

CHAPTER 7

Health, Sanitation and Animals

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ARTICLE 1

Administration and Abatement of Nuisances

Sec. 7-1. Definitions.

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

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

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

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

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

Public nuisance from marijuana establishments, as defined in Section 6-273 of this Code, means:

- a. Any smell of marijuana detected at the property line.
- b. Any debris left outside the establishment which contains significant amounts of THC and is not properly composted.
- c. Any concentrated chemicals, detergents, fertilizers, pesticides or marijuana products introduced into the sewer system.
- d. Any concentrated chemicals, detergents, fertilizers, pesticides or marijuana products deposited outside the establishment without proper dilution.
- e. Any high intensity light used for growing plants visible to the general public from dusk to dawn.
- f. Any view of marijuana plants from the property line or public right-of-way.
- g. Any other nuisance defined in this Section related to a marijuana establishment.

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

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

Weed means an unsightly, useless, troublesome or injurious growing herbaceous plant, and shall include all rank vegetable growth which exhales unpleasant and noxious odors and also high and rank vegetable growth that may conceal filthy deposits. (Ord. 84 §1, 1948; Ord. 195 §1, 1981; Ord. 379 §1, 1994; Ord. 435 §1, 1996; Ord. 720 §2, 2013)

Sec. 7-2. Common law nuisances.

Any nuisance which has been declared to be such by state courts or statutes or known as such at common law shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Article. (Ord. 435 §1, 1996)

Sec. 7-3. Prohibition of nuisances.

No person being the owner, agent or occupant, or having under his or her control any building, lot or premises or unimproved real estate within the limits of the Town, shall maintain or allow any nuisance to be or remain therein. (Ord. 435 §1, 1996)

Sec. 7-4. Ascertaining nuisances.

Whenever the pursuit of any trade, business or manufacture or the maintenance of any substance or condition of things shall, upon investigation, be considered by the Town Administrator dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance and shall be abated. (Ord. 435 §1, 1996)

Sec. 7-5. Filing complaint.

In addition to or in lieu of any procedure for abatement, a direct complaint may be filed by any person or police officer against any person who violates any provision of this Chapter. (Ord. 435 §1, 1996)

Sec. 7-6. Abatement of nuisances.

(a) Notice of abatement. The authorized inspector as provided by Section 7-8(a), upon the discovery of any nuisance on public or private property in the Town, shall notify the owner or occupant of such property in writing, requiring the owner or occupant of the property to remove and abate from the property the thing or things therein described as a nuisance within the time specified in the notice.

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

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

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

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

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

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

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

(c) Contents of notice. Any notice issued pursuant to the provisions of this Section to the owner, agent or occupant of property in which a nuisance is discovered shall describe the condition that is a nuisance; state the time in which the condition is to be removed and abated from the property; and contain a statement that if the nuisance is not abated within seven (7) days, an action may be brought in the Municipal Court to abate the nuisance and that the costs of abatement, plus fifteen percent (15%) of such cost for inspection, and other additional administrative costs, may be assessed against the person found by the court to have caused, allowed to be caused or allowed to continue the public nuisance and may become a lien upon any property on which the abatement was performed. (Ord. 379 §3, 1994)

Sec. 7-7. Action to abate public nuisance.

When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply:

(1) The Town may bring an action in the Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner, agent, occupant or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue, by the Mayor or Town Marshal.

(2) The action to declare and abate a public nuisance shall be brought by the Town in the name of the people of the Town, by the filing of a complaint, which shall be verified or supported by an affidavit. Summonses shall be issued and served as in civil cases, and any employee of the Town who is over the age of eighteen (18) may serve the summons and verified complaint upon the owner, agent, occupant or the person who allowed the nuisance to be caused or to continue

(hereafter referred to as the "respondent"). Trial shall be to the Court and the Colorado Municipal Court Rules shall apply.

a. A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than twenty-one (21) days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the Court grants a continuance for good cause shown.

b. The respondent shall file a response on or before the appearance date set forth in the notice of appearance.

c. Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear and if the Town proves that proper service was made on the respondent at least twenty-one (21) days prior to the appearance date, the Court may grant such orders as are requested by the Town; except that the Court shall order that enforcement by the Town be stayed for ten (10) days and that a copy of the Court's order be mailed to the respondent at his or her last known address. Failure to appear on any date set for trial shall be grounds for entering a default and judgment thereon against a nonappearing party. For good cause shown, and prior to enforcement, the Court may set aside an entry of default and the judgment entered thereon.

d. Any violation of any injunction or order issued by the Municipal Court in an action to abate a public nuisance may be punished as a contempt of court or by a fine not to exceed three hundred dollars (\$300.00). Unless the violation by its nature cannot be corrected, each day's failure to comply with an injunction or order to abate shall constitute a separate violation for which an additional penalty may be imposed.

e. The judgment of the Municipal Court may be appealed to the District Court.

