in any manner for any purpose; and

(j) To issue refunding bonds pursuant to this code or other applicable law to refund, pay, or discharge all or any part of its outstanding revenue bonds issued under this article or under any other law, including any interest thereon in arrears or about to become due or yield reduction payments requested to be made to the federal government to maintain the tax-exemption of interest on the refunding or refunded bonds, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or in the related utility rates to be charged, affecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal storm water and flood management facilities.

Ordinance Nos. 5601 (1993); 7400 (2004).

11-5-18 **Revenue Bonds.**

(a) In accordance with and through the provisions of this section, the storm water and flood management utility enterprise, through its governing body, is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of such enterprise or from any other available funds of such enterprise. Such bonds or other obligations shall be authorized by ordinance, adopted by the city council in the same manner as other ordinances of the city. Such bonds or other obligations may be issued without voter approval provided that, during the fiscal year of the city preceding the year in which the bonds or other obligations are authorized, the storm water and flood management utility enterprise received under ten percent of its annual revenue in grants or, during the current fiscal year of the city, it is reasonably anticipated that such enterprise will receive under ten percent of its revenue in grants. Nothing in this section shall be construed so as to require voter approval where such approval is not otherwise required by the constitution and laws of the state or the charter of the city including, without limitation, refunding bonds.

(b) The terms, conditions, and details of said bonds, or other obligations, and the procedures related thereto shall be set forth in the ordinance authorizing said bonds or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purpose for which the same be issued shall not be so limited and except that said bonds, or other obligations, must be sold at public sale in accordance with the provisions of the city charter. Notice of public sale shall comply with the requirements of the city and need not comply with paragraph 31-35-404(2)(c), C.R.S. Each bond, note, or other obligation issued under this section shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable from the revenues and other available funds of the storm water and flood management utility enterprise pledged for the payment thereof.

Notwithstanding any other provision of law to the contrary, such bonds or other obligations may be issued to mature at such times and shall bear interest at such rates as shall be determined by the city council. Refunding bonds of the storm water and flood management utility enterprise need not comply with section 31-35-412, C.R.S., but shall be issued as provided in part 1 of article 56 of title 11, C.R.S., or any other applicable law. The powers provided in this section to issue bonds, or other obligations, are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this section shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly. Bonds, notes, or other obligations may be issued pursuant to this section without regard to the provisions of any other law. Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall control with regard to any bonds lawfully issued pursuant to this section.

(c) Any pledge of revenue or other funds of the storm water and flood management utility enterprise shall be subject to any limitation on future pledges thereof contained in any ordinance of the governing body of the storm water and flood management utility enterprise or of the city authorizing the issuance of any outstanding bonds or other obligations of the storm water and flood management utility enterprise or the city payable from the same source or sources. Bonds or other obligations, separately issued by the city and the storm water and flood management utility enterprise but secured by the same revenues or other funds shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

Ordinance Nos. 5601 (1993); 7400 (2004).

11-5-19 **Governing Body.**

For all purposes under the city charter and this code, the governing body of the storm water and flood management utility enterprise shall be the city council. The governing body shall be subject to all of the applicable laws, rules, and regulations pertaining to the city council. Whenever the city council is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the city council, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the storm water and flood management utility enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the city council for the same or similar matters.

Ordinance Nos. 5601 (1993); 7400 (2004).

11-5-20 **Maintenance Of Enterprise Status.**

The storm water and flood management utility enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of article X, section 20 of the Colorado Constitution. Specifically, but not by way of limitation, the enterprise is not authorized and shall not receive ten percent or more of its annual revenue in grants.

Ordinance Nos. 5601 (1993); 7400 (2004).

TITLE 11 UTILITIES AND AIRPORT

Chapter 6 Boulder Cable Code[1]

Section:

11-6-1 Short Title.

This chapter shall be known and may be cited as "The Boulder Cable Code."

11-6-2 Definitions And Word Usage - General.

Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in title 47 of the United States Code, chapter 5, subchapter V-A, 47 U.S.C. sections 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

"Abandon" or "abandonment" means the surrender, relinquishment or disclaimer of property or rights to operate a cable system, evidenced by non-use for a period of at least fifteen days and lack of any significant evidence of intent to resume use.

"Access channel" means any channel on a cable system set aside by a franchisee for noncommercial public, educational, or governmental use.

"Affiliate" means any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

"Applicable law or laws" means all duly enacted and applicable federal, state and city constitutions, charters, laws, ordinances, codes, rules, regulations and orders, as the same may be adopted or amended from time to time.

"Applicant" means any person submitting an application within the meaning of this chapter.

[1]Adopted by Ordinance No. 5914.

11-6-2

"Application" means any proposal, submission or request to: a) construct and/or operate a cable system within the city; b) transfer a franchise; c) renew a franchise; d) modify a franchise; or e) seek any other relief from the city pursuant to this chapter or a franchise agreement. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence.

"Basic cable service" or "basic service" means any service tier that includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. sections 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as further amended from time to time.

"Cable operator" has the meaning ascribed to it under the Cable Act.

"Cable service" means: a) the one-way transmission to subscribers of video programming or other programming services; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable system" or "system" has the meaning ascribed to it under title VI of the Cable Act, plus all facilities and devices appurtenant thereto, including, by way of example and not limitation, distribution plant equipment boxes, poles and guys. The goal here is to bring not only the system but also equipment that may not be part of the system under federal law within the provisions dealing with the placement of the system and the obligation of the operator to maintain facilities.

"Control" means the legal or practical ability to exert actual working control, in whatever manner exercised, over the affairs of a franchisee, grantee or applicant, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

"Educational access channel" means any channel on a cable system set aside for non-commercial educational use.

"Fair market value" means the price that a willing buyer would pay to a willing seller for a going concern based on the cable system valuation prevailing in the industry at the time but with no value allocated to the franchise itself.

"FCC" means the Federal Communications Commission or its designee.

"Franchise" means a non-exclusive authorization granted in accordance with this chapter to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, maintenance and repair of a cable system along the public rights-of-way within all or a specified area of the city. Any such authorization, in whatever form granted, shall not mean or include: a) any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city; b) any permit or authorization required in connection with operations on public streets, rights-of-way, or other property, including, without limitation, permits for attaching devices to poles or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along public rights-of-way; c) agreements required for the use of conduits and poles, whether publicly or privately owned; or d) express or implicit authorization to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to section 621(a)(2) of the Cable Act, 47 U.S.C. section 541(a)(2)).

"Franchise agreement" means a contract entered into in accordance with the provisions of the Boulder City Charter and this chapter between the city and a franchisee that sets forth, subject to

the charter and this chapter, the terms and conditions under which a franchise will be exercised and also includes an interim permit agreement to the extent further provided in this chapter.

"Franchise area" means the area of the city that a franchisee is authorized to serve by its franchise agreement.

"Franchisee" means a natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a cable television franchise by the city.

"Governmental access channel" means any channel on a cable system set aside for noncommercial government use.

"Grantee" means any person granted a franchise pursuant to this chapter, but who has not yet entered into a franchise agreement with the city.

"Gross revenues" means all revenues derived by a franchisee or by another person who is a cable operator subject to a franchise fee under 47 U.S.C. section 542 or applicable law governing the provision of cable service. In the case of a franchisee, the term "gross revenues" means the gross revenues of the franchisee or any other entity that is a cable operator of such system in any way derived from the operation of a franchisee's cable system to provide cable services in the franchise area. Gross revenues include, by way of illustration and not limitation, monthly fees charged subscribers for any basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; revenues from rentals or sales of converters or other equipment; advertising revenues; revenues from program guides; and revenues from home shopping channels.

Gross revenues shall be the basis for computing the franchise fee under any franchise. Gross revenues shall not include: a) any taxes or fees on services furnished by a franchisee which are imposed directly on any subscriber or user by the state, city, or other governmental unit and which are collected by a franchisee on behalf of said governmental unit; b) programming revenues of any affiliate of a franchisee whose programming is carried on the cable system where such revenues are paid to said affiliate by the franchisee and recovered by the franchisee through charges to subscribers that are included in gross revenues; c) amounts paid to a franchisee by a subscriber but refunded to the subscriber; and d) amounts booked as revenues which are bad subscriber debt, net of any collections.

"Interim permit agreement" means an authorization granted to a person already providing cable service within the city for the sole purpose of allowing such entity to continue to operate within the city pending completion of the renewal process under the Cable Act by the city. Except where expressly provided to the contrary, every obligation of a franchisee and every provision that, by its terms, would apply to a franchise or franchise agreement under this chapter shall also be read to apply to a permittee and an interim permit agreement.

"Overbuild" means a cable system constructed to serve subscribers in an area of the city served by an existing cable system.

"PEG use" and similar formulations of this term means non-commercial educational, governmental and public use of channels on the cable system.

"Person" means an individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the city.

"Public access channel" means any channel on a cable system set aside for noncommercial use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

"Public right-of-way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the city now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein, or in any franchise agreement, to a "public right-of-way" shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

"Sale" means any sale or exchange or similar transaction.

"Service tier" means a package of two or more cable services for which a separate charge is made by the franchisee, other than a package of premium and pay-per-view services that is not subject to rate regulation under the Cable Act and applicable FCC regulations because those services are also sold on a true à la carte basis.

"Subscriber" means any person or entity that legally receives any service by means of or in connection with a cable system.

"Television shadow area" means that part of the city west of Broadway that cannot receive clear off-air broadcast signals from Lookout Mountain.

"Transfer" means any transaction in which: a) all or substantially all of the cable system is sold or assigned; b) there is any change, acquisition, or transfer of control of the franchisee; or c) the rights and/or obligations held by the franchisee under the franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party. Lease of an insubstantial portion of the assets of a cable system shall not constitute a transfer.

"User" means a person or organization utilizing a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

Ordinance No. 7197 (2002).

11-6-3 **The Franchise.**

(a) Grant Of Franchise: The city may grant one or more cable television franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this chapter. In no event shall this chapter be considered a contract between the city and a franchisee.

(b) Franchise Required: Except as federal law may otherwise provide, no person may construct or operate a cable system without a franchise granted by the city. No person may be granted a franchise or interim permit agreement without having entered into a franchise agreement with the city pursuant to this chapter.

(c) Franchise Characteristics:

(1) A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the city or any portion thereof; affect the city's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes as it determines appropriate; or affect the city's right to itself construct, operate, or maintain a cable system, with or without a franchise.

(2) All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the public rights-of-way, and the city reserves the right to reasonably designate where a franchisee's facilities are to be placed within the public rights-of-way.

(d) Franchisee Subject To Other Laws, Police Power:

(1) A franchisee shall at all times be subject to and shall comply with all applicable federal, state, and, except as specified in the franchise, local laws. Without limiting the foregoing, a franchisee shall at all times be subject to all lawful exercise of the police power of the city, including all rights the city may have under 47 U.S.C. section 552, article XX, section 6 of the Colorado Constitution, and laws governing permitting, zoning and control of streets and public rights-of-way.

(2) No course of dealing between a franchisee and the city, or any delay on the part of the city in exercising any rights under this chapter, shall operate as a waiver of any such rights of the city or acquiescence in the actions of a franchisee in contravention of rights except to the extent expressly waived by the city or expressly provided for in a franchise agreement.

(3) The city shall have the maximum plenary authority to regulate cable systems, franchisees, and franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by the city in a franchise agreement, they are reserved, whether expressly enumerated or not.

(4) However, notwithstanding the foregoing, a franchisee, by entering into a franchise, does not waive its rights to challenge the lawfulness of any city action, including, without limitation, on the ground that a particular action is an unconstitutional impairment of contractual rights.

(e) Operation Of A Cable System Without A Franchise:

(1) Any person who occupies public rights-of-way for the purpose of operating or constructing a cable system and who does not hold a valid franchise from the city shall be, to the extent permitted by applicable law, subject to all provisions of this chapter including, without limitation, sections 11-6-5, "Construction Provisions," and 11-6-10, "Franchise Fee," B.R.C. 1981. In its discretion, the city at any time may require such person to enter into a franchise agreement within thirty days of receipt of a written notice by the city that a franchise agreement is required; require such person to remove its property and restore the area to a condition satisfactory to the city within such time period; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; require such person to pay fair compensation to the city in the form of fees or in-kind benefits; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages for trespass. In no event shall a franchise be created unless it is issued by action of the city and is memorialized in a written franchise agreement.

(2) The city may enter into an interim permit agreement if it determines that it is appropriate to do so to protect the public interest. An interim permit agreement shall be scheduled to expire three years from the date of its issuance. However, the city may extend an interim

permit to remain in effect until the city completes the renewal process under the Cable Act or until the permittee enters into a franchise agreement, whichever is shortest.

(f) Acts At Franchisee's Expense: Any act that a franchisee is or may be required to perform under this chapter, a franchise agreement, or applicable law shall be performed at the franchisee's expense, unless expressly provided to the contrary in this chapter, the franchise agreement, or applicable law.

(g) Eminent Domain: Nothing herein or in any franchise shall be deemed or construed to impair or affect, in any way or to any extent, the right of the city to acquire the property of a franchisee through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify, expand or abridge, either for a term or in perpetuity, the city's right of eminent domain.

11-6-4 Applications For Grant, Renewal Or Modification Of Franchises.

(a) Written Application:

(1) A written application shall be filed with the city for a) grant of an initial franchise; b) renewal of a franchise under 47 U.S.C. section 546(a)–(g); or c) modification of a franchise agreement pursuant to this chapter or a franchise agreement. The provisions of this section shall not apply to the issuance of an interim permit agreement, nor shall the issuance of an interim permit agreement be deemed to mean that the permittee is qualified to hold a franchise, or that the terms of the permit are adequate to serve the cable-related needs and interests of the city. Notwithstanding the foregoing, the issuance or acceptance of an interim permit shall not prejudice the rights of the holder set forth in 47 U.S.C. section 546 (a)–(g).

(2) To be acceptable for filing, a signed original of the application shall be submitted together with three copies. The application must be accompanied by the required application filing fee as set forth in subsection 11-6-4(f), B.R.C. 1981, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

(3) All applications accepted for filing shall be made available by the city for public inspection.

(b) Contents Of Applications: A request for proposals for the grant of a franchise, including for a renewal franchise under 47 U.S.C. section 546(c), shall require, and any application submitted (other than an application submitted pursuant to 47 U.S.C. section 546(h)) shall contain, at a minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and persons in the applicant's direct ownership chain and all persons with ten percent or more ownership interest in the applicant and persons in the applicant's direct ownership chain; the persons who control the applicant and persons in the applicant's direct ownership chain; and all officers and directors of the applicant and persons in the applicant's direct ownership chain;

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel;

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including, without limitation, a demonstration that the applicant meets the following criteria:

(A) The applicant must be willing to comply with the provisions of this chapter and applicable laws; and to comply with such requirements of a franchise agreement as the city may lawfully require;

(B) The applicant must not have submitted an application for an initial or renewal franchise to the city, which was denied (including any appeals) on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three years preceding the submission of the application;

(C) The applicant shall not be issued a franchise if it may not hold the franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain, any necessary federal or state authorizations or waivers required to operate the cable system proposed;

(D) The applicant shall not be issued a franchise if, at any time during the five years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the city and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anti-competitive acts, fraud, racketeering, or other similar conduct;

(E) The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant is required to provide by law; and

(F) The applicant shall not be issued a franchise if an elected official of the city holds a controlling interest in the applicant or an affiliate of the applicant.

Notwithstanding the foregoing, the city shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise under subparagraph 11-6-4(b)(3)(D), B.R.C. 1981, by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, the remoteness of the matter from the operation of cable systems, or any other matter relating to the applicant's legal qualifications.

(4) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed;

(5) A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of cities and counties in which the applicant has, or has had, a cable franchise or any interest therein, provided that an applicant that holds a franchise for the city and is seeking renewal of that franchise need only provide this information for other cities and counties where its franchise is scheduled to expire in the calendar year prior to or after its application is submitted to the city;

(6) Identification of the area of the city to be served by the proposed cable system, including a description of the proposed franchise area's boundaries;

(7) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities;

(8) Where applicable, a description of the construction of the proposed cable system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

(9) If and to the extent that rates are subject to the jurisdiction of the city under applicable law, the proposed rate structure, including projected charges for each service tier, installation, converters, and all other proposed equipment or services;

(10) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of the channels, facilities and support for public, educational, and governmental use of the cable system (including institutional networks) that the applicant proposes to provide and why the applicant believes that the proposal is adequate to meet the future cable-related needs and interests of the community, taking into account the costs thereof and the potential for amortization of such costs;

(11) Pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;

(12) If the applicant proposes to provide cable service to a television shadow area, an agreement to comply with paragraph 11-6-5(f)(6), B.R.C. 1981;

(13) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this chapter;

(14) An affidavit or declaration of the applicant or authorized officer thereof certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all requirements of applicable law.

(c) Application For Grant Of A Franchise, Other Than A Cable Act Renewal Franchise:

(1) A person may apply for a franchise by submitting a request for issuance of a Request for Proposals ("RFP") and requesting an evaluation of its application pursuant to paragraph 11-6-4(c)(3), B.R.C. 1981. Upon receipt of a request for an RFP, the city shall, if necessary, commence a proceeding to identify the future cable-related needs and interests of the community and, upon completion of that proceeding, shall promptly issue an RFP and proposed franchise agreement, which shall be mailed to the person requesting its issuance and any existing cable system franchisee and made available to any other interested party. The applicant shall respond within the time directed by the city, providing the information and material set forth in subsection 11-6-4(b), B.R.C. 1981. The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant as if set forth and required herein. The city or its designee may seek additional information from any applicant and establish deadlines for the submission of such information. An existing franchisee shall have the right to file comments regarding any applicant and any application, which shall be treated as part of the record before the city.

(2) Notwithstanding the provisions of paragraph 11-6-4(c)(1), B.R.C. 1981, a person may apply for an initial franchise by submitting an unsolicited application containing the information required in subsection 11-6-4(b), B.R.C. 1981, and requesting an evaluation of that application pursuant to paragraph 11-6-4(c)(3), B.R.C. 1981. Prior to evaluating that

application, the city may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in paragraph 11-6-4(c)(3), B.R.C. 1981, and may seek additional applications.

(3) In evaluating an application for a franchise, the city shall consider, among other things, the following factors:

(A) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for the city;

(B) Whether the quality of the applicant's service under any existing franchise in the city, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;

(C) Whether the applicant has the financial, technical, and legal qualifications to hold a cable franchise;

(D) Whether the application satisfies any minimum requirements established by the city and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

(E) Whether, to the extent not considered as part of subparagraph 11-6-4(c)(3)(D), B.R.C. 1981, the applicant will provide adequate PEG use, capacity, facilities, and financial support;

(F) Whether issuance of a franchise is in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting an overbuild franchise on the ability of any existing franchisee to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications; and

(G) Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in the city.

(4) If the city finds that it is in the public interest to issue a franchise considering the factors set forth above, and subject to the applicant's negotiation of and agreement on an appropriate franchise agreement, it shall schedule a public vote on a proposed franchise. If the city denies a franchise, it will issue a written decision explaining why the franchise was denied. Prior to deciding whether or not to issue a franchise, the city may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The city also may grant or deny a request for a franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP.

(d) Application For Grant Of A Cable Act Renewal Franchise: Applications for renewal under the Cable Act shall be received and reviewed in a manner consistent with section 626 of the Cable Act, 47 U.S.C. section 546. It is the proposal submitted by a franchisee under 47 U.S.C. section 546(b), and not the request for commencement of the renewal proceedings submitted under 47 U.S.C. section 546(a), that must contain the information required under subsection 11-6-4(b), B.R.C. 1981. If neither a franchisee nor the city activates a renewal application in a timely manner, or can activate the renewal process as set forth in 47 U.S.C. section 546(a)-(g) (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to 47 U.S.C. section 546(h), the provisions of subsection 11-6-4(c), B.R.C. 1981, shall apply, and a renewal request shall be evaluated using the same

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criteria as any other request for a franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act:

(1) If the provisions of 47 U.S.C. section 546(a)–(g) are properly invoked, the city shall issue an RFP after conducting a proceeding to review the applicant's past performance and to identify future cable-related community needs and interests. The city shall promptly make available for review by the applicant the results of its review and ascertainment process. The city manager or the manager's designee shall establish deadlines and procedures for responding to the RFP, which deadlines may not be less than one hundred twenty days after the date of the RFP, may seek additional information from the applicant related to the city's evaluation of the proposal under applicable law, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to that RFP (and such additional information as may be provided in response to requests), the city council will determine that the franchise should be renewed, or make a preliminary assessment that the franchise should not be renewed. This determination shall be in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by resolution. If the city council determines that the franchise should not be renewed, and the applicant that submitted the renewal application notifies the city, either in its RFP response or within thirty working days of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the city shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. If the city council decides preliminarily to grant renewal, it shall prepare a final franchise agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the franchise agreement, and the final agreement is ratified by the city council, the franchise shall be renewed. If the franchise agreement is not so accepted and ratified within the time limits established by 47 U.S.C. section 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced if the applicant that submitted the renewal application requests it within thirty business days of the expiration of the time limit established by 47 U.S.C. section 546(c)(1), unless the time limit is extended by mutual agreement of the city and the franchisee.

(2) If an administrative hearing is commenced pursuant to 47 U.S.C. section 546(c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

(A) The city council shall, by resolution, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The city council may appoint itself as hearing officer.

(B) The hearing officer may conduct a pre-hearing conference and establish appropriate pre-hearing orders. Intervention by non-parties is not authorized except to the extent required by the Cable Act.

(C) The hearing officer shall require the city and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, and the city shall present evidence second.

(D) Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. section 546(a) shall be, for purposes of the administrative hearing, regarded no differently than any other evidence.

(E) The city and the franchisee shall be afforded fair opportunity for full participation in the proceeding, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection 47 U.S.C. section 546(a)), to require the production of evidence, and to question witnesses.

(F) Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the city is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the hearing officer shall then prepare written findings with respect to those matters, and submit those findings and conclusions and related conclusions of law to the city council and to the parties (unless the hearing officer is the city council, in which case the written findings shall constitute the final decision of the city).