(3) The Town may bring an action in the District Court having jurisdiction to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner, agent, occupant or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue, by the Mayor or Town Marshal pursuant to the provisions of this Article and applicable laws and rules of procedure.

(4) The remedies specified in this Section shall be in addition to all other remedies provided by law. (Ord. 379 §3, 1994; Ord. 435 §1, 1996)

Sec. 7-8. Inspection of properties.

(a) Authorized inspector. The Mayor and Town Marshal shall have the power and authority to appoint and authorize any police officer, building inspector, code enforcement officer or other officer of the Town to inspect and examine any public or private property in the Town for the purpose of ascertaining the nature and existence of any nuisance.

(b) Right of entry generally. Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever an authorized inspector has reasonable cause to believe that

there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, such inspector may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on him or her; provided, however, that if such building or premises are occupied, such inspector shall first present proper credentials and request entry; and if such building or premises are unoccupied, he or she shall first make a reasonable effort to locate the owner or occupant or other person having charge or control of the building or premises, and upon locating the owner, occupant or other person shall present proper credentials and request entry. If entry is refused, the authorized inspector shall give the owner or occupant, or if the owner or occupant cannot be located after a reasonable effort, he or she shall leave at the building or premises, a written notice of intention to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice given to the owner or occupant or left on the premises shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a Municipal Judge of the Town, or by a judge of any other court having jurisdiction. The requirements of this Section shall not apply to public places, including privately owned vacant land, as defined in Section 10-1, which may be inspected by an authorized inspector at any time without notice.

(c) Search warrants. After the expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized inspector may appear before the Municipal Judge, and upon a showing of probable cause by written affidavit shall obtain a search warrant entitling him or her to enter the building or upon the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of an unoccupied building or premises, the authorized inspector may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry.

(d) Probable cause for issuance of search warrant. For purposes of this Section, a determination of "probable cause" will be based upon reasonableness, and if a valid public interest and reasonable suspicion of violation justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent person to act. It is unlawful for any owner or occupant of the building or premises to deny entry to any authorized inspector or to resist reasonable force used by an authorized inspector, acting pursuant to this Section.

(e) Right of entry; emergencies. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Article, an authorized inspector upon a presentation of proper credentials or identification, in the case of an occupied building or premises, or possession of the credentials in the case of an unoccupied building or premises, may enter into any building or upon any premises within the jurisdiction of the Town.

(1) In the emergency situation, such person may use such reasonable force as may be necessary to gain entry into the building or upon the premises.

(2) For purposes of this Subsection, an emergency situation includes any situation where there is imminent danger of loss of, or injury or damage to, life, limb or property. It is unlawful for any owner or occupant of the building or premises to deny entry to any authorized inspector or to resist reasonable force used by the authorized official acting pursuant to this Section.

(f) Search warrants; jurisdiction of the Municipal Court. Any Municipal Judge shall have power to issue search warrants upon a showing of probable cause as provided in Subsections (c) and (d) of this Section. (Ord. 379 §3, 1994; Ord. 435 §1, 1996)

Sec. 7-9. Assessment and collection of costs of abatement.

(a) A person found by the Court to have caused a public nuisance or allowed the nuisance to be caused or to continue shall be liable for the costs specified in Section 7-7. Such costs may be collected by the Town in a civil action or assessed and filed as a lien against any property on which the abatement was performed as specified in this Section.

(b) If the costs of abatement have not been otherwise collected, the Mayor shall prepare a statement enumerating the actual costs of abatement and collection plus fifteen percent (15%) of the abatement costs for inspection and other additional administrative costs. The costs enumerated in this statement shall be a first and prior lien upon the property relating back to the date upon which the abatement was performed. A copy of this statement shall be deposited in the United States mail or personally hand-delivered to the owner. The owner may request a hearing before the Town Treasurer to contest the amount of the costs. Such request must be made in writing and be filed with the Town Treasurer within thirty (30) days of the date of mailing or service of the first statement to the owner. The owner shall be given at least two (2) weeks' written notice of the date, time and place of any hearing scheduled before the Town Treasurer. The decision of the Town Treasurer shall be final. If the statement remains unpaid, the amount shall be certified by the Town Treasurer to the County Treasurer. The County Treasurer, upon receipt of the certified statement, is hereby authorized to place the amount upon the tax list for the current year and to collect that amount in the same manner as taxes are collected with a ten-percent penalty thereon. (Ord. 379 §3, 1994)

Sec. 7-10. Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction or violation of this Chapter in the Municipal Court of the Town, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist. (Ord. 435 §1, 1996)

Sec. 7-11. Concurrent remedies.

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law. (Ord. 435 §1, 1996)

Sec. 7-12. Acts which constitute violation of Chapter.

(a) It is unlawful and a violation of this Chapter for any person:

(1) To create, operate, maintain or conduct any nuisance as defined in this Chapter.

(2) To interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by the Mayor or the Town Marshal pursuant to the provisions of this Chapter.

(b) Any person who makes or causes any nuisance to exist shall be deemed the author of the nuisance. Moreover, any person who has possession or control of any private ground or premises, whether he or she is owner of the property or not, where any nuisance exists or is found, shall be deemed the author of the nuisance. Each and every day during which any nuisance continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense. (Ord. 379 §3, 1994; Ord. 435 §1, 1996)

Sec. 7-13. Violations and penalties.

Any person who shall violate any of the provisions of this Article shall be subject to the provisions of Section 1-72 of this Code. (Ord. 435 §1, 1996)

Secs. 7-14—7-30. Reserved.

ARTICLE II

Nuisances

Sec. 7-31. Accumulation to constitute nuisances.

Whenever there shall be in or upon any lot or piece of ground within the limits of the Town any damaged merchandise, litter, trash, rubbish, garbage, wrecked car, inoperable cars or other wrecked vehicles or an accumulation of junk vehicles or junk of any type upon any private or public property, except in areas specifically zoned by the Zoning Ordinance of the Town for said purposes or otherwise designated by the Town for such purposes, the existence of any such material or items shall constitute a nuisance and shall be in violation of this Article. (Ord. 435 §1, 1996)

Sec. 7-32. Discharge of nauseous liquids.

No person shall, himself or herself or by another in the Town, discharge out of or from or permit to flow from any house or place any foul or nauseous liquid or substance of any kind whatever into or upon any adjacent ground or lot or into any street, alley or public place. (Ord. 435 §1, 1996)

Sec. 7-33. Use of property for dumping.

It is unlawful for any person to use any land, premises, receptacle, container, vehicle, trailer or other real or personal property within the Town for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind without first having made application for and receiving a permit to do so. The application therefor shall be filed with the Town Administrator or the Town Clerk and shall state the location of the land, premises or property, the manner in which the dumping or disposal is to be accomplished and the means and methods by which the applicant proposes to secure the same against the danger of disease, fire and other menaces to the public health and to provide for the suppression of rodents, mosquitoes and other insects. Upon such investigation and a finding that the proposed dumping will not cause any danger to the public health, the Town Administrator or Town Clerk shall issue such a

permit upon the payment of a fee as set forth in Section 4-151, with the approval of the Board of Trustees. (Ord. 435 §1, 1996)

Sec. 7-34. Public peace and safety.

The following are declared to be public nuisances affecting public peace and safety:

(1) All trees, hedges, billboards or other obstructions which prevent persons driving vehicles approaching an intersection of public highways from having a clear view of traffic approaching such intersection from cross streets for one hundred (100) feet along such cross streets measured from the property line, when one hundred (100) feet from such intersection, measured from the property line.

(2) All limbs of trees which project over a public sidewalk or street and which are less than eight (8) feet above the surface of such public sidewalk and nine (9) feet above the surface of such street.

(3) All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface of the ground.

(4) All buildings, walls and other structures which have been erected or damaged by fire, decay or otherwise, and which are so situated as to endanger the safety of the public.

(5) Dense smoke, noxious fumes, gas, soot or cinders in such quantities as to render the occupancy of property uncomfortable to a person of ordinary sensibilities.

(6) All loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities.

(7) All buildings and all alterations to buildings made or erected within the fire limits as established by ordinance in violation of the ordinance concerning manner and materials of construction.

(8) Obstructions and excavations affecting the ordinary use by the public of streets, alleys and sidewalks, or public grounds except under such conditions as are provided by ordinance.

(9) Any use of the public streets or sidewalks which causes large crowds of people to gather, obstructing traffic and the free use of the streets or sidewalks without having first obtained a permit for assembly as prescribed by Town ordinance.

(10) All hanging signs, awnings and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety.

(11) The allowing of rainwater, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.

(12) All barbed wire fences which are located within three (3) feet of any public way.

(13) All dangerous, unguarded machinery in any public place, or so situated or operated on private property, as to attract the public.

(14) The collection, storage or keeping of junk, as defined herein which is kept in such a manner as to essentially interfere with the health, safety and welfare of the public. For purposes of this subsection, junk is hereby defined as: scrap brass, scrap copper, scrap iron, scrap lead, scrap tin, scrap zinc and all other scrap metals and the alloys, and bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, old or used machinery of any type, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, used automobiles in nonoperative condition, used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, which are kept in such manner as to essentially interfere with the comfortable enjoyment of life or property by others.

(15) Cisterns, wells, excavations used for the storage of water, and mine openings, any of which exceed five (5) feet in depth, unless the same are adequately covered or otherwise secured to prevent entry.

(16) Keeping of bodies. All places at which the owner or occupant keeps, stores or permits to be kept or stored the whole or any part of the person, body or carcass of a human being or animal or other biological species which is not alive upon any property. Provided, however, that bodies or carcasses of human beings for which a death certificate has been issued may be buried within a cemetery authorized by the Town or stored in a research facility specifically authorized by the Town, or their properly cremated ashes may be stored in any residence of the Town, and dead animal bodies or carcasses may be stored or buried in a manner specifically allowed by state law. (Ord. 84 §4, 1948; Ord. 195 §§6—12, 1981; Ord. 379 §2, 1994; Ord. 435 §1, 1996)

Sec. 7-35. Additional nuisances enumerated.