(G) If the hearing officer is not the city council, the parties shall have thirty days from the date the findings are submitted to the city council to file exceptions to those findings with the city council. The city council shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of such proceeding. A copy of the final decision of the city council will be promptly provided to the applicant.

(H) The proceeding shall be conducted with all deliberate speed.

(I) In conducting the proceedings, and except as inconsistent with the foregoing, the hearing officer will follow the procedures as set forth in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, or the successor ordinances thereto. The hearing officer or the parties may request that the city council adopt additional procedures and requirements as necessary in the interest of justice.

(J) This section does not prohibit any franchisee from submitting an informal renewal application pursuant to 47 U.S.C. section 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. section 546(h). If such an informal renewal application is granted, then the steps specified in this section need not be taken, notwithstanding the provisions thereof.

(e) Application For Modification Of A Franchise:

(1) An application for modification of a franchise agreement shall include, at minimum, the following information:

(A) The specific modification requested;

(B) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of pro forma financial statements.

(C) A statement indicating whether the modification is sought pursuant to section 625 of the Cable Act, 47 U.S.C. section 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. section 545;

(D) Any other information that the applicant believes is necessary for the city to make an informed determination on the application for modification; and

(E) An affidavit or declaration of the applicant or applicant's authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

(2) A request for modification submitted pursuant to 47 U.S.C. section 545 shall be considered in accordance with the requirements of that section.

(f) Filing Fees: To be acceptable for filing, an application submitted after the effective date of this chapter shall be accompanied by a reasonable filing fee in an amount sufficient to cover reasonable costs incidental to the awarding or enforcement of the franchise. Such costs shall be established by resolution of the city council, subject to applicable law.

(g) Public Hearings: An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a franchise, the city shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which each applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published in a newspaper of general circulation in the proposed franchise area once a week for two consecutive weeks. The first publication shall be not less than fourteen days before the day of the hearing.

(h) Consistency With Cable Act: The provisions of this section shall be read and applied so that they are consistent with section 626 of the Cable Act, 47 U.S.C. section 546.

11-6-5 **Construction Provisions.**

(a) System Construction Schedule: Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

(b) Construction Procedures:

(1) A franchisee shall construct, operate and maintain a cable system subject to the supervision of all of the authorities of the city who have jurisdiction in such matters and in strict compliance with all laws, ordinances, rules and regulations affecting the cable system.

(2) The cable system shall be subject to the right of periodic inspection by the city. Inspections will be conducted in a manner so as not to unreasonably interfere with the operations of a cable system or the provision of service to subscribers. The city will bear its own costs associated with any independent technical tests of the cable system.

(3) No construction, reconstruction or relocation of the cable system within the public rights-of-way shall be commenced until written permits have been obtained from the proper city officials. In any permit so issued, such officials may impose such fees, conditions and regulations as a condition of the granting of the permit as are imposed on similar uses of the right-of-way.

(c) Construction Standards:

(1) The construction, operation, maintenance, or repair of a cable system shall be in accordance with all applicable laws, including, without limitation, zoning laws, construction codes, and the City of Boulder *Design and Construction Standards*, as amended. A franchisee shall at all times employ reasonable care, within the meaning of applicable law, and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(2) Without limiting the foregoing, all of a franchisee's cable system shall be constructed, operated and maintained in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel.

(3) Except in underground service areas, all parts of the cable system, including electronics, vaults, trunk, feeder and drop cable may be constructed overhead where poles now exist and electric and telephone lines are now overhead, but where either electric or telephone lines are underground, all trunk, feeder and drop cable shall be constructed underground. Whenever and wherever the poles on which a franchisee's poles are attached are no longer in use for electrical or telephone plant, all cable system facilities and plant attached to such poles shall be moved underground by the franchisee.

(4) All safety practices required by law shall be used during construction, maintenance, and repair of a cable system. A franchisee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(5) A franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, telecommunications, water, sewer, or other utility facilities, or obstruct or hinder in any manner such entities' use of any public rights-of-way, and no future occupant of the right-of-way shall interfere with the use of the right-of-way by a franchisee.

(6) Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a cable system shall be promptly repaired by the franchisee.

(7) A franchisee shall, by a time specified by the city, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the city or any other governmental entity by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way maintenance or repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public right-of-way vacation; undergrounding of adjacent electric or telephone line so that adjacent poles are no longer in use for electrical or telephone plant; or for any other purpose where the convenience of the city or such entity would be served thereby; provided, however, that:

(A) Except in the case of emergencies, the city shall provide written notice describing where the work is to be performed at least one week prior to the deadline for performing the work; a franchisee may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension shall not be unreasonably refused; and

(B) A franchisee may abandon any property in place upon notice to the city, unless the city determines, in the exercise of its reasonable discretion exercised within sixty days of the date the city receives notice, that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected thereby.

(8) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person (other than the city) that is authorized to use the public rights-of-way, a franchisee shall, after thirty days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Unless the matter is governed by a valid contract or a state or federal law or regulation, the reasonable cost of removal, relaying or relocation shall be borne by the party requesting the removal, relaying or relocation. The city may direct a franchisee to remove, relay or relocate its facilities pending resolution of a dispute as to responsibility for costs, if the person requesting removal, relaying or relocation posts security satisfactory to the city.

(9) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, while the officers of the city will make reasonable efforts to contact the franchisee, the city may remove, relay, or relocate any or all parts of that cable system without prior notice.

(10) A franchisee shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other structures. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than fourteen days' advance notice to arrange for such temporary wire changes.

(11) Subject to obtaining advance permission from the city manager, which shall not be unreasonably refused, a franchisee shall have the authority to trim trees that overhang a public right-of-way of the city so as to prevent the branches of such trees from coming in contact with the wires of the franchisee. At the option of the city, such trimming may be done by it or by the franchisee, but in either case, at the expense of the franchisee.

(12) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a cable system authorized under this chapter, a franchisee shall first submit to the city and other designated parties for approval a concise description of the cable system proposed to be erected or installed, including engineering drawings, if required by the city, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilding or upgrading of a cable system shall be commenced by any person until approval therefor has been received from the city in accordance with standard permitting practices of the city. A franchisee is expected to use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible.

(13) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of cable system equipment must be properly licensed, and each contractor or subcontractor shall have the same obligations with respect to its work as franchisee would have under this chapter and applicable law if the work were performed by the franchisee. The franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its franchise agreement and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed. This subsection shall not be deemed to alter a franchisee's tort liability to third parties.

(d) Participation With Other Utilities And The City: A franchisee shall cooperate in the planning, locating and construction of its cable system in utility joint trenches or common duct banks with other telecommunications providers and the city. The city will provide advance notice to any franchisee when it plans to open a trench and each franchisee shall provide notice to the city when it plans to open a trench. The franchisee and the city will offer to make space available to the other, and to other persons who are subject to the same obligations, on reasonable terms, consistent with applicable law and this chapter.

(e) Underground Services Alert: Each franchisee shall be a member of the regional notification center for subsurface installations (underground services alert) and shall field mark, at its sole cost and expense, the locations of its underground cable system facilities upon notification by the city.

(f) Provision Of Service/Quality Of Service: In addition to satisfying such requirements as may be established through the application process, every cable system shall be subject to the following conditions, except as prohibited by federal law or where other standards are specified in a franchise agreement:

(1) After cable service has been established by activating trunk distribution cable for an area specified in a franchise agreement, a franchisee shall provide cable service to any household or commercial establishment requesting cable service in accordance with the franchise agreement within that area, including each attached dwelling unit in that area, except for attached dwelling units to which it cannot legally obtain access. Service must be provided within time limits specified in paragraph 11-6-5(f)(2), B.R.C. 1981.

(2) A franchisee must extend service to any person who requests it within ten days of the request, where service can be provided by activating or installing a drop, within ninety days where an extension of one-half a mile or less is required, and within six months when an extension of more than one-half mile is required, provided that, in cases where a franchise agreement permits a franchisee to require a potential subscriber to bear a share of extension or installation costs, and franchisee requires the potential subscriber to bear such costs, the time for extension shall be measured from the date on which the subscriber agrees to bear such costs or, if a franchisee requires prepayment of all or a portion of the estimated costs, from the date on which the prepayment is made. A franchisee that requires a potential subscriber to bear a portion of installation or extension costs must prepare a written estimate of extension costs within seven days of a request for an installation or extension that would be subject to cost-sharing.

(3) Any cable system within the city shall meet or exceed the technical standards set forth in 47 C.F.R. section 76.601 and any other applicable technical standards. Enforcement of such technical standards shall be by the FCC unless the FCC allows enforcement by the city.

(4) A franchisee shall perform all tests reasonably necessary to demonstrate compliance with the requirements of the franchise agreement and other performance standards established by applicable law. Unless a franchise agreement or applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of National Cable Television Association's *Recommended Practices for Measurements on Cable Television Systems*, or if no recent edition exists, such other appropriate manual as the city may designate. A written report of any test results shall be filed with the city within seven days of each test. If the location fails to meet performance specifications, within a reasonable time the franchisee, without requirement of additional notice or request from city, shall take corrective action, retest the locations and advise the city of the action taken and results achieved.

(5) The city may conduct inspections of a cable system including, without limitation, the headend, construction areas and subscriber installations to assess, among other things, franchisee's compliance with its franchise agreement and applicable law. If the franchisee is notified of any violations found during course of inspections, the franchisee must bring violations into compliance within thirty days of the date on which notice of violation is given, and must submit a report to the city describing the steps taken to bring itself into compliance or must file an appeal with the city manager during the same time period. All appeals shall be decided under chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Inspection does not relieve the franchisee of its obligation to build a cable system in compliance with all provisions of its franchise agreement and applicable law.

(6) Any franchise serving any portion of the city must accept equivalent obligations for franchise fees and PEG use, capacity, facilities and financial support, on a gross revenue or per subscriber basis, as the case may be.

(7) If a franchise serves a television shadow area, it must construct at least an equivalent number of miles of cable distribution plant outside of the television shadow area as it constructs inside the television shadow area and must satisfy the other obligations imposed on any other franchise or permit, other than those relating to geographical coverage, and must accept equivalent obligations for franchise fees and PEG use, capacity, facilities and financial support, on a gross revenue or per subscriber basis, as the case may be.

(g) Publicizing Proposed Construction Work: A franchisee shall publicize any substantial rebuild of its cable system at least one week prior to commencement of that work by causing written notice of such construction work to be delivered to the city and by notifying those persons within three hundred feet of the work in at least two of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto any person's property, a franchisee shall attempt to contact the property owner or (in the case of residential property) the resident at least one day in advance. If a franchisee must enter a residence or building, it must schedule an appointment at the convenience of the owner or resident.

(h) System Maintenance:

(1) A franchisee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the cable system.

(2) Each franchise agreement shall provide that the franchisee will be obligated to follow maintenance practices that will ensure that its cable system is maintained in accordance with the highest industry standards.

(i) Continuity Of Service: Each franchise agreement shall provide that subscribers are able to receive continuous service and that, in the event the franchise is revoked or terminated, the franchisee shall be obligated to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another entity.

11-6-6 Operation And Reporting Provisions.

(a) Open Books And Records:

(1) The city shall have the right upon thirty days' advance written notice to inspect and copy at any time during normal business hours at the nearest cable system office or at such location within the city as the city may designate, all books and records reasonably necessary to monitor compliance with the terms of this chapter, a franchise agreement, or applicable law, or reasonably necessary for the exercise of any right or duty of the city under the same. This right includes the right to inspect not only the books and records of a franchisee, but any such books and records held by an affiliate regardless of who holds them, an operator of the cable system, or any person holding any form of management contract for the cable system. Each franchisee shall be responsible for collecting the information and producing it. For purposes of this chapter, the terms "books and records" shall be read expansively to include information in whatever format stored.

(2) Access to a franchisee's books and records shall not be denied by a franchisee on the basis that said books and records contain proprietary information. However, all proprietary information received by the city from a franchisee and clearly marked as such shall not be publicly disclosed insofar as permitted or required to be withheld by the Colorado Public Records Act, section 24-72-204, C.R.S., and other applicable law. The city will notify franchisee if any third party seeks release of any document marked confidential, and the city

will withhold release for the maximum period permitted by law to provide the franchisee the opportunity to seek court protection against the release of the requested documents.

(3) The franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

(b) Communication With Regulatory Agencies: Upon request, a franchisee shall file with the city all non-confidential reports required by the FCC including, without limitation, any proof of performance tests and results and all petitions, applications, and communications of all types regarding the cable system submitted or received by the franchisee, an affiliate, or any other person on the behalf of the franchisee, either to or from the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's cable system. Provided that, nothing herein requires the franchisee to produce regulatory or court filings that are treated by the agency or court as confidential, such as Hart-Scott-Rodino Act filings. Nothing in this subsection affects any rights the city may have to obtain books and records under paragraph 11-6-6(a)(1), B.R.C. 1981. Franchisee shall also deliver to the city copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchise directly or indirectly. This material shall be submitted to the city at the time it is filed or within five days of the date on which it is received.

(c) Reports:

(1) No later than ninety days after the end of its fiscal year, a franchisee shall submit a written report to the city manager, which shall include:

(A) A summary of the previous year's activities in the development of the cable system, including, but not limited to, descriptions of services begun or discontinued, the number of subscribers gained or lost for each category of service, the number of pay units sold, the amount collected annually from other users of the cable system and the character and extent of the services rendered to such users;

(B) A summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions;

(C) A summary of the number and type of outages (an outage is a loss of sound or video on any signal, or a significant deterioration of any signal affecting two or more subscribers) known by the franchisee, specifying all details of each outage known to the franchisee and the cause thereof;

(D) A list of officers and members of the board of directors of the franchisee and its parent;

(E) A full revenue report for the cable system for the previous calendar year, signed by the chief financial officer of the franchisee;

(F) An ownership report, indicating all persons who at the time of filing control or own an interest in the franchise of ten percent or more; and

(G) A report on the cable system's technical tests and measurements.

(2) Each franchisee shall conduct an opinion survey every calendar year to identify subscriber needs and interests. The results of the survey must be submitted by August 31 of the calendar year for which the survey is being conducted.

(3) Franchisees shall deliver the following special reports:

(A) Each franchisee shall submit monthly construction reports for its cable system to the city after the franchise is awarded for any construction undertaken during the term of the franchise until such construction is complete, including any rebuild that may be specified in the franchise agreement. A franchisee must submit updated as-built system design maps to city within thirty days of the completion of system construction in any geographic area, without notation of electronic components. The city shall protect confidential commercial data from disclosure under the Colorado Public Records Act, section 24-72-204, C.R.S. The maps shall be developed on the basis of post-construction inspection by the franchisee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the city in assessing operator compliance with its obligations under the franchise agreement. As-built maps shall also be supplied to the city in electronic form, compatible with city GIS and other data systems.

(B) A report submitted within thirty days of the end of each calendar quarter showing the number of service calls received by type during the prior quarter, and the percentage of service calls compared to the subscriber base by type of complaint.

(d) Records Required: A franchisee shall maintain for a period of at least six months:

(1) Records of complaints received in the form maintained as of the effective date of a franchise. The term "complaints" as used herein and throughout this chapter refers to complaints about any aspect of the cable system or franchisee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call;

(2) Records of outages, indicating date, duration, area, and the estimated number of subscribers affected, type of outage, and cause;

(3) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved; and

(4) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

11-6-7 Performance Evaluation.

(a) Performance Evaluation Sessions: The city may, at its discretion, but no more than biannually, hold performance evaluation sessions. All such evaluation sessions shall be open to the public, and announced in a newspaper of general circulation.

(1) Topics that may be discussed at any evaluation session may include, but are not limited to, system construction and performance, franchisee compliance with this chapter and the franchise agreement, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(2) During the review and evaluation by the city, a franchisee shall reasonably cooperate with the city and shall provide such information and documents as the city may need to reasonably perform its review.

(b) Voluminous Materials: If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then a franchisee may request that the inspection take place at some other location, provided that 1) the franchisee must make necessary arrangements for copying documents selected by the city after review; and 2) the franchisee must pay all travel and additional copying expenses incurred by the city in inspecting those documents or having those documents inspected by its designee.

(c) Retention Of Records; Relation To Privacy Rights: Each franchisee shall take all steps required, if any, to ensure that it is able to provide the city all information which must be provided under this chapter or a franchise agreement, including, without limitation, the step of providing appropriate subscriber privacy notices. Nothing in this section shall be read to require a franchisee to violate 47 U.S.C. section 551. Each franchisee shall be responsible for redacting any data that federal law prevents it from providing to the city.

11-6-8 Consumer Protection Provisions.

The customer service standards that each franchisee must satisfy are set forth as appendix A, "Customer Service Standards," of this chapter. In addition, each franchisee shall at all times satisfy any additional or stricter requirements established by a franchise agreement and by applicable law including, without limitation, FCC customer service standards and consumer protection laws.

11-6-9 Rate Regulation.

(a) Scope And Applicability: The city reserves all rights to implement and impose regulation of a franchisee's rates and charges to the maximum extent permitted by federal law. Nothing in this chapter shall prohibit the city from regulating a franchisee's rates and charges.

(b) Changes Of Rates And Charges By Franchisee: A franchisee may not change its rates and charges unless it has first given a minimum thirty calendar days' prior written notice of such change to the city and to all subscribers.

(c) Regulation Of Rates For Basic Cable Service: Subpart N of 47 C.F.R., part 76 governs the regulation of rates for basic cable service and equipment within the city for any franchisee.

11-6-10 Franchise Fee.

(a) Amount Of Franchise Fee: A franchisee, as compensation for the privilege granted under a franchise for the use of the public rights-of-way to construct and operate a cable system to provide cable service, shall pay to the city a franchise fee of five percent of the franchisee's gross revenues derived from the operation of its cable system to provide cable services within the franchise area.

(b) Payment Of Franchise Fee: Unless otherwise specified in a franchise agreement, a franchisee shall pay the franchise fee due to the city on a quarterly basis. Payment for each quarter shall be made to the city not later than forty-five days after the end of each calendar quarter.

(c) Persons Providing Cable And Other Services Or Cable Systems: Consistent with applicable law, any person providing cable service or any communications service over a cable system for which charges are assessed to subscribers but not received by a cable operator shall pay a fee equal to five percent of such person's gross revenues derived from the provision of such service over the cable system.

(d) Quarterly Statement Of Gross Revenues: Unless a franchise agreement provides otherwise, a franchisee or other entity subject to a fee under this provision shall file with the city within forty-five days of the end of each calendar quarter a financial statement showing the franchisee's or such entity's gross revenues during the preceding quarter and the number of subscribers served.

(e) Acceptance Of Payment Not A Release: No acceptance by the city of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for additional sums payable.

(f) Franchise Fee Not In Lieu Of Taxes: The franchise fee payment is not a payment in lieu of any tax, fee or other assessment.

(g) Annual Statement Of Gross Revenue: A franchisee or other entity subject to a fee under this provision shall file within ninety days following the end of each of its fiscal years a statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation including, without limitation, a detailed analysis of franchise fee payments made by the franchisee, or any affiliate, during the life of the franchise, showing 1) total gross revenues, by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); 2) what, if any, deductions were made from gross revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction. The statement shall be certified by a certified public accountant or the chief financial officer of the person or persons paying the fee. The franchisee shall bear the cost of the preparation of such financial statements.

(h) City's Right To Audit Books And Records: The city may, from time to time, and upon reasonable notice, inspect and audit any and all books and records relevant to the determination of gross revenues and the computation of franchise fees due, and may recompute any amounts determined to be payable. If, as a result of the audit, the city determines that the franchisee has underpaid the franchise fees owed in an amount exceeding five percent of the franchise fees actually paid or $10,000.00, whichever is less, the reasonable cost of the audit shall be borne by the person responsible to pay the fee. The audit shall be performed in the city, and it shall be the responsibility of the person subject to the fee to have all books and records necessary to satisfactorily perform the audit readily available to the auditors.

(i) Failure To Pay Franchise Fee: In the event that a franchise fee payment is not received by the city on or before the due date set forth in subsection 11-6-10(b), B.R.C. 1981, or is underpaid, the person subject to the fee shall pay interest from the due date at an interest rate equal to three percent above the rate for three-month federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the franchise fee payment.

(j) Final Statement Of Gross Revenues: When a franchise terminates for whatever reason, the franchisee shall file with the city within ninety calendar days of the date its operations in the city cease a financial statement, certified by a certified public accountant or the franchisee's chief financial officer, showing the gross revenues received by the franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the franchisee's operations ceased.

11-6-11 **Insurance; Surety; Indemnification.**

(a) Insurance Required: Throughout the entire term of the franchise, a franchisee shall maintain, and by its acceptance of a franchise specifically agrees that it will maintain, at

least the following insurance coverage insuring the franchisee: worker's compensation and employer liability insurance to meet all requirements of Colorado law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the cable system, and the conduct of the franchisee's business in the city, in the minimum amounts of:

(1) $1,000,000.00 for property damage resulting from any one accident;

(2) $2,000,000.00 for personal bodily injury or death resulting from any one accident; and

(3) $2,000,000.00 for all other types of liability.

The city may review these amounts no more than once a year and may require reasonable adjustments to them consistent with maintaining the same economic protection for the city. A franchise agreement may provide that in the event that the franchisee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount, the dispute shall be resolved in accordance with the dispute resolution provisions in the franchise agreement which may include, without limitation, provisions for arbitration.

(b) Qualifications Of Sureties: All insurance policies shall be with sureties qualified to do business in the State of Colorado, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the city.

(c) Certificates: A franchisee shall provide to the city updated certificates of insurance reasonably acceptable to the city showing the insurance coverage available at all times.

(d) Additional Insureds; Prior Notice Of Policy Cancellation: All general liability insurance policies shall name the city, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty days' prior written notice thereof has been given to the city. A franchisee shall not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to the city which complies with this section.

(e) Insurance Constitutes Material Term: The insurance requirements set forth in this section shall constitute a material term of a franchise.