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

(b) Streets, streams and water supply. No person shall throw or deposit, or cause or permit to be thrown or deposited, any offal composed of animal or vegetable substances, or both, any dead animal, excrement, garbage or other offensive matter whatever upon any street, avenue, alley, sidewalk or public or private grounds. No person shall, in the Town, throw or deposit or cause or permit to be thrown or deposited anything specified in any foregoing part of this Section or any other substance that would tend to have a polluting effect into the water of any stream, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near any such place as to be liable to pollute the water.

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

(d) Stagnant ponds. The permitting of stagnant water on any lot or piece of ground within the Town limits which is not designated as a federal wetland is hereby declared to be a nuisance, and every owner or occupant of a lot or piece of ground within the Town is hereby required to drain or fill up said lot or piece of ground whenever the same is necessary so as to prevent stagnant water or other nuisance accumulating thereon, and it shall be unlawful for any such owner or occupant to permit or maintain any such nuisance.

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

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

(g) Dead animal; removal. When any animal shall die in the Town, it shall be the duty of the owner or keeper thereof to remove and properly dispose of the body of such animal forthwith. If such body shall not forthwith be removed, the same shall be deemed a nuisance, and such owner or keeper will be the author of the nuisance.

(h) Unused appliances. No person shall keep any unused refrigerator, washer, dryer, freezer or other appliance within any accessible yard or lot, carport or residential garage within the Town limits without first removing the door of the same.

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

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

(k) Noise in public places. The use of music, noisemakers or loudspeakers on, or broadcasting to, the streets, sidewalks, parks or other public places of the Town for the sale or vending of products, advertising or other commercial purposes is hereby declared to be a nuisance and is prohibited by the terms of this Chapter. For purposes of this Section, broadcasting to the streets, sidewalks, parks or other public places of the Town shall include any noise for the sale or vending of products, advertising or other commercial purposes broadcast from a private property that exceeds sixty (60) decibels when measured on the public place.

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

(m) Noise. Any conviction for violation of the noise provisions contained in Chapter 10 of this Code that occur three (3) or more convictions from the same location within a one-year period on different dates is hereby declared a nuisance and is prohibited by the terms of this Chapter. (Ord. 84 §2, 1948; Ord. 435 §1, 1996; Ord. 504 §2, 1999)

Sec. 7-36. Trees infected with mountain pine beetle or other infectious insects or diseases.

(a) Purpose. The spread of the mountain pine beetle and other infectious insects and diseases poses an immediate threat to trees located within the Town; trees so infected are hereby declared to be a public nuisance. In order to contain and prevent the spread of these infectious insects and diseases, and to protect the health, safety and welfare of the inhabitants of the Town, this public nuisance is to be abated by the owner of the land on which such infected trees are found, or, if not so abated, are to be abated or destroyed by the Town at the cost of said land owner.

(b) Infected or diseased trees declared nuisances. The following are hereby declared to be public nuisances:

(1) All species and varieties of live trees infected with the insect known as the "mountain pine beetle" (*Dendroctonus ponderosae*), or any other insect or disease declared to be a nuisance by the Commissioner of Agriculture pursuant to Section 35-9-118, C.R.S.; and

(2) All species and varieties of trees that are dead or substantially dead, and all dead wood to which the bark is still attached, which because of their condition, may serve as a breeding place for the "mountain pine beetle" (*Dendroctonus ponderosae*), or any other insect or disease declared to be a nuisance by the Commissioner of Agriculture pursuant to Section 35-9-118, C.R.S.

(c) Abatement of nuisance by owner. It shall be unlawful for any owner of any lot or parcel of land in the Town to permit or maintain on such lot or parcel any dead wood or dead or live tree which is a public nuisance as defined herein. It shall be the duty of the owner of such to remove, burn or otherwise abate or eradicate such nuisance, and to prevent the spread thereof, as may be appropriate, under the supervision or at the direction of the Director of Public Works, the Zoning Administrator or their respective designee as provided in Section 7-6(a)(2). Such abatement may not occur by spraying. Such abatement or eradication may be done by the owner or by a commercial tree removal service.

(d) Enforcing officer. The Director of Public Works, the Zoning Administrator or their respective designee shall be the authorized persons, as set forth in Section 7-8, to perform the duties set forth in this Section and shall enforce the provisions of this Section. The Director of Public Works or the Zoning Administrator, or their respective designee, may have such assistance as the Board of Trustees shall provide.

(e) Inspections. The Director of Public Works, the Zoning Administrator or their respective designee is authorized and empowered to enter upon any lot or parcel of land in the Town at any reasonable hour, pursuant to the provisions specified in Section 7-8, for the purpose of inspecting any tree or dead wood situated thereon, and may remove specimens from such trees or wood as is required for the purpose of laboratory analysis, as prescribed by the Commissioner of Agriculture pursuant to Section 35-9-118, C.R.S.; such analysis shall be for the purpose of determining whether such tree or wood may serve as a breeding place for the mountain pine beetle or other infectious

insect or disease. It shall be unlawful for any person to take any action to prevent the Director of Public Works, the Zoning Administrator or their respective designee from performing his or her duties or the exercise of any authority as provided in this Section.

(f) Notice of violation. If any live or dead tree or wood is determined by the Town to be a public nuisance as provided herein, the Town shall notify the owner of the property of such condition pursuant to Section 7-6.

(g) Failure to abate. If any person upon whose property such notice is posted fails, neglects or refuses to remove and destroy, or otherwise abate or eradicate, such nuisance as required by the notice prescribed in this Section, the Director of Public Works, the Zoning Administrator or their respective designee may enter the property, pursuant to an administrative warrant issued by the Municipal Judge, and proceed to remove and destroy, or cause to be removed and destroyed or otherwise abated or eradicated, such nuisance as set forth in Section 7-7.

(h) Assessment and collection of costs of abatement. Costs incurred by the Town to perform such abatement shall be assessed against the property owner and collected pursuant to Section 7-9.

(i) Violations and penalties. In addition to any other penalties or fines provided by this Section, any person violating any of the provisions of this Section by failing, neglecting or refusing to comply with the provisions of any notice herein provided, or who shall resist or obstruct the carrying out of the provisions of this Section shall be subject to such penalties as provided in Section 1-72 of this Code and all other remedies provided by law. (Ord. 502 §1, 1999; Amended Ord. 502 §1, 1999)

Sec. 7-37. Public nuisance from marijuana establishments.

The Town has a zero impact, zero tolerance policy regarding public nuisance from the operations of marijuana establishments as defined in Section 7-1 of this Chapter.

(1) The following are declared to be public nuisances from marijuana establishments affecting public peace and safety:

a. Any smell of marijuana detected at the property line. Minimum ventilation requirements are to use: one hundred fifty (150) cubic feet per minute (CFM) of carbon filtration per one thousand (1,000) watts of light. This ventilation must be maintained and in proper working condition.

b. Any debris left outside the establishment which contains THC and is not properly composted in compliance with all applicable state and local statutes, regulations, ordinance or other requirements.

c. Any concentrated chemicals, fertilizers or marijuana products entering into the sewer system. All such chemicals, fertilizers or marijuana products must be disposed of in compliance with all applicable state and local statutes, regulations, ordinance or other requirements.

d. Any concentrated chemicals, fertilizers or marijuana products deposited outside the establishment without proper dilution. All such chemicals, fertilizers or marijuana products

must be disposed of in compliance with all applicable state and local statutes, regulations, ordinance or other requirements.

e. Any high intensity light used for growing plants visible to the general public from dusk to dawn.

f. Any view of marijuana plants from the property line or public right-of-way.

(2) Policy and procedures of public nuisance from marijuana establishments shall follow the policy and procedures for other public nuisances with respect to complaint, abatement, action to abate, inspection, assessment and collection of costs of abatement, remedies, acts which constitute a violation and penalties in Section 7-5 through 7-13 of this Chapter, inclusive. (Ord. 720 §2, 2013)

Secs. 7-38—7-50. Reserved.

ARTICLE III

Garbage and Refuse

Sec. 7-51. General, definitions.

For the purposes of this Article, the word *refuse* shall mean and include any grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, rubbish containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material; all rubbish of any kind or nature whatsoever; and any other materials commonly known as rubbish or refuse of any kind or character or by any means known. (Ord. 435 §1, 1996)

Sec. 7-52. Accumulation of refuse prohibited and declared nuisance.

Any accumulation of refuse or other material on any premises, improved or unimproved, in the Town is prohibited and is hereby declared to be a nuisance. (Ord. 435 §1, 1996)

Sec. 7-53. Accumulation of refuse; abatement.

Whenever the Board of Trustees shall direct, the Town Clerk shall immediately thereafter notify any owner of property, his or her agent or any person having charge of such property, in writing, that an order has been made by the Board of Trustees requiring the removal of any accumulated refuse from such property or premises within thirty (30) days after service of notice. If such property owner, agent or person having charge of such property shall not remove such refuse in accordance with the requirement of such order, the Board of Trustees may order that such refuse be removed by the Town Clerk or other agent of the Board of Trustees and assess the cost thereof against the property or premises. The amount so assessed shall be a lien upon such property until the same is paid; provided that, in case of failure to pay such assessment within ten (10) days after the same shall be made, the Town Clerk shall cause a notice of such assessment to be given to the owner of such property by publishing in a newspaper in the Town for two (2) successive weeks, which publication shall contain

a notice to such property owner of the amount assessed against his or her property, and shall designate a time and place when the Board of Trustees will hear any objections as to the adjustment and correctness of the amount so assessed. If such assessment is not paid within ten (10) days after the time fixed for hearing such objections, and unless the same are sustained, the Town Clerk shall certify such assessment to the County Treasurer to be placed by him or her on the tax list for the current year, to be collected in the same manner as other taxes are collected, with a ten-percent penalty to defray the cost of collection, as provided by state law. (Ord. 435 §1, 1996)

Sec. 7-54. Responsibility of owners and lessees for refuse on premises.