(f) Indemnification:

(1) Each franchise agreement shall contain an indemnification provision which shall provide that the franchisee shall, at its sole cost and expense, indemnify, hold harmless, and faithfully defend the city, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system by the franchisee, its employees, affiliates or agents; copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the cable system; the conduct of the franchisee's business in the city; or in any way arising out of the franchisee's enjoyment or exercise of a franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by applicable law or a franchise agreement, except in cases where liability is a) solely caused by the gross negligence of the person or persons covered by the indemnity; or b) results from programming contributed or produced by the city and transmitted over the cable system.

(2) Without limiting the foregoing, the franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the city and its officials, boards, commissions,

commissioners, agents, and employees, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to section 638 of the Cable Act, 47 U.S.C. section 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its system by the franchisee, its employees, affiliates or agents, including, without limitation, any claim against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to intervention by the city in regulatory proceedings brought by the franchisee or to the programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. section 532, unless the franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of pre-screening programming for the purported purpose of banning or regulating indecent or obscene programming, and except for programming contributed or produced by the franchisee.

(3) The indemnity provision includes, but is not limited to, the city's reasonable attorneys' fees consented to by the franchisee and payment for any labor and expenses of the city attorney's office at the going rate for legal services in Boulder County.

(g) No Limit Of Liability: The provisions of this section shall not be construed to limit the liability of a franchisee for damages under any franchise issued hereunder.

(h) Relation To Insurance And Indemnity Requirements: Recovery by the city of any amounts under insurance, the security fund or letter of credit, or otherwise does not limit a franchisee's duty to indemnify the city in any way; nor shall such recovery relieve a franchisee of its obligations under a franchise, limit the amounts owed to the city, or in any respect prevent the city from exercising any other right or remedy it may have. Nothing herein shall be read to authorize the double recovery of damages.

11-6-12 **Performance Guarantees And Remedies.**

(a) Security Fund:

(1) Prior to a franchise becoming effective, the franchisee shall post with the city a cash security deposit to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all provisions of this chapter, the franchise agreement, and other applicable law, and compliance with all orders, permits, and directions of the city, and the payment by the franchisee of any claims, liens, fees, or taxes due the city which arise by reason of the construction, operation, or maintenance of the cable system. The amount of the security fund shall be equal to three percent of the franchisee's projected annual average gross revenues or $100,000.00, whichever is less, unless modified by the franchise agreement.

(2) In lieu of a cash security fund, a franchisee may file and maintain with the city an irrevocable letter of credit with an acceptable surety in the amount specified in the preceding paragraph to serve the same purposes as set forth therein. Said letter of credit shall remain in effect for the full term of the franchise plus an additional six months thereafter. The letter of credit shall secure the franchisee's faithful performance and compliance with all provisions of this chapter, the franchise agreement, and other applicable law, and to comply with all orders, permits, and directions of the city, and payment of any claims, liens, fees, or taxes due the city which arise by reason of the construction, operation, or maintenance of the cable system. The letter of credit shall provide for thirty days' prior written notice to the city of any intention on the part of the franchisee to fail to renew or otherwise materially alter its terms. The city may agree to use a joint letter of credit to satisfy this obligation, by adoption thereof in a franchise agreement. Neither the filing of a letter of credit with the city, nor the

receipt of any damages recovered by the city thereunder, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under the terms of its franchise for damages, either to the full amount of the letter of credit or otherwise.

(3) The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter, or authorized by other law or a franchise agreement, and no action, proceeding, or exercise of a right with respect to such security fund or letter of credit will affect any other right the city may have.

(4) The following procedures shall apply to drawing on the security fund and letter of credit:

(A) If the franchisee fails to make timely payment to the city of any amount due as a result of a franchise, fails to make timely payment to the city of any amounts due under a franchise agreement or applicable law, fails to make timely payment to the city of any taxes due, or fails to compensate the city within thirty days of written notification that such compensation is due, for any damages, costs, or expenses the city suffers or incurs by reason of any act or omission of the franchisee in connection with its franchise agreement or the enforcement of its franchise agreement after thirty days' notice to comply with any provision of the franchise or franchise agreement that the city determines can be remedied by an expenditure of the security, the city may withdraw the amount thereof, with interest and any penalties, from the security fund or from funds available under the letter of credit.

(B) Within three days of a withdrawal from the security fund or under the letter of credit, the city shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the franchisee.

(C) If at the time of a withdrawal from the security fund or under the letter of credit by the city, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the franchisee to the city until it is paid.

(D) No later than seven days after mailing of notification to the franchisee by certified mail, return receipt requested, of a withdrawal from the security fund or under the letter of credit, the franchisee shall deliver to the city for deposit in the security fund an amount equal to the amount so withdrawn or shall restore the letter of credit. Failure to make timely delivery of such amount to the city or to restore the letter of credit shall constitute a material violation of the franchise.

(E) Upon termination of the franchise, the balance then remaining in the security fund, if any, shall be withdrawn by the city and paid to the franchisee within ninety days of such termination, provided that there is then no outstanding default on the part of the franchisee, in which case the amount paid may be reduced by the amount of the outstanding default; provided that, the security fund or letter of credit shall be deemed forfeited if the franchise is revoked or the cable system is abandoned.

(b) Security Fund Or Letter Of Credit Constitutes Material Term: The security fund or letter of credit set forth in this section shall constitute a material term of a franchise.

(c) Remedies: In addition to any other remedies available at law or equity, the city may apply any one or a combination of the following remedies in the event a franchisee violates this chapter, its franchise agreement, or applicable law:

(1) Revoke the franchise pursuant to the procedures specified in this chapter.

(2) Impose penalties available under subsection 11-6-12(e), B.R.C. 1981, and other applicable state and local laws for violation of city ordinances.

(3) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

(4) Apply any remedy provided for in a franchise agreement, including enforcement provisions, if any.

(d) Revocation Or Termination Of Franchise:

(1) A franchise may be revoked by the city council for the franchisee's failure to construct, operate or maintain the cable system as required by this chapter or the franchise agreement, or for any other material violation of this chapter or material breach of the franchise agreement. If within sixty calendar days following written notice from the city to the franchisee that it is in material violation of this chapter or in material breach of the franchise agreement, the franchisee has not, to the city's satisfaction, taken corrective action or corrective action is not being actively and expeditiously pursued, the city may give written notice to the franchisee of its intent to consider revocation of the franchise, stating its reasons.

(2) Prior to revoking a franchise, the city council shall hold a public hearing, upon at least thirty calendar days' notice, at which time the franchisee and the public shall be given an opportunity to be heard. Following the public hearing the city council may determine whether to revoke the franchise based on the evidence presented at the hearing, and other evidence of record. If the city council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the franchisee.

(3) To the extent permissible under federal law, any franchise may, at the option of the city following a public hearing before the city council, be revoked one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one-hundred-twenty-day period:

(A) Such assignment, receivership or trusteeship has been vacated.

(B) Such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and the franchise agreement.

(e) Foreclosure: In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee used for the franchise, the city may revoke or shorten the franchise, following a public hearing before the city council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

(1) The city has approved the transfer of the franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this chapter.

(f) Procedures Upon Revocation Or Abandonment Of A Franchise: If the city revokes a franchise, or if, for any other reason, a franchisee abandons or fails to operate or maintain service to its subscribers as required by its franchise, the following procedures and rights are effective:

(1) The city may require the former franchisee to remove its aerial facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, the city may have the removal done at the former franchisee's expense and may use the permit fund or letter of credit to reimburse itself for such expense;

(2) The city, by resolution of the city council, may acquire ownership or effect a transfer of the cable system at fair market value, with no value assigned to the franchise itself, and with the price adjusted downward for the harm to the city or subscribers, if any, resulting from the franchisee's breach of its franchise agreement or violation of this section and further adjusted to account for other equitable factors that may be considered consistent with 47 U.S.C. section 547; or

(3) If a cable system is abandoned by a franchisee, the city may sell, assign or transfer all or part of the assets of the cable system.

(4) The provisions herein shall be subject to and be interpreted so that they are consistent with any provisions in a franchise agreement designed to ensure continuity of service in the event a franchise is revoked or terminated, or the cable system is abandoned.

11-6-13 **Arbitration.**

(a) No Arbitration: No matter or dispute between the city and the franchisee relating to this chapter or a franchise agreement may be arbitrable except as specifically provided for in subsection 11-6-11(a), B.R.C. 1981, and in any franchise agreement. By agreement of the city and a franchisee, or under the specific provisions of this chapter or of a franchise agreement, any matter may be subjected to the arbitration procedures set forth in subsection 11-6-13(b), B.R.C. 1981.

(b) Arbitration Procedure: The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The city and the franchisee will each select a qualified arbitrator. The two persons selected shall select a third qualified arbitrator, and the three arbitrators will constitute a panel whose decision is binding on the city and the franchisee. The fees of the first two arbitrators shall be paid by the party selecting such person, and the third person shall be compensated one-half by the city and one-half by the franchisee. The general costs of the proceeding shall be shared equally by the city and the franchisee.

11-6-14 **Transfers.**

(a) City Approval Required: No transfer shall occur without prior written notice to and approval of the city council. The franchisee's obligations under the franchise involve confidence in the franchisee, and transfer without the prior written approval of the city shall be considered to impair the city's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(b) Application:

(1) The franchisee shall promptly notify the city of any proposed transfer. If any transfer should take place without prior notice to the city, the franchisee will promptly notify the city that such a transfer has occurred.

(2) Prior to the contemplated effective date of a transfer, the franchisee shall submit to the city an application for approval of the transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical,

and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. At a minimum, the following information must be included in the application:

(A) All information and forms required under federal law;

(B) All information required in paragraphs 11-6-4(b)(5), (b)(11) and (b)(14), B.R.C. 1981;

(C) A detailed statement of the corporate or other business entity organization of the proposed transferee, together with an explanation of how decisions regarding the cable system will be made if the proposed transaction is approved;

(D) Any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein, if and to the extent that such documents exist at the time of filing, subject to a requirement of ongoing supplementation through the application process;

(E) Any publicly available shareholder reports or filings with the Securities and Exchange Commission or the Federal Trade Commission that discuss the transaction;

(F) Complete financial statements for any potential transferees for the last three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;

(G) To the extent known, a detailed description of the sources and amounts of the funds to be used in the proposed transaction, indicating how the debt-equity ratio of the cable system will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferees will be required to maintain over the franchise term if the proposed transaction is approved; what financial resources would be available to the cable system under the control of the proposed transferee; whether the proposed transferee can meet debt-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required and why;

(H) Any other information necessary to provide a complete and accurate understanding of the financial position of the cable system before and after the proposed transfer;

(I) Complete information regarding any potential impact of the transfer on subscriber rates and service;

(J) Any representations made in writing in connection with the transaction, about the franchisee's compliance with its franchise; and

(K) A brief summary of the proposed transferee's plans for at least the next five years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the cable system.

(3) For the purposes of determining whether it shall consent to a transfer, the city or its agents may inquire into all qualifications of the prospective transferee and such other matters as the city may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned under subsection 11-6-14(c), B.R.C. 1981. The franchisee and any prospective transferees shall assist the city in any such inquiry, and if they fail to do so, the request for transfer may be denied.

(c) Determination By City:

(1) In making a determination as to whether to grant, deny, or grant subject to conditions an application for a transfer of a franchise, the city shall consider the legal, financial, and technical qualifications of the transferee to operate the cable system; any potential impact of the transfer on subscriber rates or services; whether the incumbent cable operator is in compliance with its franchise agreement and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the city; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the city's interest under this chapter, the franchise agreement, other applicable law, or the public interest, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost. The city may deny an application for transfer on the basis of any of these considerations.

(2) Any transfer without the city's prior written approval shall be ineffective, and shall make this franchise subject to revocation at the city's sole discretion, and to any other remedies available under the franchise or other applicable law.

(3) Any mortgage, pledge or lease shall be subject and subordinate to the rights of the city under this chapter or other applicable law.

(d) Transferee's Agreement: No application for a transfer of a franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee under this chapter and the franchise agreement for all purposes, including renewal, unless the city, in its sole discretion, expressly waives this requirement in whole or in part.

(e) Approval Does Not Constitute Waiver: Approval by the city of a transfer of a franchise does not constitute a waiver or release of any of the rights of the city under this chapter or a franchise agreement, whether arising before or after the date of the transfer.

11-6-15 Rights Of Individuals Protected.

(a) Discriminatory Practices Prohibited Unless Permitted By Federal Law:

(1) A franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, or residents of the city on the basis of race, color, religion, national origin, sex, sexual orientation, or age.

(2) A franchisee shall not discriminate among persons or take any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the franchisee require a person to waive such rights as a condition of taking service.

(3) A franchisee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) Except to the extent the city may not enforce such a requirement, a franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discrimina-

tory basis to similar classes of subscribers throughout the city; and a franchisee may offer discounts for the elderly, the handicapped, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A franchisee shall comply at all times with all applicable federal, state, and city laws, and all executive and administrative orders relating to non-discrimination.

(b) Subscriber Privacy: A franchisee shall at all times protect the privacy of all subscribers pursuant to the provisions of section 631 of the Cable Act, 47 U.S.C. section 551. A franchisee shall not condition subscriber service on the subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the subscriber's explicit consent.

11-6-16 Miscellaneous Provisions.

(a) Public Emergency: In the event of a major public emergency or disaster as determined by the city, a franchisee immediately shall make the entire cable system, employees, and property, as may be necessary, available for use by the city or other civil defense or governmental agency designated by the city to operate the cable system for the term of such emergency or disaster for the emergency purposes, provided that the city shall return use of the entire cable system, employees, and property to the franchisee after the emergency or disaster has ended or has been addressed.

(b) Connections To System; Use Of Antennas:

(1) Subject to applicable law, subscribers shall have the right to attach devices to a franchisee's system within the subscriber's home or facility such as video cassette players or recorders, receivers, and other terminal equipment. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

(2) A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, provided that such antenna is connected with an appropriate device and complies with applicable law.

(see following page for Appendix A)

APPENDIX A

CUSTOMER SERVICE STANDARDS

I. POLICY

The cable operator should be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the franchising authority.

Where a given complaint is not addressed by the cable operator to the citizen's satisfaction, the franchising authority should intervene. In addition, where a pattern of, or unremedied, non-compliance with the standards is identified, the franchising authority should prescribe a cure and establish a thirty-day deadline for implementation of the cure. If the non-compliance is not cured within thirty days, monetary sanctions should be imposed to encourage compliance.

These standards are intended to be of general application; however, the cable operator shall be relieved of any obligations hereunder it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The cable operator is free to exceed these standards to the benefit of its Customers and such shall be considered performance for the purposes of these standards.

II. DEFINITIONS

When used in these customer service standards (the "standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact the standards.

"Cable operator" shall mean the franchisee, as described in the franchise agreement, and the franchisee's employees, agents, contractors, or subcontractors.

"City" shall mean the City of Boulder, Colorado.

"Customer" shall mean any person who receives service of any sort from the cable operator.

"Customer Satisfaction Specialist" or "CSS" shall mean any person employed by the cable operator to assist, or provide service to, customers, whether by answering public telephone lines, writing service or installation orders, answering customers' questions, receiving and processing payments, or performing other customer service-related tasks.

"Franchising authority" shall mean the City.

"Greater Metro Cable Consortium" or "GMCC" shall mean a Colorado agency formed by intergovernmental agreement between its Members, local governmental subdivisions of the State of Colorado. The GMCC may be delegated the authority to enforce cable television franchises and cable system operations for its Member communities, and may administer any or all functions under these standards.

III. CUSTOMER SERVICE

A. Courtesy.

All employees of the cable operator shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

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B. Accessibility.

1. The cable operator shall provide, at sites acceptable to the franchising authority, customer service centers/business offices ("service centers") such that no customer shall be located further than ten miles away from a service center. The cable operator shall always provide at least one service center within the jurisdictional boundaries of the City. Except as otherwise approved by the franchising authority, all service centers shall be open Monday through Friday from 9:00 a.m. to 6:00 p.m. and shall be fully staffed with customer service representatives offering the following services to customers who come to the service center: bill payment, equipment exchange, processing of change of service requests, and response to customer inquiries and requests. The franchising authority may approve alternatives for service centers offering lesser services at any site to which the public has general access. The cable operator shall post a sign at each service center advising customers of its hours of operation and of the addresses and telephone numbers at which to contact the franchising authority and the cable operator if the service center is not open at the times posted. The cable operator shall provide free exchanges of faulty converters at the customer's address.

2. The cable operator shall maintain local telephone access lines that shall be available twenty-four hours a day, seven days a week for service/repair requests and billing inquiries.

3. The cable operator shall have dispatchers and Boulder based technicians on call twenty-four hours a day, seven days a week, including legal holidays.

4. The cable operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a customer service representative within thirty seconds or less, and that any transfers are made within thirty seconds. These standards shall be met no less than ninety percent of the time measured monthly.

5. The total number of calls receiving busy signals shall not exceed three percent of the total telephone calls. This standard shall be met ninety percent or more of the time measured monthly.

C. Responsiveness.

1. Guaranteed Seven-Day Residential Installation

a. The cable operator shall complete all standard residential installations requested by customers within seven business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five feet from the existing distribution system. If the customer requests a non-standard residential installation, or the cable operator determines that a non-standard residential installation is required, the cable operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the cable operator and the customer.

2. Residential Installation And Service Appointments

a. Customers requesting installation of cable service or service to an existing installation may choose any of the following blocks of time for the installation appointment: 8:00 a.m. to 12:00 a.m.; 12:00 Noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four-hour block of time mutually agreed upon by the customer and the cable operator. The cable operator may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve hours after the initial call.

b. The cable operator shall contact by telephone, mail, or in person, every customer within two weeks after installation to assure the customer's satisfaction with the work completed. All responses shall be recorded, and retained by the cable operator, and made easily available to the franchising authority upon request.

c. The cable operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the cable operator. In such circumstances, the cable operator shall contact the customer within forty-eight hours.

3. Residential Service Interruptions

a. In the event of system outages (loss of reception on all channels) resulting from cable operator equipment failure affecting five or more customers, the cable operator shall correct such failure within two hours after the third customer call is received.

b. All other service interruptions resulting from cable operator equipment failure shall be corrected by the cable operator by the end of the next calendar day.

c. The cable operator shall keep an accurate and comprehensive file of any and all complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the cable operator's actions in response to those complaints. These files shall remain open to the franchising authority and the public during normal business hours. Grantee shall provide Grantor an executive summary monthly, which shall include information concerning customer complaints. A summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the cable operator for each month and submitted to the franchising authority by the tenth day of the succeeding month. A log of all service interruptions shall be maintained and provided to the franchising authority quarterly.

d. All service outages and interruptions for any cause beyond the control of the cable operator shall be corrected within thirty-six hours, after the conditions beyond its control have been corrected.

4. TV Reception

a. The cable operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission ("FCC"). The cable operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between 12:00 a.m. and 6:00 a.m.

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b. If a customer experiences poor video or audio reception attributable to the cable operator's equipment, the cable operator shall repair the problem no later than the day following the customer call. If an appointment is necessary, customer may choose the same blocks of time described in section III.C.2.a. At the customer's request, the cable operator shall repair the problem at a later time convenient to the customer.

5. Problem Resolution

The cable operator's customer service representatives shall have the authority to provide credit for interrupted service or any of the other credits listed in Schedule A, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four hours and resolve the problem within forty-eight hours or within such other time frame as is acceptable to the customer and the cable operator.

6. Billing, Credits, And Refunds

a. The cable operator shall allow at least thirty days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the cable operator may apply an administrative fee to the customer's account. If the customer's service bill is not paid within forty-five days of the beginning date of the applicable service period, the cable operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two days of the beginning date of the applicable service period, the cable operator may disconnect the customer's service, provided it has provided two weeks notice to the customer that such disconnection may result.

b. The cable operator shall issue a credit or refund to a customer within thirty days after determining the customer's entitlement to a credit or refund.

7. Treatment Of Property

a. The cable operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by the cable operator, any employee or agent during installation or construction shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. The cable operator shall, at its own cost and expense, and in a manner approved by the property owner and the franchising authority, restore any property to as good condition as before the work causing such disturbance was initiated. The cable operator shall repair, replace or compensate a property owner for any damage resulting from the cable operator's installation, construction, service or repair activities.

c. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent of the cost of the damage or

replace the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. In the case of an emergency, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.

d. The cable operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services For Customers With Disabilities.

1. For any customer with a disability, the cable operator shall at no charge deliver and pick up converters at customers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to the cable operator.

2. The cable operator shall provide TDD service with trained operators who can provide every type of assistance rendered by the cable operator's customer service representatives for any hearing-impaired customer at no charge.

3. The cable operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with subsection 4, below) customers.

4. Any customer with a disability may request the special services described above by providing the cable operator with a letter from the customer's physician stating the need, or by making the request to the cable operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Customer Information.

1. Upon installation, and at any time the customer may request, the cable operator shall provide the following information, in clear, concise written form:

a. Products and services offered by the cable operator, including its local channel lineup;

b. The cable operator's complete range of service options and the prices for these services;

c. These standards, with the attached Schedule A, and any other applicable customer service standards;

d. Instruction on the use of cable TV service and on standard VCR hookups;

e. The cable operator's billing, collection and disconnection policies;

f. Customer privacy requirements;

g. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the cable operator, the FCC, and the franchising authority to whom the complaints should be addressed;

h. Use and availability of A/B switches;

i. Use and availability of parental control/lock out device;

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j. Special services for customers with disabilities;

k. Days, times of operation, and locations of the service centers.

2. Copies of all notices provided to the customer shall be filed (by fax acceptable) concurrently with the franchising authority and the consortium.

3. The cable operator shall provide customers with written notification of any change in rates, programming, or channel positions, at least thirty days before the effective date of change.

4. All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with cable customers shall wear on their outer clothing identification cards bearing their name and photograph as approved by the franchising authority. The cable operator shall account for all identification cards at all times. Every vehicle of the cable operator shall be clearly visually identified to the public as working for the cable operator. All CSSs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the cable operator.

5. Each CSS, technician or employee of the cable operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.

F. Customer Privacy.

1. The cable operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without prior written consent from that customer, except as otherwise permitted by the applicable franchise.