It shall be the duty of every person, whether owner, lessee or renter of any vacant lot, building or premises, including any place of business, hotel, restaurant, dwelling house, apartment, tenement or any other establishment, at all times to maintain the premises in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. (Ord. 435 §1, 1996)

Sec. 7-55. Removal of refuse from business required.

Discarded automobile parts, stoves, furniture, wool, hides, junkyard refuse and packing house or slaughterhouse refuse shall be removed periodically from such respective establishments by the proprietor so that the premises are clean and orderly at all times. Silt and similar deposits from automobile wash racks shall be removed to the Town dump by the establishment creating such deposit. Any accumulation of refuse that is highly explosive or inflammable which might endanger life or property shall be removed to such places as approved by the Chief of Police or the Town Administrator. Such removal shall be handled by the establishments responsible therefor. (Ord. 435 §1, 1996)

Secs. 7-56—7-70. Reserved.

ARTICLE IV

Weeds and Brush

Sec. 7-71. Designation of Undesirable Plant Management Advisory Commission.

The Board of Trustees is appointed to act as the Undesirable Plant Management Advisory Commission for the Town and shall have the duties and responsibilities as provided by state statute. (Ord. 435 §1, 1996)

Editor's note: Section 3.5-5.5-101, C.R.S., establishes the requirements for undesirable plant management in the State.

Sec. 7-72. Declaration of nuisance.

Any weeds or brush found growing in any lot or tract of land in the Town is hereby declared to be a nuisance, and it shall be unlawful to permit any such weeds or brush to grow or remain in any such place. (Ord. 435 §1, 1996)

Sec. 7-73. Duty of property owner to cut.

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to cut to the ground all weeds and brush when said weeds and brush grow to a height of twelve (12) inches or more. (Ord. 435 §1, 1996)

Sec. 7-74. Removal from Town.

All weeds and brush cut in accordance with Section 7-73 hereof shall, immediately upon being cut, be removed from the Town or otherwise entirely destroyed by the owner of the lot upon which the weeds and brush have been cut. (Ord. 435 §1, 1996)

Secs. 7-75—7-90. Reserved.

ARTICLE V

Animals

Sec. 7-91. Definitions.

The following definitions shall apply to the interpretation and enforcement of this Article, unless the context otherwise requires:

Animal shall be defined as pet animal below.

Animal Control Division means that section of the Town Marshal's office that is engaged in animal control and is vested with the power and authority to enforce this Article. This term shall also include the department's duly authorized officers, employees and agents. This term shall be used interchangeably with the terms Animal Control Officer and Town Marshal's office, each being the equivalent of the other for purposes of this Article.

Animal Control Officer means any person authorized by the Board of Trustees or the Town Marshal's office to engage in animal control in the Town including, but not limited to, law enforcement officers.

Bodily injury means physical pain, illness or any impairment of physical condition.

Current, as used in connection with a rabies inoculation, means that the vaccine is in compliance with County Health Department Regulation 5 and/or Town ordinances.

Guard dog means a trained dog which is kept for the protection of property, and restrained by cage, fence or other adequate means from contact with the general public or with any person who enters the premises with the actual or implied permission of the owner or occupant. This is provided that the premises are posted in a manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog.

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

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

Leash control means firmly attached to a secured tether or a leash no longer than six (6) feet which is being held and controlled by a person.

Owner includes all owners where ownership of an animal is shared; all owners shall be jointly and severally liable. The owners may be liable even if the animal was in possession of a keeper at the time of the offense.

Pet animal is defined for the purposes of this Article as any dog, cat, bird, rabbit, guinea pig, hamster, mouse, snake, iguana, turtle, chicken hen or any other species of domestic animal.

Premises means the area of land surrounding the residence of the owner of the animal which is owned and is occupied or under the control of the owner of the animal, or any other confined area or locality like a room, shop, vehicle or building.

Running at large means an animal which is off of or away from the premises of its owner or keeper and not under leash control as more specifically set forth in Section 7-95 of this Article. An animal that is not under leash control but is on private property with the permission of the owner or keeper of the property shall not be considered to be at large and is under control of the owner or keeper.

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

- a. A person who attacked such animal or who engaged in conduct reasonably calculated to provoke such animal to attack or bite such person or another person;
- b. Any person engaged in attacking or molesting another person;
- c. Any person engaged in the unlawful entry into or upon the fenced or enclosed portion of a premises upon which such animal is kept, or into or upon any automobile or other vehicle parked or stored in, upon or on the street adjacent to such premises;
- d. Any animal engaged in the unauthorized entry into or upon the fenced or enclosed portion of the premises upon which the accused animal is kept; or
- e. Any person engaged in the unlawful or unauthorized entry into any automobile or other vehicle in which such animal is kept or confined. (Ord. 324 §1, 1991; Ord. 435 §1, 1996; Ord. 694 §1, 2011)

Sec. 7-92. Rabies inoculation required.

(a) The owner of each dog and cat in the Town shall have such animal inoculated against rabies at three (3) months of age, one (1) year later and every three (3) years thereafter pursuant to Regulation 5 of the County Health Department regulations or Town ordinances, as periodically amended.

(b) Inoculation required.

(1) It is unlawful for any person to own, keep, harbor or possess any dog or cat over the age of three (3) months which has not been inoculated against rabies.

(2) All requirements concerning the inoculation of dogs as set forth in this Code shall apply to cats, excepting the requirement of issuance and of wearing the metal tag. The inoculation certificate shall be maintained by the cat owner and shall be presented upon demand of the Animal Control Officer.

(c) Upon vaccination of a dog or cat, a licensed veterinarian shall execute and furnish to the owner a certificate of rabies inoculation which shall include the following:

(1) The name, address and telephone numbers (home and business) of the owner of the vaccinated animal.

(2) The name and address of the veterinarian administering the vaccination.

(3) The breed, age, color, name, sex and status as to spayed or neutered of the vaccinated animal.

(4) Date of vaccination and expiration thereof.

(5) Type of vaccine used, lot number and manufacturer.

(6) The rabies vaccination tag number.

The veterinarian shall also furnish to the owner a rabies tag which shall be firmly affixed to the collar or harness of the dog.

(d) Any dog or cat that is brought into the Town from another county or state must have been inoculated against rabies at least thirty (30) days but not more than thirty-six (36) months prior to importation into the Town; however, if the vaccine used does not meet the requirements of Regulation 5 pertaining to thirty-six-month vaccines, the maximum acceptable inoculation period shall be twelve (12) months. The tag denoting vaccination shall be firmly affixed at all times to the collar or harness of the dog, and subject to the requirements set forth in this paragraph, shall be evidence of compliance with Regulation 5 and this Article. Any legally acceptable certificate of vaccination issued by a legally authorized person to the owner of the dog in any municipality, county or state shall be exchanged for a current Town rabies inoculation tag for dogs if the imported dog remains in the Town more than thirty (30) days.

(e) Any animal that has bitten a person so as to cause any abrasion and/or break of the skin and has no verification of a valid rabies shot shall be impounded or confined at the owner's or keeper's expense in either the County Humane Society or any private veterinary hospital for observation for at least ten (10) days in order to determine whether the animal has rabies. The Town Marshal's office shall give oral notice of such impoundment to the owner, if known. If the owner is not known, the Town Marshal's office shall cause a notice of the impoundment of the animal to be published or advertised in a newspaper of general circulation. If no owner appears to claim the animal within five

(5) days after receipt of the oral notice or within seven (7) days after publication of the written notice and at least after the ten-day rabies impoundment period, if necessary, the animal will be put up for adoption or humanely disposed of in accordance with local policy. Before an animal can be released from the impoundment facility, it must either be inoculated for rabies or have proof of a valid rabies inoculation, if applicable. (Ord. 324 §2, 1991; Ord. 435 §1, 1996)

Sec. 7-93. Tags required.

(a) A rabies inoculation tag shall be issued by the veterinarian who administered the vaccination to the dog or cat, or upon proof of a current rabies inoculation by the Town Marshal's office or the County Humane Society. Each rabies inoculation tag shall be inscribed with the words "Town of Nederland," the year for which the tag is issued and the tag number. Except as provided under Subsection (b) below, every dog must wear a collar or harness to which the rabies tag shall be firmly attached. Each rabies tag shall be worn only by the dog for which it was issued. Rabies tags for dogs which are brought into the Town from another county or state are governed under Section 7-92(d) above.

(b) Town tags and registration are required every calendar year. Dogs are required to wear these tags at all times. Cats will not be required to wear tags; however, the owner must have possession of the tag. Tags of dogs participating in sanctioned dog shows or matches, or of dogs aiding law enforcement officers or of dogs within fenced grounds, with permission of the owner, need not be attached to the collar or harness but must be in the possession of the owner. (Ord. 324 §3, 1991)

Sec. 7-94. Barking dogs or other disturbances.

(a) It is unlawful for any person owning or keeping pet animals to fail to prevent such animal from disturbing the peace of any other person by loud, persistent and habitual barking, howling, yelping or making any other loud, persistent and habitual noise, whether the animal is on or off the owner's premises.

(b) It is a defense to this charge if provocation to the animal results in noise. For the purposes of this Article, provocation shall be defined as actions or deeds which will likely result in noise or which are made with the intent to cause the animal to make noises.