2. The cable operator shall not sell or otherwise make available customer lists or other personally identifiable customer information without prior written customer consent, except as otherwise permitted by the franchise. The cable operator is permitted to disclose such information if such disclosure is necessary to render, or conduct, a legitimate business activity related to a cable service or other service provided by the cable operator to its customers.

G. Safety.

The cable operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the cable operator receives notice that an unsafe condition exists with respect to its equipment, the cable operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

H. Satisfaction Guaranteed.

The cable operator shall guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to the customer's cable subscription. Any such customer who requests disconnection of such service within thirty days from its date of activation shall receive a credit to his/her

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account in the amount of one month's subscription charge for the service that has been disconnected.

IV. COMPLAINT PROCEDURE

A. Complaints To The Cable Operator.

1. The cable operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts in accordance with Schedule A: "Credits to Customers", which Schedule is incorporated herein by this reference, and as otherwise provided herein, without intervention by the franchising authority and shall publicize such procedures through printed documents at the cable operator's sole expense.

2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to the cable operator that it has violated any provision of these customer service standards, any terms or conditions of the customer's contract with the cable operator, or reasonable business practices.

3. At the conclusion of the cable operator's investigation of a customer complaint, but in no more than fifteen calendar days after receiving the complaint, the cable operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. The cable operator shall also notify the customer of the customer's right to file a complaint with the franchising authority in the event the customer is dissatisfied with the cable operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the franchising authority. In accordance with federal law, the cable operator shall publish the telephone number and address of the franchising authority on its monthly billing statements.

5. The cable operator shall immediately report all customer complaints that it does not find valid to the franchising authority.

6. The cable operator's complaint procedures shall be filed with and approved by the franchising authority prior to implementation.

B. Security Fund.

1. Within thirty days of the effective date of these standards or the effective date of any franchise granted by the franchising authority, whichever occurs first, the cable operator shall deposit with an escrow agent approved by the franchising authority $100,000.00, or, in the sole discretion of the franchising authority, such lesser amount as the franchising authority deems reasonable to protect subscribers within its jurisdiction. Such amount may, with the approval of the franchising authority, be posted jointly for more than one member of the GMCC, and may be administered, and drawn upon, jointly by the GMCC or drawn upon individually by each member. The escrowed funds shall constitute the "Security Fund" for ensuring compliance with these standards for the benefit of the franchising authority. The escrowed funds shall be maintained by the cable operator at $100,000.00, or such lesser amount accepted by the franchising authority, even if amounts are withdrawn pursuant to any provision of these standards.

2. At any time during the term of this agreement, the franchising authority may require the cable operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.

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3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by the cable operator of all its obligations under these customer service standards.

4. The rights reserved to the franchising authority with respect to the Security Fund are in addition to all other rights of the franchising authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the franchising authority may otherwise have.

C. Complaints To The Franchising Authority.

1. Any customer who is dissatisfied with any proposed decision of the cable operator shall be entitled to have the complaint reviewed by the franchising authority.

2. The customer may initiate the review either by calling the franchising authority or by filing a written complaint together with the cable operator's written decision, if any, with the franchising authority.

3. The customer shall make such filing and notification within twenty days of receipt of the cable operator's decision or, if no decision has been provided, within thirty days after filing the original complaint with the cable operator.

4. If the franchising authority decides that further evidence is warranted, the franchising authority shall require the cable operator and the customer to submit, within ten days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The cable operator and the customer shall produce any additional evidence, including any reports from the cable operator, which the franchising authority may deem necessary to an understanding and determination of the complaint.

6. The franchising authority shall issue a determination within fifteen days after examining the materials submitted, setting forth its basis for the determination.

7. The franchising authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

8. If the franchising authority determines that the customer's complaint is valid and that the cable operator did not provide the complaining customer with the proper solution and/or credit, the franchising authority may reverse any decision of the cable operator in the matter and/or require the cable operator to grant a specific solution as determined by the franchising authority in its sole discretion, and/or any credit provided for in these standards; or the franchising authority may provide the customer with the amount of the credit (as set forth in the attached Schedule A) by means of a withdrawal from the Security Fund.

D. Verification Of Compliance.

The cable operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the franchising authority.

E. Overall Quality Of Service.

The franchising authority may evaluate the overall quality of customer service provided by the cable operator to customers:

1. In conjunction with any performance review provided for in the franchise agreement; and

2. At any other time, at its sole discretion, based on the number of customer complaints received by the cable operator and the franchising authority, and the cable operator's response to those complaints.

F. Non-Compliance With Customer Service Standards.

Non-compliance with any provision of these standards is a violation of these standards.

G. Procedure For Remedying Violations.

1. If the franchising authority has reason to believe that the cable operator has failed to comply with any of these standards, or has failed to perform in a timely manner, the franchising authority may demand in writing that the cable operator remedy the alleged non-compliance. If the alleged non-compliance is denied or not remedied to the satisfaction of the franchising authority, the franchising authority may opt to follow the following procedure.

2. An informal meeting may be held to review the alleged non-compliance. If this meeting does not result in a resolution satisfactory to the franchising authority, the cable operator may request or the franchising authority may require an administrative hearing to determine if the non-compliance occurred. The cable operator shall be provided with ten days' written notice of the time and the place of the hearing, the allegations of non-compliance and the possible consequences of the non-compliance if substantiated.

3. After the administrative hearing, the franchising authority shall determine whether the non-compliance has been substantiated. If the non-compliance is substantiated, the franchising authority may order the cable operator to correct or remedy the non-compliance within thirty days (except where the non-compliance constitutes a material safety hazard) and in the manner and on the terms and conditions that the franchising authority establishes, or, in its sole discretion, the franchising authority may find a material violation of these standards.

4. If the franchising authority determines in its sole discretion that the non-compliance has been substantiated, the franchising authority may:

a. Impose assessments of $1,000.00 per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied;

b. Order, after further hearing, such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted non-compliance with these standards;

c. In its sole discretion, declare a violation of the franchise agreement, and in such case, the non-compliance shall be a violation of the franchise agreement for the purposes of the franchise agreement, triggering all available obligations and remedies under the franchise agreement;

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d. Withhold licenses and permits for work by the cable operator or its subcontractors in accordance with applicable law;

e. Pursue any other legal or equitable remedy available under any applicable franchise agreement or law; or

f. Any assessment or remedy shall not constitute a waiver by the franchising authority of any other right or remedy it may have under any applicable franchise agreement or law including any right to recover from the cable operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the franchising authority by reason of, or arise out of non-compliance with these standards.

V. MISCELLANEOUS

A. Severability.

Should any section, subsection, paragraph, term, or provision of these standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver.

Failure to enforce any provision of these standards shall not operate as a waiver of the obligations or responsibilities of the cable operator under said provision, or any other provision of these standards.

TITLE 12

HUMAN RIGHTS

TITLE 12 HUMAN RIGHTS

Chapter 1 Prohibition Of Discrimination In Housing, Employment, And Public Accommodations[1]

Section:

12-1-1 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

"Age" means age between forty and sixty-five years.

"Employer" means any person employing any person in any capacity.

"Employment agency" means any person undertaking, with or without compensation, to procure employees or opportunities to work for any person or holding itself out as equipped to do so.

"Gender identity" means a person's various individual attributes, actual or perceived, that may be in accord with, or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

"Gender variance" means a persistent sense that a person's gender identity is incongruent with the person's biological sex, excluding the element of persistence for persons under age twenty-one and including, without limitation, transitioned transsexuals.

"Genetic characteristics" means all characteristics of an individual that can be transmitted through the person's chromosomes.

"Genital reassignment surgery" means surgery to alter a person's genitals, in order to complete a program of sex reassignment treatment.

"Housing" means any building, structure, vacant land, or part thereof during the period it is advertised, listed, or offered for sale, lease, rent, or transfer of ownership, but does not include transfer of property by will or gift[2].

[1]Adopted by Ordinance No. 4571. Amended by Ordinance Nos. 4574, 4646, 7264. Derived from Ordinance No. 3824.
[2]24-34-501(2), C.R.S.

"Labor organization" means any organization, or committee or part thereof, that exists for the purpose in whole or in part of collective bargaining, dealing with employers concerning grievances, terms, or conditions of employment, or other mutual aid or protection in connection with employment[1].

"Marital status" means both the individual status of being single, divorced, separated, or widowed and the relational status of cohabitating and being married or unmarried.

"Minor child" means a person under eighteen years of age.

"Person" or "individual" means any individual, group, association, cooperation, joint apprenticeship committee, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trustee, and unincorporated organization and other legal, commercial, or governmental entity.

"Physical or mental disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. The term excludes current use of alcohol or drugs or other disabilities that prevent a person from acquiring, renting, or maintaining property, that would constitute a direct threat to the property or safety of others, or that would prevent performance of job responsibilities.

"Place of accommodation" means any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges, or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind.

"Sex" means biological sex, the sum of a person's physical characteristics.

"Sex reassignment treatment" means treatment to change a person's sex, based on medically recognized treatment protocols such as that published by the Harry Benjamin International Gender Dysphoria Association.

"Sexual orientation" means the choice of sexual partners, i.e., bisexual, homosexual or heterosexual.

"Transitioning transsexual" means a person experiencing gender variance who is undergoing sex reassignment treatment.

"Transitioned transsexual" means a person who has completed genital reassignment surgery.

Ordinance Nos. 4969 (1986); 5061 (1987); 7040 (2000).

12-1-2 **Discrimination In Housing Prohibited[2].**

(a) It is an unfair housing practice, and no person:

(1) Who has the right of ownership or possession or the right of transfer, sale, rental, or lease of any housing or any agent of such person shall:

(A) Refuse to show, sell, transfer, rent, or lease or refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease or otherwise to deny to or withhold from any individual such housing because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, preg-

[1]24-34-401(6), C.R.S.
[2]See 42 U.S.C. §§ 3604-3606.

nancy, parenthood, custody of a minor child, or mental or physical disability of that individual or such individual's friends or associates;

(B) Discriminate against any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the individual or such individual's friends or associates in the terms, conditions, or privileges pertaining to any facilities or services in connection with a transfer, sale, rental, or lease of housing; or

(C) Cause to be made any written or oral inquiry or record concerning the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of an individual seeking to purchase, rent, or lease any housing or of such individual's friends or associates, but nothing in this section prohibits using a form or making a record or inquiry for the purpose of required government reporting or for a program to provide opportunities for persons who have been traditional targets of discrimination on the bases here prohibited;

(2) To whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing shall:

(A) Make or cause to be made any written or oral inquiry concerning the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of an individual seeking such financial assistance, such individual's friends or associates, or prospective occupants or tenants of such housing, or

(B) Discriminate against any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual, such individual's friends or associates, or prospective occupants or tenants in the term, conditions, or privileges relating to obtaining or use of any such financial assistance;

(3) Shall include in any transfer, sale, rental, or lease of housing any restrictive covenant limiting the use of housing on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability or shall honor or exercise or attempt to honor or exercise any such restrictive covenant pertaining to housing[1];

(4) Shall print or cause to be printed or published any notice or advertising relating to the transfer, sale, rental, or lease of any housing that indicates any preference, limitation, specification, or discrimination based on race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability;

(5) Shall aid, abet, incite, compel, or coerce the doing of any act prohibited by this section or obstruct or prevent any person from complying with the provisions of this section or attempt either directly or indirectly to commit any act prohibited by this section[2];

(6) For the purpose of promoting housing sales, rentals, or leases in a geographic area, shall initiate, instigate, or participate in any representation, advertisement, or contract, directly or indirectly, within such geographic area that changes have occurred, will occur, or may

[1] 24-34-502(1)(c), C.R.S.
[2] 24-34-502(1)(e), C.R.S.

occur in the composition of the geographic area with respect to race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the owners or occupants or that such changes will or may result in lowering property values, in increased criminal or antisocial behavior, or in declining quality of schools in the geographic area;

(7) Shall discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this section;

(8) Shall:

(A) Offer, solicit, accept, use, or retain a listing of housing with the understanding that an individual may be discriminated against in the purchase, lease, or rental thereof on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual or such individual's friends or associates;

(B) Deny any individual access to or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting housing; or

(C) Discriminate against such individual on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual or such individual's friends or associates;

(9) Shall establish unreasonable rules or conditions of occupancy that have the effect of excluding pregnant women, parents, or households with minor children.

(b) The provisions of subsection (a) of this section do not apply to prohibit:

(1) Any religious or denominational institution or organization that is operated, supervised, or controlled by a religious or denominational organization from limiting admission or giving preference to persons of the same religion or denomination or from making such selection of buyers, lessees, or tenants as will promote a bona fide religious or denominational purpose.

(2) (A) An owner or lessee from limiting occupancy of a single dwelling unit occupied by such owner or lessee as his or her residence.

(B) An owner from limiting occupancy of rooms or dwelling units in buildings occupied by no more than two families living independently of each other if the owner actually maintains and occupies one of such rooms or dwelling units as his or her residence.

(C) An owner or lessor of a housing facility devoted entirely to housing individuals of one sex from limiting lessees or tenants to persons of that sex.

(3) The transfer, sale, rental, lease, or development of housing designed or intended for the use of the physically or mentally disabled, but this exclusion does not permit discrimination on the basis of race, creed, color, sexual orientation, gender variance, genetic characteristics, marital status, religion, ancestry, or national origin.

(4) Compliance with any provisions of section 9-8-5, "Occupancy Of Dwelling Units," or chapter 10-2, "Housing Code," B.R.C. 1981, concerning permitted occupancy of dwelling units.

(5) Discrimination on the basis of pregnancy, parenthood, or custody of a minor child in:

(A) Any owner-occupied lot containing four or fewer dwelling units;

(B) Any residential building in which the owner or lessor publicly establishes and implements a policy of renting or selling exclusively to persons fifty-five years of age or older, but only as long as such policy remains in effect;

(C) Any residential institution, as defined in section 9-16-1, "General Definitions," B.R.C. 1981;

(D) Any dwelling unit rented, leased, or subleased for no more than eighteen months while the owner or lessee is temporarily absent, when the owner or lessee leaves a substantial amount of personal possessions on the premises;

(E) Any residential building located on real estate whose title was, as of November 17, 1981, encumbered by a restrictive covenant limiting or prohibiting the residence of minor children on such property, but only so long as such covenant remains in effect; and

(F) Up to one-third of the buildings in a housing complex consisting of three or more buildings; for purposes of this subparagraph, housing complex means a group of buildings each containing five or more units on a contiguous parcel of land owned by the same person or persons.

(c) The provisions of subsection (a) of this section shall not be construed to require an owner or lessor of property to make any improvement to a housing facility beyond minimal building code standards applicable to the housing facility in question and approved by a state or local agency with responsibility to approve building plans and designs.

Ordinance Nos. 4803 (1984); 5061 (1987); 5117 (1988); 7040 (2000).

12-1-3 Discrimination In Employment Practices Prohibited[1].

(a) It is a discriminatory or unfair employment practice, and no person:

(1) Shall fail or refuse to hire, shall discharge, shall promote or demote, or shall discriminate in matters of compensation, terms, conditions, or privileges of employment against any individual otherwise qualified or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as provided in this paragraph if there is no reasonable accommodation that such person can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

(2) Shall refuse to list and properly classify for employment or refer an individual for employment in a known available job for which such individual is otherwise qualified

[1]See 42 U.S.C. 2000e.

12-1-3

because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for an employment agency to refuse to list and properly classify for employment or refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

(3) Shall exclude or expel any individual otherwise qualified from full membership rights in a labor organization, otherwise discriminate against any members of such labor organization in the full enjoyment of work opportunity, or limit, segregate, or classify its membership or applicants for membership, or classify or fail or refuse to refer for employment such individual in any way that deprives such individual of employment opportunities, limits employment opportunities, or otherwise adversely affects such individual's status as an employee or applicant for employment because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates;

(4) Shall print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification, or discrimination on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability or intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification;

(5) Shall establish, announce, or follow a policy of denying or limiting, through a quota system or otherwise, opportunities for employment or membership in a group on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability;

(6) Shall aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice, obstruct or prevent any person from complying with the provisions of this section, or attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(7) That is an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs shall discriminate against any individual on the basis of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates in admission to or employment in any program established to provide apprenticeship or other training; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice to withhold the right to be admitted to or to participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the individual from the program, and the disability has a significant impact on participation in the program;

(8) Shall use in the recruitment or hiring of individuals any employment agency, placement service, training school or center, labor organization, or any other employee referral source known by such person to discriminate on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability;

(9) Shall use in recruitment, hiring, upgrading, or promoting any test that such person knows or has reason to know tends to discriminate on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability; but it is not a discriminatory or unfair employment practice to provide employment opportunities for classes of individuals that have been the traditional targets of discrimination or to use a form or make a record or inquiry for the purpose of required government reporting, and with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as prohibited in this subsection if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job; and

(10) Seeking employment, shall publish or cause to be published an advertisement with a specification or limitation based upon race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability, unless based upon a bona fide occupational qualification.

(b) The provisions of subsection (a) of this section do not apply to prohibit a religious organization or institution from restricting employment opportunities to persons of the religious denomination or persons of other defined characteristics and advertising such restriction if a bona fide religious purpose exists for the restriction.

(c) The provisions of subsection (a) of this section concerning discrimination based on marital status do not apply to the provision of employee health or disability insurance.

(d) Notwithstanding any other provision of this chapter, a workplace supervisor may require that a worker not change gender presentation in the workplace more than three times in any eighteen-month period.

Ordinance Nos. 5061 (1987); 5468 (1992); 7040 (2000).

12-1-4 Discrimination In Public Accommodations Prohibited[1].

(a) It is a discriminatory practice, and no person shall:

(1) Refuse, withhold from, or deny to any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, or mental or physical disability of such individual or such individual's friends or associates, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation[2]; or

(2) Publish, circulate, issue, display, post, or mail any written or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that such individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of the race, creed, color, sex, sexual orientation, gender

[1] See 42 U.S.C. 2000a.
[2] 24-34-601(1), C.R.S.

variance, genetic characteristics, marital status, religion, national origin, ancestry, or mental or physical disability of such individual or such individual's friends or associates.

(b) The provisions of subsection (a) of this section do not apply to prohibit:

(1) Persons from restricting admission to a place of public accommodation to individuals of one sex if such restriction bears a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation[1]; or

(2) Any religious or denominational institution that is operated, supervised, or controlled by a religious or denominational organization from limiting admission to persons of the same religion or denomination as will promote a bona fide religious or denominational purpose.

(c) Notwithstanding any other provision of this chapter, transitioned transsexuals may use the locker rooms and shower facilities of their new sex and shall be protected by section 12-1-4, "Discrimination In Public Accommodations Prohibited," B.R.C. 1981, from any discrimination in their use of such locker rooms and shower rooms.

(d) Notwithstanding any other provision of this chapter, transitioning transsexuals shall be granted reasonable accommodation in access to locker rooms and shower facilities.

Ordinance Nos. 5061 (1987); 7040 (2000).

12-1-5 Prohibition On Retaliation For And Obstruction Of Compliance With Chapter.

(a) No person shall use a threat, communicated by physical, oral, or written means, of harm or injury to another person, such other person's reputation, or such person's property, or discriminate against any person because such person has entered into a conciliation agreement under this chapter, because the final or any other ruling in any proceeding brought under this chapter has been in such other person's favor, because such other person has opposed a discriminatory practice, or because such other person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing before a person charged with the duty to investigate or hear complaints relating to problems of discrimination, but this section does not apply when the threat involves knowingly placing or attempting to place a person in fear of imminent bodily injury by use of a deadly weapon;

(b) No person shall willfully obstruct, hinder, or interfere with the performance or the proper exercise of a duty, obligation, right, or power of the city manager, the municipal court, or other official or body charged with a duty, obligation, right, or power under this chapter.

12-1-6 Provisions Of This Chapter Supplement Other Code Sections.

Anything to the contrary notwithstanding, the substantive terms of this chapter and the remedies herein provided supplement those terms and remedies contained in this code and other ordinances of the city.

12-1-7 City Manager May Appoint Person To Assist In Enforcement.

The city manager may appoint a person to carry out any or all of the duties, obligations, rights, or powers under the provisions of this chapter, who may have such job title as the manager designates.

[1]24-34-601(3), C.R.S.

12-1-8 Administration And Enforcement Of Chapter.

(a) Any person claiming to be aggrieved by a violation of this chapter may file a written complaint under oath with the city manager:

(1) Within one year of any alleged violation of section 12-1-2, "Discrimination In Housing Prohibited," B.R.C. 1981; within one hundred eighty days of any alleged violation of section 12-1-3, "Discrimination In Employment Practices Prohibited," B.R.C. 1981; or within sixty days of any alleged violation of section 12-1-4, "Discrimination In Public Accommodations Prohibited," B.R.C. 1981; and

(2) The complaint shall state:

(A) The name of the alleged violator, or facts sufficient to identify such person;

(B) An outline of the material facts upon which the complaint is based;

(C) The date of the alleged violation;

(D) That any conduct of the complainant was for the purpose of obtaining the housing, employment, or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made; and

(E) That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without a final judgment on the merits.

(b) The city manager shall furnish a copy of the complaint to the person against whom the complaint is made.

(c) Before conducting a full investigation of the complaint, the city manager may attempt to negotiate a settlement of the dispute between the parties, if the manager deems that such an attempt is practicable.

(d) If the city manager does not deem it practicable to attempt a preinvestigation settlement or if such settlement attempt is unsuccessful, the manager shall conduct an investigation to determine whether there is probable cause to believe the allegations of the complaint.

(1) If the city manager determines there is no probable cause, the manager shall dismiss the complaint and take no further action thereon other than that of informing the concerned persons that the complaint has been dismissed.

(2) If the city manager determines that there is a sufficient basis in fact to support the complaint, the manager shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the manager, whereunder the alleged violation is eliminated and the complainant is made whole to the greatest extent practicable.

(3) The city manager shall furnish a copy of such signed conciliation agreement to the complainant and the person charged. The terms of a conciliation agreement may be made public, but no other information relating to any complaint, its investigation, or its disposition may be disclosed without the consent of the complainant and the person charged.

(4) A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred.

(5) A conciliation agreement may provide for dismissal of the complaint without prejudice.

(e) If a person who has filed a complaint with the city manager is dissatisfied with a decision by the manager to dismiss the complaint under paragraph (d)(1) of this section or if conciliation attempts as provided in paragraph (d)(2) of this section are unsuccessful to resolve the complaint, the aggrieved party may request a hearing before the City of Boulder Human Relations Commission[1], which shall hold a hearing on the appeal. If the commission finds violations of this chapter, it may issue such orders as it deems appropriate to remedy the violations, including, without limitation, orders:

(1) Requiring the person found to have violated this chapter to cease and desist from the discriminatory practice;

(2) Providing for the sale, exchange, lease, rental, assignment, or sublease of housing to a particular person;

(3) Requiring an employer to: reinstate an employee; pay backpay for discriminatory termination of employment, layoff, or denial of promotion opportunity; make an offer of employment in case of discriminatory refusal of employment; make an offer of promotion in the case of discriminatory denial of promotion opportunity; or take other appropriate equitably remedial action;

(4) Requiring that a person make available a facility of public accommodation in the case of discriminatory denial of the use of such facility;

(5) Requiring that a person found to have violated this chapter report compliance with the order or orders issued pursuant to this section; and

(6) Requiring that a person found to have violated any provisions of this chapter make, keep, and make available to the commission such reasonable records as are relevant to determine whether such person is complying with the commission's orders.

(f) No person shall fail to comply with an order of the human relations commission.

(g) The city manager may initiate and file a complaint pursuant to this section based on the information and belief that a violation of this chapter has occurred. The manager may file such a complaint pursuant to the following standards:

(1) The manager has supervised any investigative testing used;

(2) Any investigative testing is not designed to induce a person to behave in other than such person's usual manner; and

(3) The case is not brought for the purpose of harassment.

(h) No complaint shall be accepted against the city or a city-appointed agency unless there is no state or federal protection for the human rights violation set forth in the complaint.

Ordinance Nos. 4879 (1985); 7040 (2000).

12-1-9 **Judicial Enforcement Of Chapter.**

(a) The city manager may file a criminal complaint in municipal court seeking the imposition of the criminal penalties provided in section 5-2-4, "General Penalties," B.R.C. 1981, for violations of this chapter.

[1]Section 2-3-6, "Human Relations Commission," B.R.C. 1981.

(b) The city manager may seek judicial enforcement of any orders of the human relations commission.

(c) Any party aggrieved by any final action of the human relations commission may seek judicial review thereof in the District Court in and for the County of Boulder by filing a complaint for review within thirty days after the date of the final action under the Colorado Rules of Civil Procedure 106(a)(4).

12-1-10 City Contractors Shall Not Discriminate.

The city manager shall require that all contractors providing goods or services to the city certify their compliance with the provisions of this chapter.

12-1-11 Authority To Adopt Rules.

The city manager and the human relations commission are authorized to adopt rules to implement the provisions of this chapter.

12-1-12 Gender Variance Exemptions.

Competitive sports and sports-related records and sex-segregated housing for persons under age twenty-five shall be exempt from the gender variance discrimination provisions of this chapter.

Ordinance No. 7040 (2000).

12-1-13 Elements Of Proof.

Proof of the characteristics of the victim, while admissible to prove intent, and to determine reasonable accommodation for disabilities and for transitioning transsexuals, shall not otherwise be required as an element of proof in and of itself. The essential elements of proof shall be of discriminatory intent and of a nexus between such intent and an action or refusal or failure to act identified in this chapter.

Ordinance No. 7040 (2000).

TITLE 12 HUMAN RIGHTS

Chapter 2 Landlord-Tenant Relations[1]

Section:

12-2-1 Legislative Intent.

The purpose of this chapter is to supplement the provisions of state law governing the rights and duties of landlords and tenants of residential property in the city.

12-2-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Bank" means a bank, credit union, or similar institution that accepts deposits of money and insures such funds through the Federal Deposit Insurance Corporation, the National Credit Union Association, or similar institution.

"Interest" means simple interest on the full amount of the security deposit on deposit.

"Security deposit" means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.

Ordinance No. 7320 (2004).

12-2-3 Leases To Be Provided.

Any person renting residential property for thirty days or more shall enter into a written lease relating to such rental within thirty days of the commencement of such rental, and the lessor shall provide a copy of such lease to each lessee thereof within seven working days of final execution of the lease or within fifteen working days of the signature thereof by any lessee, whichever is sooner. Prior to issuance of a summons and complaint under this section, the complaining witness or a peace officer of the city must first request a copy of the lease, and the person renting the residential property shall have five working days from the date of mailing or personal delivery of such request to provide a copy of the lease.

Ordinance No. 4969 (1986).

[1]Adopted by Ordinance No. 4957.

12-2-4 Written Disclosures Required.

(a) No operator shall allow any person to occupy a rental property as a tenant or lessee or otherwise for valuable consideration unless and until that operator has satisfied each of the following conditions:

(1) The operator has executed and provided to the tenant a copy of a written lease, rental agreement, set of site rules, or other written instrument containing the following information:

(A) The maximum occupancy levels permitted in the rental unit;

(B) Notice of the provisions contained in sections 5-3-11, "Nuisance Party Prohibited," 5-6-6, "Fireworks," and chapter 5-9, "Noise," B.R.C. 1981;

(C) Notice of the provisions contained in sections 6-2-3, "Growth Or Accumulation Of Weeds Prohibited," 6-3-3, "Trash Accumulation Prohibited," paragraph 7-6-13(a)(1), concerning parking prohibited on sidewalks, and section 8-2-13, "Duty To Keep Sidewalks Clear Of Snow," B.R.C. 1981, relating to the responsibility of every owner, manager, or operator of rental property to maintain a valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property;

(D) The names of those individuals permitted, pursuant to the tenancy agreement, to occupy the rental unit;

(E) Notification to tenants that violation of the city's noise regulation requirements or residency within the rental unit of persons other than those lawfully occupying the unit pursuant to the tenancy agreement is cause for the termination of the tenancy; and

(F) Notification that interest must be paid to tenants upon any security deposit collected pursuant to the provisions of sections 12-2-2, "Definitions," and 12-2-7, "Interest Rate On Security Deposits," B.R.C. 1981.

(G) Notification to tenants of the date and nature of any violations of law during the preceding twenty-four months for which the owner, manager or operator has received written notice of violation pursuant to section 10-2.5-6, "Required Procedures Prior To Commencement Of Public Nuisance Action," B.R.C. 1981.

(b) The city manager shall approve a form that, if fully executed, will satisfy the requirements of subsection (a) of this section. Use of the approved form shall not be mandatory and individual operators may utilize other writings in lieu of such form so long as those writings satisfy the requirements of subsection (a) of this section.

(c) The operator has established and maintained an accurate listing of the identities of each of the persons who are authorized to reside in the subject rental unit.

(d) The maximum penalty for any violation or violations of this section that are charged as part of a single court proceeding shall be $500.00.

Ordinance Nos. 7158 (2002); 7320 (2004); 7515[1] (2007).

[1]This ordinance shall be of no further force and effect on April 30, 2009, unless action is taken by the city council to extend or make permanent the amendments enacted by this ordinance.

12-2-5 Ownership Of Security Deposit And Payment Of Interest.

Any security deposit for residential property subject to regulation under state law shall be and remain the sole property of the tenant advancing same, and such security deposit plus interest shall not be retained by the person having custody of it after the termination of the tenancy except for actual cause, pursuant to the provisions of state law dealing with retention of security deposits. This section does not create a fiduciary relationship between the parties, but creates a duty to account for interest upon the termination of the tenancy.

Ordinance No. 7158 (2002).

12-2-6 Return Of Accrued Interest - Enforcement.

(a) No person having custody of a security deposit for residential property shall fail to return accrued interest on the security deposit within one month after termination of the lease or surrender and acceptance of the premises, whichever occurs last, and according to the provisions of state law concerning the return of the related security deposit, notice of any deductions therefrom, and the legality of such deductions. Any additional accrued interest shall be returned at the time of the return of the related security deposit, subject to the same provisions of state law.

(b) Failure of any person having custody of a security deposit to provide the same notice required by state law for the retention of a security deposit with respect to the interest thereon shall work a forfeiture of such person's right to withhold any portion of the interest.

(c) The willful and wrongful retention of interest on a security deposit in violation of this chapter shall render the person having custody of the security deposit liable to the tenant for $100.00 or treble the amount so retained, whichever is greater, together with reasonable attorneys' fees and court costs; except that the tenant has the obligation to give notice to such persons of the tenant's intention to file legal proceedings a minimum of seven days prior to filing the action[1].

(d) In any court action brought by a tenant under this chapter, the person having custody of the security deposit shall bear the burden of proving that retention of the interest on a security deposit or any portion thereof was not in violation of this chapter.

(e) Nothing in this chapter shall preclude a tenant from filing a claim under part 1, article 12, title 38, C.R.S., and a claim under this chapter in the same lawsuit.

(f) This section and section 12-2-5, "Ownership Of Security Deposit And Payment Of Interest," B.R.C. 1981, do not apply to any security deposit paid to a mobile home park on account of the lease of a mobile home space.

Ordinance Nos. 4969 (1986); 7158 (2002).

12-2-7 Interest Rate On Security Deposits.

(a) The rate of interest to be paid upon the refund of security deposits shall be determined by the manager by averaging the interest rates being paid on one-year certificates of deposit by three banks doing business within the city that, in the view of the manager, provide indicia of being significant participants in the local banking industry. This average interest rate will

[1] If a landlord deliberately fails to return a security deposit during the additional seven-day notice period set forth in the State Security Deposit Act, §38-12-103(3)(a), C.R.S., the retention of the deposit is "willful" under the State Act. Turner v. Lyons, 539 P.2d 1241 (Colo. 1975).

be calculated as of December 15 of each year or, if that date falls on a weekend or holiday, on the first business day thereafter. The manager's determination of the rate shall be final. The rate shall be published in a newspaper of general circulation or posted on a city internet site that is accessible to members of the general public. The average interest rate so determined shall be rounded no more than two places to the right of the decimal point. It shall become the rate of interest paid on any security deposit that is provided to a landlord during the calendar year starting on January 1 of the year immediately following the date of the manager's determination.

(b) For the year 2004, the rate of interest shall be determined by the manager using the method set forth in subsection (a) of this section, within ten days of March 19, 2004. Within three days of that determination, the interest rate so determined shall be published or posted and shall, thereafter, apply to any security deposit provided to a landlord as a consequence of a lease or rental agreement that is entered into after the date on which the manager's determination is published or posted. In every subsequent year, the manager's determination shall be made pursuant to the provisions of subsection (a) of this section.

(c) Interest on security deposits for multi-year tenancies shall be calculated separately each year of tenancy in the manner provided in this section. The manager shall retain and make available a list of all prior year interest rates and shall provide a standard formula for the calculation of interest rates on multi-year tenancies.

(d) Payments of interest on security deposits made pursuant to lease or rental agreements entered into prior to March 19, 2004, shall be paid at the rate of five and one-half percent per annum simple interest on the full amount of the security deposit.

Ordinance No. 7320 (2004).

12-2-8 **Waiver Void.**

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived shall deemed to be against public policy and shall be void.

Ordinance Nos. 7158 (2002); 7320 (2004).

TITLE 12 HUMAN RIGHTS

Chapter 3 Drug Testing[1]

Section:

12-3-1 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Commercial vehicle" means any vehicle which meets the definition set forth in the Colorado Department of Public Safety Minimum Standards for the Operation of Commercial Vehicles.

"Employee" means a person treated as an employee for purposes of federal income tax withholding: a) who is assigned or anticipated to be assigned to an immediate supervisor located in the city and does not have a principal out of home office located outside of the city, or b) who is assigned or anticipated to be assigned more than thirty-three percent of the time on the job for a period of more than three months to a job located in the city.

"Employer" means a person who pays wages or salary to an employee, an agent of such a person, or a person in a position of authority over an employee.

Ordinance No. 5688 (1994).

12-3-2 Post-Employment Drug Testing Requirements.

Except as provided in section 12-3-4, "Exemptions," B.R.C. 1981, no employer shall request or require from an employee any urine, blood, or other bodily fluid or tissue test for any drug or alcohol or determine an employee's eligibility for promotion, additional compensation, transfer, disciplinary, or other personnel action, or the receipt of any benefit, based in whole or in part on the result of such test, unless all of the following conditions are met:

(a) At the time of the request or requirement, the employer has individualized reasonable suspicion, based on specific, objective, clearly expressed facts, to believe that the employee is under the influence of a drug or alcohol on the job, or his or her job performance is currently adversely affected by use of a drug or alcohol, or the employee has agreed to the test as a part of an employee assistance program after a finding or admission of prior drug or alcohol abuse;

(b) Prior to the administration of any drug or alcohol test, the employer adopts a written testing policy and makes it available to all employees. But a copy need not be provided directly to each employee, so long as a copy is made available freely for inspection by employees at any reasonable time during working hours, without personal identification of the employees. Such testing policy must, as a minimum, set forth all of the following information:

[1]Adopted by Ordinance No. 5195.

(1) The employees subject to testing under the policy;

(2) The circumstances under which drug or alcohol testing may be requested or required;

(3) The right of an employee to refuse to undergo drug or alcohol testing and the consequence of refusal;

(4) Any disciplinary or other personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test;

(5) The right of an employee to obtain, immediately upon request to the employer's custodian thereof, a copy of all records maintained of his or her initial positive confirmatory test results, and to submit written information explaining any such results;

(6) Any other appeal procedure available; and

(7) A copy of this chapter;

(c) The collection of any urine specimen is accomplished without direct observation of the genitals by any person other than the employee being tested;

(d) A sufficient specimen is collected to perform two tests, and the one untested specimen is maintained until a negative test result is obtained, or, in case of a positive result, for a period of not less than one year following the date on which the specimen is collected;

(e) No portion of any specimen is tested for pregnancy, and except for pre-employment physicals, no portion of any specimen is examined for evidence of any other medical condition, other than for the presence of alcohol or drugs;

(f) The collection, storage, and transportation of the specimen is accomplished in tamper-proof containers;

(g) Chain-of-custody documentation identifies how the specimen was handled, stored, and tested, at all times;

(h) Positive test results are confirmed by means of gas chromatography/mass spectrometry or an alternate method of equal or greater sensitivity and accuracy;

(i) The employer permits the employee, at the employee's request and expense, to contract with a laboratory meeting the National Institute of Drug Abuse Standards to have a second confirmatory test performed on an untested portion of the original specimen, subject to the same chain-of-custody assurances provided for the original test; and

(j) The release of the test results is prohibited, except as authorized by the person tested, or to those employees of the employer with reasonable business need to know, or as required by a court of law.

Ordinance No. 5688 (1994).

12-3-3 **Job Applicant Drug Testing Requirements.**

Except as provided in section 12-3-4, "Exemptions," B.R.C. 1981, no employer shall conduct a drug or alcohol test as part of a pre-employment screening or pre-employment physical except under the following circumstances:

(a) The employer includes notice that a drug or alcohol test will be part of the pre-employment screening process or pre-employment physical in the application for employment, or if no application form is required, in all advertisements soliciting applicants for employment, and all applicants for employment are personally informed of the requirement for a drug or alcohol test at the first formal interview;

(b) The drug or alcohol test is required only of Colorado residents who are the single finalist for the position or out-of-state resident finalists for the position who come to Colorado for an interview, if the same test is required of all finalists for that position; and

(c) Subsections 12-3-2(b) through (j), B.R.C. 1981, are complied with concerning job applicants as well as employees.

Ordinance Nos. 5271 (1990); 5688 (1994).

12-3-4 **Exemptions.**

(a) The following are exempt from this chapter:

(1) United States government;

(2) Colorado state government;

(3) The University of Colorado;

(4) Boulder County government;

(5) Boulder Valley School District; and

(6) Testing of an employee operating a commercial vehicle weighing over twenty six thousand pounds and for which a Commercial Driver's License is required, or which transports sixteen or more passengers, including the driver, under the Controlled Substances Testing Provisions set forth in the U.S. Department of Transportation regulations for commercial vehicles.

Ordinance No. 5688 (1994).

12-3-5 **Employers' Rights.**

(a) Nothing in this chapter restricts an employer's ability to prohibit the use of, possession of, or trafficking in, illegal drugs during work hours, or restricts an employer's ability to discipline an employee for being under the influence of, using, possessing, or trafficking in, illegal drugs during work hours or on the employer's premises. Nothing in this chapter restricts an employer's ability to prohibit the use of alcohol during work hours, or restricts an employer's ability to discipline an employee for being under the influence of alcohol during work hours or on the employer's premises.

(b) Nothing in this chapter prevents an employer from conducting routine medical examinations of employees or medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the work place or in the performance of an employee's job responsibilities. But no employer shall extend medical screening beyond the specific substance being monitored, and any inadvertently obtained information concerning drug or alcohol use shall be maintained in confidence in the medical record and not disclosed to any employer. No employer shall use any such evidence to determine promotion, additional

compensation, transfer, termination, disciplinary or other personnel action or the receipt of any benefit.

(c) It is an affirmative defense that a person was required to conduct drug or alcohol testing or take disciplinary action against an employee based on such testing in order to comply with a statute or regulation of the United States or the State of Colorado or any of their agencies or any agency interpretation of such statute or regulation. It is a specific defense that a person, based on specific, objective, clearly expressed facts, was reasonably required to conduct such testing or take such action in order to compete effectively to obtain a contract with the United States or the State of Colorado or any of their agencies.

Ordinance No. 5688 (1994).

12-3-6 **Enforcement.**

(a) The penalty for violation of any provision of this chapter is a fine of not more than $1,000.00 per violation. In addition, upon conviction of any person for violation of this chapter, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court under this section is a violation of this section and is punishable by a fine of not more than $2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration[1].

(b) Any person who commits or proposes to commit an act in violation of this chapter also may be enjoined therefrom by the municipal court or by any other court of competent jurisdiction.

(c) An action for injunctive relief under this chapter may be brought by the city attorney, upon ascertaining that a violation is likely to occur. Nothing in this chapter shall be construed to create a private right of action for damages.

Ordinance No. 5639 (1994).

[1]Ordinance No. 5639, effective July 15, 1994.

TITLE 12 HUMAN RIGHTS

Chapter 4 Domestic Partners[1]

Section:

12-4-1 Purpose.

The city values the dignity and worth of all people and is committed to promoting justice, equity and inclusiveness. The city finds that domestic partnerships exist in many different forms, including unmarried couples in either same or opposite sex relationships who are living together. In order to promote equal respect and fair treatment and to protect the public health safety and welfare, it is the policy of the city to allow any two unrelated adults in a committed relationship who meet the domestic partnership criteria to register with the city and to obtain a certificate attesting to their status or to receive a certificate documenting their status but not be formally registered in the city's domestic partnership registry.

12-4-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Common household" means a place where both domestic partners reside. The legal right to occupy the common household need not be joint.

"Marriage," as used in this chapter, shall mean a marriage as defined in section 14-2-104, C.R.S.

12-4-3 Requirements For Domestic Partnerships.

(a) In addition to freely declaring that both persons entering a domestic partnership are each other's sole domestic partner, an individual must:

(1) Be an unmarried person eighteen years of age or older and competent to contract;

(2) Not have been prohibited from marrying his or her domestic partner under the law of this state by reason of a blood relationship to the domestic partner or by reason of adoption;

(3) Share a "common household", as defined herein, with his or her domestic partner;

(4) Not have a different domestic partner under the provisions of this chapter or any other comparable domestic partnership provision;

[1]Adopted by Ordinance No. 7416.

(5) Execute, with his or her domestic partner, a certificate of domestic partnership, attesting to the foregoing requirements and that the parties are in a relationship of mutual support, caring, and commitment with the present intention to remain in that relationship; and

(6) Not have terminated the domestic partnership.

(b) No person shall make any misrepresentations in order to obtain a certificate of domestic partnership nor shall any person make any misrepresentations in connection with the process of the registration of a domestic partnership.

12-4-4 Creation And Termination Of Domestic Partnerships.

(a) Creation: A domestic partnership is established when both parties execute a certificate of domestic partnership, attesting to the foregoing facts of section 12-4-3, "Requirements For Domestic Partnerships," B.R.C. 1981, before the city manager.

(b) Termination: A domestic partnership ends when either of the domestic partners dies, marries, or executes a certificate of termination, stating that one or more of the criteria listed in subsection (a) of this section no longer apply, subject to the following conditions:

(1) The domestic partnership shall terminate as of the date of the death or marriage of either partner, or as of the date of executing the certificate of termination; and,

(2) In the event that only one of the partners executes the certificate of termination, then that partner shall, in such certificate, attest to the fact that he or she has sent a copy of the certificate of termination to the other partner at the other partner's last known address, registered mail, return receipt requested.

(c) Certification Of Creation And Termination: To be effective, certificates of domestic partnership and certificates of termination must be certified by the city manager. Certificates of domestic partnership and certificates of termination may be filed with the city manager. The city manager shall assess a fee for certifying such certificates, and provide one certified copy to one or both of the parties.

(d) Prior Registry: Domestic partnerships declared under the City of Boulder's prior domestic registry may be terminated under the provisions of this section.

(e) Subsequent Domestic Partnerships: No person shall enter into a domestic partnership after termination until at least ninety days after the termination of any such prior domestic partnership.

(f) Fee: An applicant for a certificate documenting the creation or termination of a domestic partnership shall pay the fee in section 4-20-59, "Domestic Partnership Registration Fees," B.R.C. 1981.

(g) Administration: The city manager may make available forms for creating and terminating domestic partnerships, which forms shall meet all requirements for registering a domestic partnership pursuant to this chapter. In addition to meeting the foregoing requirements of this chapter, any forms provided by the city manager shall include a statement that under current law registering a domestic partnership under the provisions of this chapter does not alter the parties' contract or property rights.

12-4-5 Recognition Of Domestic Partnerships Registered In Previous Registry And Other Jurisdictions.

For the purposes of this chapter, the city recognizes the domestic partnerships that are:

(a) Prior Registry: Registered under the City of Boulder's prior domestic registry;

(b) Governmentally Sanctioned: Are governmentally sanctioned civil unions or same sex marriages; or

(c) Domestic Partnerships Of Other Jurisdictions: Publicly documented and created under other laws of other jurisdictions that meet requirements that are similar to the requirements of section 12-4-3, "Requirements For Domestic Partnerships," B.R.C. 1981.

12-4-6 Private Registry Of Domestic Partnerships.

Nothing contained in this chapter shall be construed to prevent the city manager to continue the practice of allowing private registration of domestic partnership between two individuals. However, any privileges granted by the registration pursuant to section 12-4-4, "Creation And Termination Of Domestic Partnerships," B.R.C. 1981, shall accrue to such privately registered domestic partnerships upon the presentation of such private registration certified by the city manager.

12-4-7 Rules And Rulemaking.

(a) Rulemaking Authority: The city manager may promulgate such rule as the manager considers necessary to implement and enforce this chapter. All such rules shall be adopted in accordance with the procedures set forth in chapter 1-4, "Rulemaking," B.R.C. 1981.

(b) Violation Of Rules Prohibited: No person shall violate any rule issued by the city manager under this section.

TITLE 13

ELECTIONS AND CAMPAIGN DISCLOSURES AND ACTIVITIES

TITLE 13 ELECTIONS AND CAMPAIGN DISCLOSURES AND ACTIVITIES

Chapter 1 Elections[1]

Section:

13-1-1 Legislative Intent.

(a) The purpose of this chapter is to establish procedures for regular and special elections of the home rule City of Boulder. Such procedures are intended to be consistent with the Uniform Election Code of 1992 as adopted by the State of Colorado, except as necessary to comply with provisions of the charter or to meet a specific need of the city as determined by the city council.

(b) The purpose of this chapter in adopting by reference sections 1-2-228, 1-4-913, part 2 of article 1-11, and article 13 of title 1, C.R.S., which form a part of the Uniform Election Code, is to make it clear that such provisions apply to city elections. Adoption does not create a separate municipal offense or municipal court proceeding. Proceedings under such statutes, including, without limitation, contests of municipal elections and criminal prosecutions, shall be brought and heard in the district court or county court as specified by state law, and control of the criminal prosecution of the enumerated election offenses shall remain with the district attorney or the attorney general of the state.

13-1-2 Incorporation Of Uniform Election Code Of 1992, As Amended, With Modifications.

(a) The Uniform Election Code of 1992, 1-1-101 through 1-13-803, C.R.S., as amended through June 6, 2006, is adopted by reference and incorporated so as to have the same force and effect as if printed in full in this code, except as specifically amended by the provisions of this chapter.

(b) The council finds that certain modifications to the Uniform Election Code of 1992, as amended, are in the best interest of the residents of the city and therefore adopts the following modifications:

(1) Section 1-1-102, C.R.S., is repealed and reenacted to read:

1-1-102. Applicability.

(1) This election code applies to all municipal general and special elections of the city, including without limitation recall elections. Except as otherwise provided in the Boulder Revised Code, 1981, or any uncodified ordinance specific to the situation, this election

[1]Adopted by Ordinance No. 5582. Derived from Ordinance Nos. 3738, 3984, 3935, 3947, 4036, 4139, 4277, 4561, 4596, 4607, 4618, 4652, 4997, 5067, 5218, 5242, 5403, 5509.

13-1-2

code also applies to general improvement district elections, and to any elections required by the Constitution of the State of Colorado for which no specific provision is made by any law of the city.

(2) The *Uniform Election Code* of 1992 was adopted by the General Assembly of the State of Colorado to cover many elections other than municipal elections. Accordingly, many provisions of the *Uniform Election Code* are inapplicable to municipal elections. The sections and parts of sections which appeared most clearly to be inapplicable to municipal elections have been specifically not adopted, either by calling them not adopted, repealed, or repealed and reenacted to read, in adopting by reference the *Uniform Election Code* of 1992. However, other provisions of the *Uniform Election Code* of 1992 which are also inapplicable to municipal elections have not been specifically called out as being inapplicable. Adoption by reference of such provisions does not mean that the city council was of the opinion that such provisions are applicable to municipal elections, and in such cases their applicability shall be determined by the intent of the Colorado General Assembly.

(3) This election code is applicable both to coordinated elections involving the participation of the county clerk and elections of other political jurisdictions, and to municipal elections which the city may choose to conduct on its own, as the city council may from time to time specify in any ordinance calling a special election or otherwise.

(4) To the extent that any provision of this election code conflicts with the charter, such provision is inapplicable.

(2) Section 1-1-104(8), C.R.S., is repealed and reenacted to read:

"Designated election official" means the city clerk.

(3) Section 1-1-104(17), C.R.S., is repealed and reenacted to read:

"General election" means the election specified in Charter Section 22 to be held on the first Tuesday in November of every odd-numbered year.

(4) Section 1-1-104(18), C.R.S., is repealed and reenacted to read:

"Governing body" means the city council, including without limitation the city council sitting as the board of directors of a general improvement district.

(5) Section 1-1-104(34.5), C.R.S., is repealed and reenacted to read:

"Referred measure" includes any ballot question or ballot issue submitted by the city council to the qualified electors of the city pursuant to Charter Sections 37 through 54 or Section 1-41-103, C.R.S.

(6) Section 1-1-104(46), C.R.S., is repealed and reenacted to read:

"Special election" means an election other than a general election as specified in the charter, including without limitation Sections 22, 41, 47, and 58.

(7) Sections 1-1-104(1), (5), (6), (9), (9.5), (19), (20), (22), (23), (24), (25), (26), (31), (32), (39), (40), (41), (42), and (45), C.R.S., are repealed.

(8) Sections 1-1-109(1) and 1-1-110(3), C.R.S., are repealed and reenacted to read:

(1) Except as otherwise provided by this election code, by some other specific provision of the Boulder Revised Code, 1981, or by the ordinance calling a particular election, the secretary of state shall approve all the forms required by this election code, which forms shall be followed by county clerk and recorders, election judges, and other election officials. Forms concerning nominations for city council, initiative, referendum, and recall petitions, and any other forms governed by the charter are included among the forms which are "otherwise provided" by this election code.

(2) As the chief election official for the county, the county clerk and recorder shall be the chief designated election official for all coordinated elections. If the city or its general improvement districts request that its election be coordinated with any other election, it shall certify the ballot content to the county clerk and recorder prior to the fifty-fifth day before the election. Nothing in this section shall authorize the city clerk or the county clerk and recorder to take any action at variance with the requirements of the charter.

(9) Section 1-1-202, C.R.S., is repealed and reenacted to read:

1-1-202. Commencement of Terms.

The terms of city councilmembers shall commence as specified in charter section 5.

(10) Section 1-2-104, C.R.S., is repealed and reenacted to read:

1-2-104. Additional Qualifications.

Qualifications for voting in elections concerning general improvement districts of the city shall be as specified in Chapter 8-4, "General Improvement Districts," B.R.C. 1981, and in the ordinance establishing the specific district.

(11) Section 1-4-501, C.R.S., is repealed and reenacted to read:

1-4-501. Electors Eligible to Hold Municipal Office.

Qualifications of electors eligible to hold municipal office are those set forth in charter section 4.

(12) Section 1-4-805, C.R.S., is repealed and reenacted to read:

1-4-805. Nomination of Municipal Officers.

Nomination of municipal officers is governed by charter sections 23 through 28 and 30.

(13) Section 1-4-901, C.R.S., is repealed and reenacted to read:

1-4-901. Recall.

Recall elections shall be conducted when required and under the procedures specified in charter sections 55 through 62. The conduct of such elections shall be in accordance with those provisions of this election code not inconsistent with the charter.

(14) Repealed.

(15) Section 1-4-1001, C.R.S., is repealed and reenacted to read:

1-4-1001. Withdrawal from candidacy.

Withdrawal from nomination shall be governed by charter section 29.

(16) Section 1-5-203, C.R.S., is amended to add a new subsection (4) to read:

(4) Certification of Ballot For Elections Which Are Not Coordinated.

To the extent not inconsistent with the charter, the city clerk shall certify the ballot at least fifty days before any election which is not a coordinated election. The ballot certified shall comply with Charter Section 31, and shall also include any ballot issues or ballot questions to be submitted to the eligible voters.

(17) Section 1-5-205, C.R.S., is amended by the addition of a sentence to read:

With respect to the election of a member or members of the city council, the city clerk shall also publish the notice required by and containing the information contained in charter section 31.

(18) Repealed.

(19) Section 1-5-208, C.R.S., is repealed and reenacted to read:

1-5-208. Election May be Canceled or Ballot Questions Withdrawn.

(1) Except for initiative, initiated referendum, and recall elections, if the only matter before the electors is the consideration of ballot issues or ballot questions, no later than twenty-five days before an election conducted as a coordinated election in November, and at any time prior to any other election, the city council may by resolution cancel the election or withdraw one or more such issues or questions from the ballot. The ballot issues and ballot questions shall be deemed to have not been submitted and votes cast on the ballot issues and ballot questions shall either not be counted or shall be deemed invalid by action of the city council.

(2) If the electors are to consider the election of persons to the city council and ballot issues or ballot questions, the city council may remove any or all of the ballot issues or questions by following the procedures set forth in subsection (1) of this section.

(3) Unless otherwise provided by an intergovernmental agreement pursuant to 1-7-116, C.R.S., upon receipt of an invoice, the city shall within thirty days pay all costs accrued by the county clerk and recorder and any coordinating political subdivision attributable to the canceled election and any removed ballot questions or issues.

(4) The designated election official shall provide notice by publication of the cancellation of an election and a copy of the notice shall be posted at each polling place of the city, in the city clerk's office, and in the office of the county clerk and recorder.

(20) Section 1-5-406, C.R.S., is repealed and reenacted to read:

1-5-406. Content of Ballots.

The designated election official shall provide printed ballots for every election. The official ballots shall be printed and in the possession of the designated election official at least thirty days before the election. Every ballot shall contain the names of all duly

nominated candidates for city council, except those who have died or withdrawn, and the ballot shall contain no other names. The names of the candidates shall be printed upon the ballot in alphabetical order by surname as provided in charter section 34.

(21) Repealed.

(22) Sections 1-6-105 and 106, C.R.S., are repealed and reenacted to read:

1-6-105. Appointment of Election Judges for Non-partisan Elections.

(1) For coordinated elections, election judges shall be appointed by the county clerk as provided by state law. For other elections, no later than fifteen days before the election, the city clerk shall appoint election judges for the city or the district for which the election is to be held. The term of office for such judges shall end with the end of the judge's duties with respect to the election for which appointed.

(2) For coordinated elections, any person who has been appointed by a county clerk and recorder, who has filed an acceptance, and who has attended a class of instruction may be appointed as an election judge for non-partisan elections. For other elections, any person who has been appointed by the city clerk, who has filed an acceptance, and who has attended a class of instruction may be appointed as an election judge for such election.

1-6-106. Certification of Appointment

For coordinated elections, thirty days before the election the county clerk and recorder shall certify the list appointing the election judges and shall mail one acceptance form to each person appointed. For other elections, fifteen days before the election the city clerk shall certify the list appointing the election judges and shall mail one acceptance form to each person appointed.

(23) Section 1-7-902, C.R.S., is repealed and reenacted to read:

1-7-902. Preparation of Fiscal Information.

The city manager shall be responsible for providing to the designated election official the fiscal information which must be included in the ballot issue notice for a referred measure.

(24) Section 1-7.5-104, C.R.S., is repealed and reenacted to read:

1-7.5-104. Mail Ballot Elections.

If the city council determines that an election shall be by mail ballot, the designated election official shall conduct the election by mail ballot in accordance with this article. The designated election official shall give appropriate weight to the comments of the secretary of state concerning the city's mail ballot plan, but may conduct the election despite disapproval of all or a part of such plan by the secretary of state.

(25) Section 1-7.5-107, C.R.S., is amended by the addition of a sentence to read:

With respect to the election of a member or members of the city council, the city clerk shall also publish the notice required by and containing the information contained in charter section 31.

(26) Sections 1-10-201, 202, and 203, C.R.S., are repealed and reenacted to read:

1-10-201. Canvassing.

The general canvassing and election board shall be appointed and conduct its business as provided in charter section 32. The city clerk shall forward all election returns to the city council for canvassing pursuant to charter section 32. This canvassing board shall also act as the canvassing board for the city portion of a coordinated election.

(27) Repealed.

(28) Section 1-11-103, C.R.S., is repealed and reenacted to read:

1-11-103. Certificates of Election.

Certificates of election shall be issued as provided by charter section 32.

(29) Article 1-12, C.R.S., is repealed and reenacted to read:

1-12-101. Recalls and Vacancies.

Recalls shall be initiated and conducted as provided in Charter Sections 55 through 62. Vacancies shall be filled as provided in Charter Section 8.

(30) Section 1-13-107, C.R.S., is amended to add a subsection (b) to read:

(b) The secretary of state is not authorized by this section to take any action or enforce any regulation which is inconsistent with this election code as adopted by the home rule City of Boulder or with the charter.

(31) The following sections, parts, and articles of the Colorado Revised Statutes are not adopted by reference, and are not applicable to city elections: Sections 1-1-112, 201 and 203, 1-2-203, 209, 210, 218.5, 219, 222, 701, 702 and 703; Article 1-3; Article 1-4 except parts 9, 10, and 11; Sections 1-4-902 through 908, 910, and 912, 1-4-1002 and 1003, 1-4-1103; 1-5-101, 103, 207, 301, 402, 403, 404, 601.5, 605.7 and 608.2; 1-6-102, 103, 103.5, 103.7, 104, 109, 110, 111; 1-7-105 and 106; Part 2 of Article 1-7, Sections 1-7-407; Section 1-8-114.5; Part 1 of Article 1-10; 1-10.5-102; 1-11-101 through 108, 1-11-203, 1-11-204 through 211, and Part 3 of Article 1-13.

Ordinance Nos. 5667 (1994); 5724 (1995); 5903 (1997); 5936 (1997); 6018 (1998); 7135 (2001); 7228 (2002); 7311 (2003); 7474 (2006).

13-1-3 **Responsibility Of The City Manager.**

The city manager shall administer the requirements of this chapter and comply with all laws regulating the conduct of elections.

13-1-4 **Absentee Ballot Cards.**

Whenever an electronic voting system is used in a municipal election and official ballots are in the form of ballot cards to be read by electronic vote counting equipment, official absentee ballots may also be in the form of ballot cards.

13-1-5 Duplication Of Absentee Ballots For Counting.

(a) Whenever an electronic voting system is used in a municipal election and whenever an absentee ballot is not suitable for counting on the electronic vote counting equipment because such ballot was cast in pencil or ink or is in the form of a paper ballot, a true duplicate copy of the ballot may be made and counted in the manner provided in this section.

(b) By means of a vote recorder or punching device, the judges of election of the precinct selected by the city manager to receive the absentee ballots shall make such duplicate copy by punching an unused ballot card provided to the judges for that purpose. One such judge shall read aloud the vote on the original handwritten ballot and another judge shall punch the duplicate. A third judge shall watch the duplication process and shall check its accuracy.

(c) An election judge shall label any duplicate ballot so made as a duplicate ballot and shall record the serial number of the duplicate ballot on the original handwritten absentee ballot.

(d) If a judge makes an inaccurate duplicate ballot, the judge shall label such ballot "void" and place it in a separate envelope provided by the city manager for that purpose. The judges shall make a new duplicate ballot and label it in the same manner as provided in this section and shall record the serial number of any new duplicate ballot on the original handwritten absentee ballot.

(e) The election judges shall retain all original handwritten absentee ballots and place them in a separate envelope provided by the city manager for that purpose.

(f) The election judges shall substitute any duplicate ballot made under this section for the original ballot and shall present such duplicate for counting on the electronic vote counting equipment at the counting center after 7:00 p.m. on election day in the same manner as other ballots from city election precincts are counted.

(g) No election judge shall make any duplicate ballot under this section before the time otherwise allowed by law for the counting of absentee ballots.

(h) Whenever election judges of the absentee voter precinct use the duplicate ballot process authorized by this section, such judges shall make a written statement, in addition to any other statements or certificates otherwise required by law to be made, showing the number of duplicate ballots made and not marked "void" together with the serial numbers thereof and the number of duplicate ballots made and marked "void" together with the serial numbers thereof and shall return such statement to the city manager with other election papers and supplies.

(i) When absentee ballots are duplicated and counted as authorized by this section, the absentee precinct judges shall not be required to make or post an abstract of the count of votes.

(j) All provisions of the election laws of the city that are not inconsistent or in conflict with this section continue to apply to all elections where the duplicate ballot process authorized by this section is used. Any provisions of the election laws of the city that are inconsistent or in conflict with the provisions of this section do not apply to elections where the duplicate ballot process provided in this section is used. Nothing in this section shall be construed to prohibit the use of a manual system of counting absentee ballots.

(k) The city manager is authorized to institute other procedures not inconsistent with the provisions of this section that are designed to promote efficiency and accuracy in the duplication process authorized by this section.

13-1-6 Submission Of Citizen Petitions For Comment Prior To Circulation.

The proponents of an initiative, referendum, or charter amendment petition may submit a draft thereof to the city manager before circulating the petition. No later than fifteen days after the date of receiving such petition draft, and after consulting with the city attorney, the manager shall provide written comments to the proponents concerning any problems encountered in the format or contents of the draft. The proponents may either disregard the comments or alter the petition draft in response thereto.

13-1-7 Initiative And Referendum.

All aspects of the exercise of the initiative and referendum power reserved to the people by the charter of the City of Boulder shall be governed exclusively by the provisions of the charter, this code, and any other applicable ordinance of the city, and no statute of the state purporting to regulate in any way the exercise of the initiative or referendum shall govern the exercise of the initiative or referendum, except for those criminal provisions of state law not in conflict with any provision of the charter or this code which prohibit fraud or deception in the circulation or signing of initiative or referendum petitions, or respecting affidavits concerning said petitions. This section does not apply to initiatives concerning the amendment or abolition of the charter[1].

Ordinance No. 7135 (2001).

13-1-8 Special Provisions Concerning Filling Council Vacancies By Special Election.

The electors of the city approved an amendment to charter section 8 in November 1996. That amendment changed the method of filling vacancies on the city council from an appointment system to an election system. This section establishes the term of a person elected by special election to fill a council vacancy, and makes such adjustments to the provisions of the Uniform Election Code of 1992, as adopted with amendments by this title, as are useful in adapting that code to the exigencies of special elections to fill vacancies, which must be conducted on a compressed time frame.

(a) The term of a council member elected in a special election held pursuant to charter section 8 to fill a council vacancy shall expire at 10:00 a.m. on the third Tuesday in November following the next general municipal election.

(b) The city council may, in the resolution calling for a special election to fill a council vacancy, specify a number of days before the election that the early voters' polling place shall be open which is less than that specified in section 1-8-202, C.R.S., as adopted by reference, and may also specify additional hours during which such early voters' polling place shall be open. But such a provision is only effective for a special election which is not conducted as a coordinated election.

Ordinance Nos. 5856 (1996); 5903 (1997).

[1]Article XX, section 9 of the Colorado Constitution gives the General Assembly authority over the home rule amendment process. See section 31-2-201 et seq., C.R.S.

TITLE 13 ELECTIONS AND CAMPAIGN DISCLOSURES AND ACTIVITIES

Chapter 2 Campaign Financing Disclosure[1]

Section:

13-2-1 Legislative Intent.

(a) The purposes of this chapter include assisting electors in the city in making informed election decisions by requiring financial disclosure information from candidates for city office and committees supporting or opposing such candidates and city ballot issues.

(b) The limitations on contributions are intended to assure the public that:

(1) Excessive campaign costs and large contributions do not cause corruption or the appearance of corruption in the election process; and

(2) Large campaign contributions will not be used to buy political access or to influence governmental actions.

(c) Public campaign financing is intended to assure the public that access to large amounts of money will not be a prime requirement for participation in the political process.

(d) The provisions of this chapter concerning financial disclosure are exclusive, and supersede any state statute on the subject, whether in conflict herewith or not, including, without limitation, article 1-45, C.R.S., unless the provisions of such statute are expressly made applicable by reference in this chapter.

[1]Adopted by Ordinance No. 4678. Amended by Ordinance Nos. 4934, 5186, 5218, 5271, 5639, 5800, 5903, 6018, 7035. Derived from Ordinance Nos. 4049, 4333. Repealed and reenacted by Ordinance No. 7136.

(e) The reporting requirements are necessary to gather the data to detect violations.

(f) The provisions of this chapter have been modeled on the Federal Election Campaign Act and the Colorado Fair Campaign Practices Act, and in accordance with an initiative passed by the people of the city in 1999. Modifications have been made where necessary to meet specific needs of the city, to clarify and make more specific various requirements, and to comply with the evolving law in this area.

(g) The city council finds that at this time it is not necessary to require candidates and their candidate committees to report expenditures over $200.00 as frequently as such reporting is necessary for unofficial candidate committees and independent expenditures in order to serve the purposes of this chapter. Candidates are necessarily subject to intense scrutiny throughout the campaign, and are required to file financial disclosures shortly after becoming candidates. They become candidates no later than seventy-one days before the election under the charter. Generally candidate committees file their statement of organization at the beginning of the campaign, and thus are a formed ongoing entity which is well known. Unofficial candidate committees can be formed at any time, and individuals can make independent expenditures at any time, so within twenty-one days of the election more frequent reporting of larger expenditures is required of them. Council, like the United States Congress, finds that a twenty-four hour reporting period is not unreasonable in that immediate pre-election time, especially where mail ballots are used. In addition, if unofficial candidate committees and individuals making independent expenditures use the alternative of reporting campaign advertising instead of placing language of attribution in the advertisement, more frequent reporting is essential if voters interested in knowing the source of the advertisement are to be able to discover this information in a timely manner.

(h) Making an endorsement supporting or opposing a candidate or ballot proposition, or solicitation of such an endorsement by a candidate, committee, or other person, is not regulated by this title. However, the expenditures for publishing endorsements, and any contributions for support or opposition to a candidate or ballot proposition other than the endorsement itself, are regulated by this title in the same way as other contributions and expenditures.

Ordinance No. 7214 (2002).

13-2-2 **Definitions.**

The following terms used in this chapter and chapter 13-3, "Campaign Activities," B.R.C. 1981, have the following meanings unless the context clearly indicates otherwise:

"Ballot proposition" means any amendment to the city charter, and any initiative, referendum, or recall for which petitions have been properly certified by the city clerk for submission to the city council, or any ordinance or issue put to a vote of the electors of the City of Boulder under the provisions of the city charter. Such term does not include any ballot issue placed on the ballot by the United States, the State of Colorado or any political subdivision thereof other than the city.

"Candidate" means any person whose petition of nomination for city council, whether at a regular, special, or recall election, has been certified as sufficient by the city clerk pursuant to charter section 26.

"Candidate committee" means a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. The term "official candidate committee" is synonymous with "candidate committee."

"Committee" means a candidate committee, an unofficial candidate committee, and an issue committee, unless the context indicates that it can mean only one or two of these types of committees.

"Contribution" means:

(a) Any payment, loan, pledge, or advance of money, including, without limitation, checks received but not deposited or payments made by credit card, or guarantee of a loan, made to or for the benefit of any candidate or committee;

(b) Any payment made to a third party for the benefit of any candidate or committee, including, without limitation, the use of a credit card to secure such benefit;

(c) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's election, including, without limitation, commercial services such as banking, printing, and mailing services; or

(d) With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, without limitation, items of perishable or non-permanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration.

"Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate or committee.

"Contribution in kind" means the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate or committee for the purpose of influencing the passage or defeat of any issue or the election or defeat of any candidate. Personal services are a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used by the candidate or committee. "Contribution in kind" does not include an endorsement of a candidate or an issue by any person, nor does it include the payment of compensation for legal or accounting services rendered to a candidate if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this title.

"Expenditure" means the payment, distribution, loan, or advance of any money by any candidate or committee, whether in cash, by check, as a credit card charge, or otherwise. "Expenditure" also includes the payment, distribution, loan, or advance of any money by a person for the benefit of a candidate or committee that is made with the prior knowledge and consent of an agent of the candidate or committee. An expenditure occurs when the actual payment is made or when a contract is agreed upon, whichever comes first. Consent may be implied from collaboration and need not be express.

"Independent expenditure" means an expenditure by any person for the purpose of expressly advocating the election or defeat of a candidate or candidates, which expenditure is not controlled by, coordinated with, or made upon consultation with any candidate or candidate committee or any agent of such candidate or committee. "Independent expenditure" does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business, including political messages sent solely to members.

"Issue" is synonymous with ballot proposition.

"Issue committee" means any two or more natural persons who collaborate together, or any corporation, partnership, commission, association, or any other organization or group of persons,

that accepts contributions or makes expenditures for the purpose of opposing or supporting a ballot proposition at a city election, regardless of whether or not it has obtained the consent of the sponsors of the ballot proposition.

"Official candidate committee" - see definition of "candidate committee."

"Political committee" means any two or more natural persons who collaborate together, or any corporation, partnership, commission, association, or any other organization or group of persons, that accepts contributions or makes expenditures for the purpose of opposing or supporting a candidate for city council, or a city ballot proposition, and which, because of campaign activities concerning other candidates, other ballot measures, or both, is required under the Fair Campaign Practices Act found in state law to file statements and reports with the secretary of state or the county clerk and recorder. It is the intention of this chapter to reduce the burden on such committees of following two separate sets of filing and reporting requirements, while still protecting the public purposes served by filing and reporting. However, no candidate committee or other committee, the expenditures of which are in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation with any candidate or candidate committee or agent thereof shall be deemed a political committee eligible for these different requirements.

"Unofficial candidate committee" means any two or more natural persons who collaborate together, or any corporation, partnership, commission, association, or any other organization or group of persons, that accepts contributions or makes expenditures for the purpose of expressly advocating the election or defeat of a clearly identified candidate for city council. An unofficial candidate committee ceases to be independent if its expenditures are in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation with any candidate or candidate committee or agent thereof.

13-2-3 Candidate's Financial Disclosure Statement.

No more than three days after a candidate's petition of nomination for city council has been certified as sufficient by the city clerk pursuant to charter section 26, the candidate shall file a statement of financial disclosure that contains:

(a) The candidate's employer and occupation and the nature and source of any other income in excess of $1,000.00 per year, including, without limitation, capital gains, whether or not taxable, dividends, interest, wages, salaries, rents, and profits;

(b) The name, location, and nature of activity of any business entities or enterprises for profit, with holdings of real or personal property or with business dealings in the area encompassed by the Boulder Valley Comprehensive Plan, in which the candidate has any financial interest or is actively engaged as an officer, director, or partner and the nature of the candidate's interest or activity;

(c) The location of any real property within Boulder County in which the candidate has an interest or, if the candidate has a controlling interest in an entity or enterprise disclosed pursuant to subsection (b) of this section, in which the controlled entity or enterprise has any interest and the nature of such interest;

(d) Any other information that the candidate feels would be helpful or should be disclosed; and

(e) Notwithstanding any other provision of this chapter, no candidate is required to disclose any confidential relationship protected by law.

13-2-4 Incumbent's Financial Disclosure Statement.

On September 10 of each calendar year each incumbent council member shall file an amended statement concerning the financial disclosures in section 13-2-3, "Candidate's Financial Disclosure Statement," B.R.C. 1981, with the city manager or notify the manager in writing that the council member has no change of financial condition regarding the disclosed items since previously filing a disclosure statement.

13-2-5 Statement Of Organization Of Official Candidate Committee.

(a) No more than three days after a candidate's petition of nomination for city council has been certified as sufficient by the city clerk pursuant to charter section 26, the candidate shall file a statement of organization of the committee formed to assist the candidate in being elected to city council. This statement shall be filed even if the candidate has not formed a committee, and shall be amended later if a committee is formed or the information required changes. The statement of organization shall include:

(1) The name and address of the candidate;

(2) The name and address of the committee;

(3) The names and addresses of all persons acting as officers of the candidate's campaign or of the committee, including committee chairpersons; and

(4) The name and address of the committee's campaign treasurer.

(b) A candidate may be the treasurer and hold any position in the candidate's own campaign committee. A candidate is deemed to have a committee even if there is none, but this does not increase the reporting requirements. No candidate shall be deemed to have more than one candidate committee, and if more than one committee acts under the authority of or in coordination with a candidate, all shall be deemed the candidate's committee and shall file combined reports as required by this title and all shall jointly be subject to the limitations of this title.

(c) The committee treasurer shall file a statement of any changes in the information required by subsection (a) of this section no more than three days after such change.

(d) Expenditures by any person on behalf of a candidate that are, in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation with any candidate or the candidate's official committee or agent thereof shall be considered a contribution to the candidate and are subject to the contribution limitations contained in this chapter. If such an expenditure is made by an unofficial candidate committee, all contributions to that committee shall be deemed contributions to the candidate for purposes of contribution limitations. Such expenditures also count toward the expenditure limit of any candidate receiving public funding under this chapter.

13-2-6 Statement Of Organization Of Unofficial Candidate Committee.

(a) No more than three days after an unofficial candidate committee accepts a contribution or makes or obligates itself to make an expenditure, the treasurer of the committee shall file a statement of organization that includes:

(1) The name and address of the committee;

(2) The candidate or candidates the committee is supporting or opposing, or both if that is the case;

(3) The names and addresses of all persons acting as officers of the committee, including committee chairpersons; and

(4) The name and address of the committee's campaign treasurer.

(b) The committee treasurer shall file a statement of any changes in the information required by this section no more than three days after such change.

(c) Expenditures by any unofficial candidate committee on behalf of a candidate that are, in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation with any candidate or the candidate's committee or agent thereof shall be considered a contribution to the candidate and subject the candidate and the contributor to any applicable penalties contained in this chapter. Such expenditures also count toward the expenditure limit of any candidate who has received public funding under this chapter.

(d) Unofficial candidate committees which make expenditures on behalf of any candidate who has received public funding under this chapter shall keep records of the time, place, and general subject matter of all consultation with any person, other than a member of the committee who is not affiliated with any other candidate or official or unofficial candidate committee, concerning the substance, venue, and timing of the expenditure, which records shall be given to the city manager by the committee treasurer if the manager makes a demand for same. The manager is authorized to make such a demand any time the manager has a reasonable suspicion that the expenditures were controlled by, or coordinated with, or made upon consultation with any candidate or candidate's committee or other unofficial candidate committee or agent thereof.

13-2-7 Statement Of Organization Of Issue Committee.

(a) No more than three days after an issue committee accepts a contribution or makes an expenditure, or three days after ballot certification if the committee has accepted contributions or made expenditures in anticipation of ballot proposition certification, the treasurer of the committee shall file a statement of organization that includes:

(1) The name and address of the committee;

(2) The ballot proposition or propositions being supported or opposed by the committee;

(3) The names and addresses of all persons acting as officers of the committee, including committee chairpersons; and

(4) The name and address of the committee's treasurer.

(b) The committee treasurer shall file a statement of any changes in the information required by this section no more than three days after such change.

13-2-8 Statement Of Contributions And Expenditures Of Official Candidate Committee.

(a) The candidate, or the treasurer of each official candidate committee, shall file statements of contributions and expenditures according to the following schedule:

(1) Three days after the candidate's petition of nomination for city council has been certified as sufficient by the city clerk pursuant to charter section 26, which statement shall cover all contributions and expenditures made in anticipation of candidacy;

(2) On the twenty-eighth day prior to the election; and

(3) On the fourteenth day prior to the election.

(b) The statement shall contain:

(1) The names and addresses of each person making contributions to the filer's knowledge, and the amount, dates, and nature of such contributions since the last report required to be filed by this chapter, unless the statement is the first one required;

(2) The cumulative total value of the contributions received;

(3) The names and addresses of each person to whom an expenditure has been made and the amount, date, and purpose of such expenditure since the last statement required by this chapter, unless the statement is the first one required;

(4) The cumulative total value of all expenditures made; and

(5) A statement of all anonymous contributions received, together with their disposition, from the last statement required by this chapter, unless this statement is the first one required.

(c) By 5:00 p.m. on the Thursday before the election, the candidate or the treasurer of each official candidate committee shall file a statement of contributions and expenditures, providing the information required by subsection (b) of this section, together with anticipated contributions and expenditures for the remainder of the campaign, if any, before or after the election.

(d) On the thirtieth day after the election, the candidate or the treasurer of each official candidate committee shall file a final statement of contributions and expenditures, stating the information required by subsection (b) of this section and, if a balance remains on the candidate's or committee's books, the intended disposition of that balance. If such a balance remains, the candidate and treasurer shall file a final statement sixty days after the election showing the actual disposition of that balance.

(e) The candidate and the candidate's committee shall comply with the disclosure requirements of section 13-2-13, "Election Materials And Advertising Supporting Or Opposing Candidate To Contain Sponsor's Name," B.R.C. 1981.

Ordinance Nos. 7289 (2003); 7390 (2004).

13-2-9 Statement Of Contributions And Expenditures Of Unofficial Candidate Committee.

(a) The treasurer of each unofficial candidate committee shall file statements of contributions and expenditures according to the following schedule:

(1) Three days after the committee accepts a contribution or makes or obligates itself to make an expenditure, which statement shall cover all contributions and expenditures made in anticipation of candidacy;

(2) On the twenty-eighth day prior to the election; and

(3) On the fourteenth day prior to the election.

(b) The statement shall contain:

(1) The names and addresses of each person making contributions to the treasurer's knowledge, and the amount, dates, and nature of such contributions since the last report required to be filed by this section, unless the statement is the first one required;

(2) The cumulative total value of the contributions received;

(3) The names and addresses of each person to whom an expenditure has been made and the amount, date, and purpose of such expenditure since the last statement required by this section, unless the statement is the first one required;

(4) The cumulative total value of all expenditures made; and

(5) A statement of all anonymous contributions received, together with their disposition, from the last statement required by this section, unless this statement is the first one required.

(c) By 5:00 p.m. on the Thursday before the election, the treasurer of each unofficial candidate committee shall file a statement of contributions and expenditures, providing the information required by subsection (b) of this section, together with anticipated contributions and expenditures for the remainder of the campaign, if any, before or after the election.

(d) In addition, if an unofficial candidate committee makes an expenditure in excess of $200.00, the treasurer of the committee shall file a statement of independent expenditure giving the names and addresses of each person to whom such an expenditure has been made, and the amount, date, and purpose of such expenditure, on the following schedule:

(1) On or before the twenty-first day before the election: Within three business days after obligating funds for the first such expenditure[1].

(2) On or after the twenty-first day but more than twenty-four hours before the election, and including any reportable expenditure not previously reported: Within twenty-four hours after obligating funds for such expenditure.

(3) On or before the thirtieth day after the election: Notice of any independent expenditure in excess of $200.00 made on the day before or the day of the election.

(4) A statement due on a weekend or holiday shall be filed on the next business day.

(e) On the thirtieth day after the election, the treasurer of each unofficial candidate committee shall file a final statement of contributions and expenditures, stating the information required by subsection (b) of this section and, if a balance remains on the committee's books, the intended disposition of that balance. If such a balance remains, the candidate and treasurer shall file a final statement sixty days after the election showing the actual disposition of that balance.

[1]These requirements are in addition to the first and subsequent periodic filings required above. If more than one such expenditure is made before the twenty-first day before the election, the expenditures after the first need not be filed until made part of the twenty-first day filing. It is intended that all such expenditures be reported, but that no expenditure be reported twice.

(f) Unofficial candidate committees shall comply with the disclosure requirements of section 13-2-13, "Election Materials And Advertising Supporting Or Opposing Candidate To Contain Sponsor's Name," B.R.C. 1981.

Ordinance Nos. 7289 (2003); 7390 (2004).

13-2-10 Independent Expenditures.

(a) Any natural person making an independent candidate expenditure in excess of $200.00 shall deliver notice in writing to the city clerk of such independent expenditure, as well as the amount of such expenditure, and a detailed description of the use of such independent expenditure, within three business days after obligating funds for such expenditure. Thereafter, notice of additional expenditure obligations in excess of $200.00 shall be delivered to the clerk on the twenty-first day before the election. Notice of each subsequent independent expenditures in excess of $200.00 up to twenty-four hours before the election but not previously reported shall be delivered to the clerk within twenty-four hours after obligating funds for the independent expenditure. On or before the thirtieth day after the election, notice of any independent expenditure in excess of $200.00 made on the day before or the day of the election shall be delivered to the clerk. The notice shall specifically state the name of the candidate or candidates whom the independent expenditure is intended to support or oppose. Each independent expenditure shall be reported as a separate item in each notice.

(b) Any natural person making an independent expenditure in excess of $200.00 shall comply with the disclosure requirements of section 13-2-13, "Election Materials And Advertising Supporting Or Opposing Candidate To Contain Sponsor's Name," B.R.C. 1981.

(c) Expenditures by any natural person on behalf of a candidate that are, in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation with any candidate or the candidate's committee or agent thereof shall be considered a contribution to the candidate and subject the candidate and the contributor to any applicable penalties contained in this chapter. Such expenditures also count toward the expenditure limit of any candidate who has received public funding under this chapter.

(d) Individuals who make an independent expenditure on behalf of any candidate who has received public funding under this chapter shall keep records of the time, place, and general subject matter of all consultation with any person about the substance, venue, and timing of the expenditure, which records shall be given to the city manager if the manager makes a demand for same. The manager is authorized to make such a demand any time the manager has a reasonable suspicion that the expenditures were controlled by or coordinated with or made upon consultation with, any candidate or candidate's committee or agent thereof.

13-2-11 Statement Of Contributions And Expenditures Of Issue Committee.

(a) The treasurer of each issue committee shall file a statement of contributions and expenditures according to the following schedule:

(1) Three days after the committee accepts a contribution or makes or obligates itself to make an expenditure, or three days after ballot certification if the committee has accepted contributions or made expenditures in anticipation of ballot proposition certification;

(2) On the twenty-eighth day prior to the election; and

(3) On the fourteenth day prior to the election.

(b) The statement shall contain:

(1) The names and addresses of each person making contributions to the treasurer's knowledge, and the amount, dates, and nature of such contributions since the last report required to be filed by this section, unless the statement is the first one required;

(2) The cumulative total value of the contributions received;

(3) The names and addresses of each person to whom an expenditure has been made and the amount, date, and purpose of such expenditure since the last statement required by this section, unless the statement is the first one required;

(4) The cumulative total value of all expenditures made; and

(5) A listing of the amount of each individual anonymous contribution, together with the total of all anonymous contributions received from the last statement required by this section, unless this statement is the first one required.

(c) By 5:00 p.m. on the Thursday before the election, the treasurer of each issue committee shall file a statement of contributions and expenditures, providing the information required by subsection (b) of this section, together with anticipated contributions and expenditures for the remainder of the campaign, if any, before or after the election.

(d) On the thirtieth day after the election, the treasurer of each issue committee shall file with the city manager a final statement of contributions and expenditures, stating the information required by subsection (b) of this section and, if a balance remains on the committee's books, the intended disposition of that balance. If such a balance remains, the candidate and treasurer shall file a final statement sixty days after the election showing the actual disposition of that balance.

Ordinance Nos. 7289 (2003); 7390 (2004).

13-2-12 **Political Committee Filing And Reporting Requirements.**

A political committee which is, by virtue of its support for or opposition to a candidate for a political office other than that of city council of the city, or for a ballot proposition appearing on the ballot of an entity other than the city, required to file, and does file with the secretary of state or the county clerk and recorder, or both, the disclosures required by section 1-45-108, C.R.S., and complies with the reporting and filing requirements of section 1-45-109, C.R.S., and disposes of unexpended campaign contributions pursuant to section 1-45-106, C.R.S., is exempt from the separate filing and reporting and unexpended campaign contribution requirements of this chapter. But such a committee shall file with the city manager, within three days of its first acceptance of a contribution or expenditure in support of or opposition to a candidate for city council or a city ballot proposition, a full and correct copy of its registration statement as filed with the secretary of state pursuant to subsection 1-45-108(3), C.R.S., and the most recent other report or disclosure which it has filed with the secretary of state or any county clerk and recorder, and shall thereafter file with the city manager full and correct copies of every disclosure or report on the same day it files such a document with either state official, plus an expenditure report conforming with section 13-2-9, "Statement Of Contributions And Expenditures Of Unofficial Candidate Committee," or 13-2-11, "Statement Of Contributions And Expenditures Of Issue Committee," B.R.C. 1981, as applicable, segregating, insofar as possible, expenditures made on the city election.

13-2-13 Election Materials And Advertising Supporting Or Opposing Candidate To Contain Sponsor's Name.

All persons composing, presenting, or distributing information in any of the following forms, which expressly opposes or supports any candidate or candidates, shall include therein the name of the person who financed the composition, presentation, or distribution of such information: posters, advertisements, leaflets, flyers, brochures, letters, postcards, records, or tapes.

13-2-14 Solicitation For Candidate Campaign Funds.

Whenever any person makes an expenditure for the purpose of soliciting any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication:

(a) If authorized by a candidate or committee or any agent thereof, shall clearly state that the communication has been so authorized;

(b) If paid for by other persons but authorized by a candidate or committee, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such candidate or committee, or its agents; or

(c) If not authorized by a candidate or committee, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or committee.

(d) Each candidate and committee shall include on the face or front page of all literature and advertisements soliciting contributions the following notice:

"A copy of our report is filed with the City Clerk of the City of Boulder, Colorado."[1]

13-2-15 Filing, Preservation, And Public Inspection Of Statements.

(a) Persons required by this chapter to prepare and file statements shall do so on the basis of information that is complete and current at least as of 5:00 p.m. on the second calendar day before the filing date.

(b) Persons required by this chapter to file statements or deliver notices shall file such statements or notices with the city manager on forms that the manager provides.

(c) The city manager shall preserve all statements filed under this chapter for a period of six months from the date of the election or, in the case of a successful candidate, until six months after the person finally leaves office. Such statements constitute a part of the public records of the city and shall be available for public inspection during normal business hours.

13-2-16 Notice Of Disclosure Requirements And Enforcement.

The city manager shall administer the provisions of this article and shall:

(a) Publish a summary of the filing and reporting required of candidates and committees and independent expenditures in a newspaper of general circulation in the city on the forty-fifth

[1]Derived from 2 U.S.C. 435.

day before each regular municipal election, or as soon thereafter as practicable after the calling of a special election, and again two weeks after each municipal election;

(b) Prepare and make available the forms to be used in filing the statements required by this chapter;

(c) Prepare and provide to each candidate or organization upon its first filing with the manager a checklist of the statements required and the specific calendar date each is due;

(d) Keep a record of persons or organizations to whom the forms and checklists were given and a record of the date such filings were received;

(e) Upon concluding on the basis of such records, complaints, or other information that a candidate or organization has not filed the required statements or has filed incomplete or incorrect statements, immediately notify, either verbally or in writing, the person required to file that such person must file the missing statement or provide the information within seventy-two hours of the manager's notice; and

(f) As soon as practical after any candidate signs a contract with the city for matching funds, the manager shall publish notice of that fact electronically on the city's website, in the city's regular news release, and as part of the next available weekend newspaper listing of upcoming city government activities.

13-2-17 **Contribution Limitation.**

No candidate for city council, or candidate committee, or unofficial candidate committee, shall solicit or accept any contribution, including any "in-kind" contribution, that will cause the total contributions from any person to exceed $100.00 to that candidate with respect to any single election. The recipient of any contribution which would cause the total amount of contributions to a candidate from a single person to exceed $100.00 shall promptly return any such excess to the donor. The candidate and the candidate's committee shall be treated as one, and a contribution to one is counted as a contribution to the other. Contributions to unofficial candidate committees are separately subject to the $100.00 limitation.

13-2-18 **Anonymous Contributions.**

(a) Anonymous contributions to any candidate or candidate committee or unofficial candidate committee may not be retained or expended by the candidate or committee. Anonymous contributions also may not be retained or expended by a political committee insofar as it is reasonably possible to discern from the contribution that it was intended to support that committee's efforts to elect or defeat a candidate. If anonymous contributions are received by a candidate or committee, they shall be disposed of as follows:

(1) If the candidate has accepted public financing under this chapter, all anonymous contributions to the candidate or the candidate's committee shall be forwarded to the city clerk with the next required report, noted in the report, and deposited in the general fund of the city.

(2) Unofficial candidate committees, political committees, and candidates and candidate committees of candidates who have not accepted public financing under this chapter shall donate anonymous contributions to any charitable organization recognized by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code or to the city, and the distribution of such funds shall be indicated on the next report required to be filed pursuant to section 13-2-8, "Statement Of Contributions And Expenditures Of Official

Candidate Committee," or 13-2-9, "Statement Of Contributions And Expenditures Of Unofficial Candidate Committee," B.R.C. 1981.

(3) If an anonymous contribution is donated to a charitable organization recognized by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code, the candidate or committee shall retain the envelope or other container in which it arrived, together with any other material which arrived with it, and a photocopy of the contribution itself (showing only the amount and serial number of any bills), and shall retain such information as candidate or committee records for at least six months after the election, and shall make such records available to the city manager upon request.

(b) If an anonymous contribution is received by an issue committee, the treasurer shall retain the envelope or other container in which it arrived, together with any other material which arrived with it, and a photocopy of the contribution itself (showing only the amount and serial number of any bills), and shall retain such information as committee records for at least six months after the election, and shall make such records available to the city manager upon request.

13-2-19 Unexpended Campaign Contributions.

Unexpended contributions to candidates or committees may be donated to any charitable organization recognized by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code or returned to the contributor, and the distribution of such funds shall be indicated on the final report of the committee required to be filed pursuant to section 13-2-8, "Statement Of Contributions And Expenditures Of Official Candidate Committee," or 13-2-9, "Statement Of Contributions And Expenditures Of Unofficial Candidate Committee," B.R.C. 1981[1].

13-2-20 Public Matching Funds.

(a) The city will allocate and provide matching funds, up to fifty percent of the expenditure limit as herein defined, to any city council candidate who meets the eligibility requirements set out in section 13-2-21, "Eligibility For Matching Funds," B.R.C. 1981. The expenditure limit shall be set at $0.15 per registered city voter as of the day after the date set by state law for the purging of registration records of the election year. This limit shall be adjusted based on changes in the Consumer Price Index (all items) of the U.S. Department of Labor, Bureau of Labor Statistics, for the statistical area which includes the city, in an amount equal to the percentage change for the preceding two years. Only actual currency or its equivalent shall be matched with public funds. Neither loans nor in-kind contributions nor amounts exceeding $100.00 from the candidate's personal wealth shall be eligible for matching funds.

(b) After meeting the eligibility requirements, any candidate may request matching funds from the city no more frequently than once per week in amounts no less than $500.00. The final request for matching funds must be submitted to the city no later than fourteen days before the election, but may be for less than $500.00.

13-2-21 Eligibility For Matching Funds.

A candidate who meets the following requirements shall be eligible to receive matching funds:

(a) The candidate raises at least ten percent of the expenditure limit from individual contributors. No more than $25.00 of each contribution may be counted toward the ten percent; and

[1]Compare 1-45-106, C.R.S.

(b) The candidate signs a contract with the city committing to the following:

(1) Agrees to limit his or her expenditures to $0.15 per registered voter of the city as of the day after the date set by state law for the purging of registration records of the election year. This limit shall be adjusted based on changes in the Consumer Price Index (all items) of the U.S. Department of Labor, Bureau of Labor Statistics, for the statistical area which includes the city, in an amount equal to the percentage change for the preceding two years;

(2) Agrees to contribute to his or her campaign no more than twenty percent of the expenditure limit from his or her own personal wealth;

(3) Agrees to return at least fifty percent of any unexpended funds to the city, but not more than the matching funds received; and

(4) Agrees to treat any carryover funds from a previous campaign as funds from the candidate's personal wealth, subject to the limits of such funds.

13-2-22 **Violations And Penalty.**

(a) Criminal Acts And Penalties: No person shall:

(1) File any statement required by this chapter that the person knows contains false information;

(2) Fail to file a required statement within seventy-two hours of having been notified by the city manager pursuant to subsection 13-2-16(e), B.R.C. 1981;

(3) Fail to provide required information necessary to complete a required statement within seventy-two hours of having been notified by the city manager pursuant to subsection 13-2-16(e), B.R.C. 1981;

(4) Knowingly misstate or misrepresent the name of the person who financed the composition, presentation or distribution of information as required by section 13-2-13, "Election Materials And Advertising Supporting Or Opposing Candidate To Contain Sponsor's Name," B.R.C. 1981; or

(5) Fail to comply with any of the other requirements of this chapter;

(6) Any person convicted of a violation of this subsection is subject to a fine not to exceed $1,000.00[1].

(b) Civil Remedies:

(1) For the purposes of this subsection, "this ordinance" means those provisions adopted by the people in the 1999 regular municipal election as placed on the ballot in Ordinance No. 6097, including, without limitation, any contract entered into pursuant to subsection 13-2-21(b), B.R.C. 1981[2].

(2) Any registered elector of the city may bring a civil action including, without limitation, an action for injury, and may sue for injunctive relief to enjoin violations or to compel compliance with this ordinance consistent with paragraph (b)(3) of this section, provided

[1]Ordinance No. 5639, effective July 15, 1994.

[2]These are found in this chapter as the definition of "independent expenditure" in section 13-2-2, "Definitions," B.R.C. 1981, subsection 13-2-9(d), B.R.C. 1981, concerning independent expenditures by unofficial candidate committees, these civil enforcement provisions, and sections 13-2-10, "Independent Expenditures," 13-2-17, "Contribution Limitation," 13-2-20, "Public Matching Funds," and 13-2-21, "Eligibility For Matching Funds," B.R.C. 1981.

such person first files with the city attorney a written request for the city attorney to commence action. The request shall include a statement of grounds for believing a cause of action exists. The city attorney shall respond within ten days after receipt of the request indicating whether the city attorney intends to file a civil action. If the city attorney indicates in the affirmative and files suit within thirty days thereafter, no other civil action for the same violation may be brought unless the action brought by the city attorney is dismissed without prejudice.

(3) Any candidate or candidate committee who knowingly accepts a contribution in excess of $100.00 or exceeds the expenditure limit in violation of the contract with the city and this ordinance is liable in a civil action initiated by the city attorney or by a registered elector of the city for an amount up to $500.00 or three times the amount by which the contribution or expenditure limit is exceeded, whichever is greater.

(4) In determining the amount of civil liability, the court may take into account the seriousness of the violation and culpability of the defendant.

(5) The city attorney shall enforce all provisions of this ordinance.

(6) The city council is empowered to create an advisory committee and other enforcement procedures as it deems appropriate to implement this ordinance.

TITLE 13 ELECTIONS AND CAMPAIGN DISCLOSURES AND ACTIVITIES

Chapter 3 Campaign Activities[1]

Section:

13-3-1 Legislative Intent.

The purpose of this chapter is to regulate election campaign activities in municipal elections. The provisions of this chapter have been modeled on portions of the Federal Election Campaign Act, 2 U.S.C. sections 435 and 441. Modifications have been made where necessary to meet specific needs of the city[2]. The provisions of this chapter concerning municipal election campaign activities are exclusive, and supersede any state statute on the subject, whether in conflict herewith or not, including, without limitation, article 1-45, C.R.S.

13-3-2 Campaign Advertising Requirements.

No person who sells space in a newspaper or magazine to a candidate or committee to use in connection with a municipal election may charge an amount for such space which exceeds the amount charged for comparable use of such space for other purposes[3].

13-3-3 Contributions By City Contractors.

It shall be unlawful for any person who enters into any contract with the city or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the city or any department or agency thereof, or for selling any land or building to the city or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the city council, at any time between the commencement of negotiations for and the later of completion of performance under or the termination of negotiations for such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any candidate or committee or to any person for any political purpose or use in any city election; or knowingly to solicit any such contribution from any such person for any such purpose during any such period[4].

13-3-4 Contributions In Name Of Another Prohibited.

No person shall make a contribution in the name of another person or knowingly permit such person's name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person[5].

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[1]Adopted by Ordinance No. 4934. Amended by Ordinance Nos. 5218, 5800, 6018. Repealed and reenacted by Ordinance No. 7136.
[2]See Buckley v. Valeo, 424 U.S. 1 (1976).
[3]Derived from 2 U.S.C. 435.
[4]Derived from 2 U.S.C. 441(c).
[5]Derived from 2 U.S.C. 441(f).

13-3-5 Limitation On Contribution Of Currency.

No person shall make contributions of coin or paper currency of the United States or of any foreign country to or for the benefit of any candidate or committee, which, in the aggregate, exceed $100.00 with respect to any campaign in which such candidate or committee is participating for a municipal election[1].

13-3-6 Misrepresentation Of Campaign Authority.

No candidate or political committee or any agent thereof shall make any fraudulent misrepresentation as speaking or writing or otherwise acting for or on behalf of any other candidate or committee on a matter which is damaging to such other candidate or committee; or willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to do so[2].

[1]Derived from 2 U.S.C. 441(g).
[2]Derived from 2 U.S.C. 441(h).

TITLE 13 ELECTIONS AND CAMPAIGN DISCLOSURES AND ACTIVITIES

Chapter 4 Complaints Related To Election Procedures And Regulations[1]

Section:

13-4-1 Legislative Intent.

The provisions of this chapter are intended to assist with the enforcement of the regulatory provisions of chapters 13-2, "Campaign Financing Disclosure," and 13-3, "Campaign Activities," B.R.C. 1981. The procedures set forth in this chapter are not exclusive and shall supplement other applicable enforcement provisions.

13-4-2 Allegation Of Election Code Violation.

(a) A request for action stating that any provision of chapter 13-2, "Campaign Financing Disclosure" or chapter 13-3, "Campaign Activities," B.R.C. 1981, of this title has been violated may be submitted to the city clerk. The request for action shall be in writing and must be submitted no later than forty-five days following any election in which it is alleged that the misconduct occurred. The request for action shall:

(1) Request that the city attorney file a civil action;

(2) Identify the particular provisions of chapter 13-2, "Campaign Financing Disclosure," or 13-3, "Campaign Activities," B.R.C. 1981, that allegedly were violated;

(3) State the factual basis for that allegation;

(4) Identify any relevant documents or other evidence; and

(5) Identify any witnesses or persons with relevant knowledge.

(b) The city clerk will notify the party named in the request for action (the "respondent") and may provide the respondent an opportunity to provide information or otherwise respond to the allegations of the request for action.

[1]Adopted by Ordinance No. 7214.

13-4-3 Initial Review Of Request For Action.

The city clerk will evaluate the request for action and all information in the clerk's possession related to the request for action to determine whether there is probable cause to believe that further investigation would disclose a violation by the respondent. The city clerk may, at the clerk's discretion, consult with the city attorney or delegated legal counsel regarding this review. Such determination shall be made based upon the request for action, any information provided by the person who filed the request for action or the party named in the request for action, and upon such additional information as the clerk may determine to be pertinent.

13-4-4 Denial Of Request For Action By City Clerk.

If the city clerk determines that no probable cause exists that further investigation would disclose a violation by the respondent, the city clerk shall close the file with regard to the matter. In that event, the city clerk shall so notify both the complainant and the respondent. Such notice shall be sufficient if it is accomplished by depositing it with the United States Postal Service addressed to the last known address of the complainant and the respondent. The city clerk may also determine that the violation, if any, can be cured after exercise of the city manager's powers under chapter 13-2, "Campaign Financing Disclosure," B.R.C. 1981, and, if the violation is cured, may deny the request for action on that basis without further review.

13-4-5 Determination By City Clerk Final.

(a) A determination by the city clerk that there is no probable cause that further investigation would disclose a violation by the respondent shall be final. Cure of a violation through exercise of the city manager's powers under chapter 13-2, "Campaign Financing Disclosure," B.R.C. 1981, also shall be final. No appeal or review from such determinations shall be permitted, and the city attorney will not bring any civil or criminal enforcement action against a party in either circumstance.

(b) A determination by the city clerk that there is probable cause that investigation will disclose a violation by the respondent shall also be final. No defect in the city clerk's determination shall constitute a defense at any hearing held by a city clerk or at any judicial enforcement proceeding.

13-4-6 Power Of City Clerk To Hold Hearings.

The city clerk is empowered to receive evidence and make recommendations with regard to any request for action. The purpose of such hearings will be to determine whether sufficient evidence of a violation by the respondent exists to warrant bringing a civil or criminal action. The city clerk may schedule hearings, mandate the appearance of witnesses through the issuance of subpoenas and mandate the provision of documents through the issuance of subpoenas for documents. Subpoenas for documents may be directed to any custodian of records or to any other person possessing or controlling such records.

13-4-7 Hearing Procedures.

The following procedures shall be used by the city clerk in any hearing:

(a) The city clerk shall fix the date, time, duration, and place of each hearing;

(b) The complainant and the respondent may each be represented by counsel or other authorized representative;

(c) The city clerk may receive and consider testimony under oath, as well as evidence of witnesses by affidavit, giving such evidence only such weight as seems proper after consideration of any objection made to its admission;

(d) The legal rules of evidence need not be strictly applied by the city clerk. The city clerk shall accept or reject evidence based upon the city clerk's evaluation of the reliability of that evidence; and

(e) The city clerk may refer to the provisions in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, relating to quasi-judicial hearings, for guidance with respect to procedures that may be utilized at any hearing held pursuant to this section. However, final decisions regarding such procedures shall be determined by the city clerk in conformity with the intent of these provisions and in a manner consistent with general principles of due process.

13-4-8 Negative Determination By City Clerk.

If, upon completion of the city clerk's evaluation of evidence, the city clerk determines that there is insufficient evidence of a violation by the respondent to warrant bringing a civil or criminal action, the investigation shall be terminated concerning that respondent. In that event, the city clerk shall notify both the complainant and the respondent of this determination. Such notice shall be sufficient if it is deposited with the United States Postal Service addressed to the last known address of the complainant and the respondent.

13-4-9 Power Of City Clerk To Issue Remedial Order Or Warning Letter.

If, upon completion of the hearing process, the city clerk determines that sufficient evidence exists to bring a civil or criminal action, the city clerk may direct the respondent to take remedial actions including, without limitation, the following:

(a) Filing a corrected disclosure form;

(b) Publishing corrective advertising;

(c) Refunding any private contributions obtained under false pretenses; and

(d) Refunding to the city any public monies inappropriately obtained for the financing of election activities.

The city clerk may also issue the respondent a warning letter. The city attorney may bring a civil action following compliance with a remedial order as described in subsections (a) through (d) of this section for the purpose of incorporating the terms of the order into a consent decree. Otherwise, a warning letter or compliance by the respondent with a remedial order will end the process, and no civil or criminal action will be filed.

13-4-10 Referral To City Attorney For Criminal Or Civil Prosecution.

If upon completion of the formal hearing process, the city clerk determines that sufficient evidence exists to bring a civil or criminal action and if the matter is not resolved through a warning letter or compliance with a remedial order issued by the city clerk, the matter shall be referred to the city attorney and delegated legal counsel. In such an instance, the city attorney or

delegated legal counsel will evaluate the case to determine whether or not criminal prosecution or the bringing of a civil enforcement action is in the public interest.

13-4-11 **Remedies Not Exclusive.**

The procedures set forth by these provisions shall not impair the right of any interested party, including the city clerk, the city attorney, or a complainant, to notify the district attorney or the police of crimes that might be investigated or potentially prosecuted by those agencies. Nor shall these provisions preclude the city attorney from bringing criminal charges without first exhausting the administrative hearing process set forth in these provisions if the city attorney feels that there is sufficient basis for a criminal prosecution and that the interests of justice require prosecution prior to exhaustion of the administrative process described in these provisions.

13-4-12 **No Appeal To City Council.**

No decision by the city clerk made pursuant to this chapter shall be reviewed or reversed by the city council. The city council shall not become involved in the handling of any matter brought or investigated pursuant to these provisions. Nothing in this chapter shall be deemed to create a right of appeal to the city council by a person named in a request for action.

13-4-13 **Confidentiality Of Investigation.**

The contents of files relating to pending inquiries or investigations into possible violations of the provisions of chapter 13-2, "Campaign Financing Disclosure," or 13-3, "Campaign Activities," B.R.C. 1981, shall not be made public by the city clerk, the city attorney, or by any other person or agency that is conducting an official investigation on the part of the city into alleged or possible violations of this type. Nor will any preliminary reports or drafts relating to the results of such investigations be made public. The city council finds that such disclosures could compromise criminal justice investigations. Further, the city council finds that such disclosures would be contrary to the public interest because such disclosures might have the effect of politically damaging a person or interest in a case in which the final disposition of an investigation would not sustain a finding of misconduct. The release of interim findings or draft reports might in that manner interfere with the appropriate workings of the democratic process.

TITLE 14

ARTS

TITLE 14 ARTS

Chapter 1 Arts Grant Program[1]

Section:

14-1-1 Legislative Intent.

An arts grant program is hereby created, whose purpose is to stimulate and promote the visual, literary, and performing arts in the city for the benefit of the people of the city by providing encouragement and finance support for local arts programs and artists.

14-1-2 Eligible Programs And Projects.

(a) Artists and arts organizations are eligible to apply for grants from the city for programs and projects that stimulate or promote the availability of visual, literary, or performing arts for the people of the city. Such programs and projects may include, without limitation:

(1) Musical productions and performances;

(2) Lectures and classes;

(3) Theater productions and performances;

(4) Poetry readings;

(5) Radio and television programs;

(6) Dance productions and performances;

(7) Visual art, craft, and photographic festivals and exhibitions;

(8) Visual artwork for public buildings, facilities and spaces; and

(9) Film productions and performances.

(b) Any performance, production, lecture, class, reading, exhibition, festival, film, or other program funded in whole or in part by a grant under this chapter shall be held or shown within the Boulder Valley as defined by the then current version of the Boulder Valley Comprehensive Plan; but any such program funded jointly by the city hereunder and by another political subdivision of the State of Colorado may be held or shown in such other political subdivision, as long as at least one performance of any such program is held within the Boulder Valley.

[1]Adopted by Ordinance No. 4629. Amended by Ordinance No. 4691.

(c) All visual artwork, crafts, and photographs funded in whole or in part by grants under this chapter shall become the property of the city or shall be made available to the city for public display for a period of time and at a cost to be determined by the City of Boulder Arts Commission[1] and the grantee at the time the grant is awarded.

Ordinance No. 4954 (1985).

14-1-3 **Application For Arts Grants.**

(a) An applicant for grants under this chapter shall file an application with the commission upon forms prescribed by the commission for that purpose, including information that the commission deems necessary in order to perform its functions set forth in section 14-1-4, "Review By Boulder Arts Commission," B.R.C. 1981.

(b) An applicant shall verify its application as to the truth and correctness of all facts and information presented.

14-1-4 **Review By Boulder Arts Commission.**

(a) The commission shall review and evaluate all applications for arts grants and, except as otherwise provided in section 14-1-6, "Certain Grants Not Requiring Express Approval," B.R.C. 1981, shall refer to the city council a listing of and report concerning applications it recommends for approval.

(b) In determining whether to recommend approval of an application for a grant for any particular project, the commission shall consider the following:

(1) Whether the application conforms to the requirements set forth in sections 14-1-2, "Eligible Programs And Projects," and 14-1-3, "Application For Arts Grants," B.R.C. 1981;

(2) Whether the proposed project is likely to result in enjoyment of the arts by a substantial number of or diverse groups of people of the city;

(3) Whether the project is of overall artistic and aesthetic merit and quality;

(4) With respect to visual art, whether the project is appropriate as art in a public place and is compatible in scale, material, form, and content with its proposed surroundings;

(5) Whether there are adequate funds available to pay the cost of the proposed project in light of other proposals and the limited funds available to the arts grant program;

(6) Whether the project would promote diversity and innovation in the overall arts grant program in view of other projects that have received or requested grant funding;

(7) With respect to visual art, whether the proposed disposition of the project when completed would result in a long term benefit to the people of the city; and

(8) With respect to the performing arts, whether the production is appropriate for and is available for audio or visual recording to be retained by the city.

(c) The commission shall consult with advisors in reviewing and evaluating grant applications. Advisors shall be visual, performing, or literary artists or any other persons deemed by the commission to have special knowledge or expertise in the arts or humanities.

[1]Section 2-3-2, "Arts Commission," B.R.C. 1981.

14-1-5 Referral To The City Council For Approval.

(a) Upon receipt of recommendations from the commission, the city council shall hold a hearing, which shall be quasi-legislative in nature, on the proposed grant awards.

(b) At such hearing, the city council shall by motion either approve or disapprove the grants recommended by the commission.

14-1-6 Certain Grants Not Requiring Express Approval.

(a) For purposes of this section, the following terms have the following meanings:

"Mini-grant" means an arts grant that does not exceed a specific dollar amount designated in the annual budget documents adopted by the city council.

"Rental assistance grant" means an arts grant that has as its purpose the provision of rental space for class rooms, exhibitions, or performance.

(b) Anything in this chapter to the contrary notwithstanding, if the city council, in adopting the annual arts budget, designates in the budget documents a specific maximum dollar amount for individual mini-grants and a maximum cumulative total for all such mini-grants for such year, the commission may award mini-grants within such dollar limitations during such year without receiving further council approval. Such maximum cumulative total may be set forth in the budget documents either separately from or in combination with any maximum cumulative amount set forth for rental assistance grants under subsection (c) of this section.

(c) Anything in this chapter to the contrary notwithstanding, if the city council, in adopting the annual arts budget, designates in the budget documents, a maximum cumulative total for rental assistance grants for the year, the commission may award rental assistance grants within such dollar limitation during such year without receiving further council approval. Such dollar limitation may be set forth in the budget documents either separately from or in combination with any maximum cumulative amount set forth for mini-grants under subsection (b) of this section.

(d) Except as provided in this section, the application procedure and criteria for award of mini-grants and rental assistance grants are the same as those applicable to other grants under this chapter.

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