(c) In the event the Animal Control Division determines that a violation of this Section has occurred, the Animal Control Officer shall give the violator a written warning of the violation pursuant to Subsection (d) below. The violator shall be entitled to a period of three (3) days after the date on which the written warning is given in order to correct the violation. If the violation persists or reoccurs after this three-day period, the violator shall be subject to enforcement action under Sections 7-103 and 7-104 of this Article. A person shall not be entitled to more than one (1) warning in any calendar year. In case of a subsequent violation occurring in a calendar year, the Animal Control Officer may issue a penalty assessment without prior warning.

(d) The warning process to be employed by the Animal Control Officer shall be as follows:

(1) The Animal Control Officer will give such warning after either of the following circumstances: a phoned-in complaint which the Animal Control Officer investigates or two (2) phoned-in complaints from different households which are not investigated.

(2) All complainants must clearly identify themselves and the dog complained of, the length of time and approximate hour of disturbances.

(3) Such warning is sufficient if it identifies Subsection (a) above, it states that a complaint has been received and that the person's animal is disturbing the peace of another individual, and it is identified as coming from the Animal Control Officer.

(4) A warning is given under this Section if it is personally served on the owner of the animal, posted on the owner's premises, or placed in the United States mail with postage prepaid, and addressed to the owner of the animal at the address contained in the rabies inoculation records or at an address based on the best information available.

(5) The Animal Control Officer shall keep records of all warnings given and such records shall be prima facie evidence that such warnings were given.

(6) No person shall be convicted at trial of violating this Section unless one (1) or more witnesses testifies to the loud, persistent or habitual nature of the noise. An Animal Control Officer may be relied upon as a witness in meeting this requirement. (Ord. 324 §4, 1991; Ord. 435 §1, 1996)

Sec. 7-95. Animals running at large; restraint and control.

(a) It is unlawful for any owner or keeper of any animal to fail to prevent the animal from running at large within the Town limits. Every owner or keeper of any animal of any age shall keep such animal exclusively upon his or her own premises. However, an animal may be off such premises if: it is under the control of a competent person and restrained by a substantial chain or leash not exceeding six (6) feet in length or if it is within a vehicle or is similarly physically confined and inaccessible to any passers-by. An animal is presumed to be at large if injury, damage or trespass has occurred, even if said animal is under leash control at the time of injury, damage or trespass.

(b) It is unlawful for an animal to attack any domestic animal or fowl or any species of wildlife. The owner or keeper of the animal at the time of the attack shall be responsible for any violation of this Subsection.

(c) Any animal control officer apprehending an animal at large may impound the animal, return the animal to the owner and/or issue a citation. Said officer shall have the right to enter upon private property when it is necessary to apprehend any animal that has been running at large. Such entrance upon private property shall be in reasonable pursuit of said animal, and shall not include entry into a domicile or enclosure which confines an animal unless it is at the invitation of the owner.

(d) The Animal Control Officer shall issue a citation to the owner of any animal running at large except for the following conditions:

(1) The animal is wearing a leash that was obviously frayed or broken, unless the leash was known to be inadequate or appeared to be unreasonably inadequate; or

(2) The animal confinement has been obviously and temporarily damaged due to weather conditions or other acts of God.

(e) Repeat offenses of an animal at large within a twelve-month period, for any reason, shall be cause for citation by the terms of this Article.

(f) Paragraphs (d)(1) and (2) above shall constitute affirmative defenses to a violation of this Section.

(g) Upon a conviction of guilt or a plea of guilty or nolo contendere to a violation of this Section, in addition to any other penalties imposed by the Municipal Court, the Municipal Judge shall impose a mandatory minimum fine of two hundred fifty dollars (\$250.00) unless the defendant can demonstrate to the satisfaction of the Municipal Court that the animal running at large has been spayed or neutered prior to the imposition of sentence. Upon motion of the defendant, the Court may continue sentencing to give the defendant time to have the animal in question neutered. (Ord. 324 §5, 1991; Ord. 508 §1, 1999)

Sec. 7-96. All pet animals restrained.

It is unlawful for any person who owns, harbors or keeps within the corporate limits of the Town any animal that may be otherwise legally kept to fail to keep the same securely enclosed in a pen or building, or to permit the same to run at large or to go upon public property or the premises of another unless in a manner specifically authorized in this Article. (Ord. 324 §6, 1991)

Sec. 7-97. Vicious animal.

(a) It is unlawful for any person to harbor or keep a vicious animal within the Town. Any vicious animal shall be deemed a public nuisance, and may be seized by any law enforcement officer and upon appropriate complaint and order of the Municipal Court or any court of competent jurisdiction and may be humanely destroyed or otherwise disposed of, as the Court may determine in the abatement of the nuisance and the protection of the public safety. It shall be an affirmative defense to prosecution under this Section:

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

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

(b) It is unlawful for the owner or keeper of a vicious animal to fail to prevent said animal from going off the premises of the owner. In the case of a dog, the dog may leave the premises if it is under leash control and properly muzzled so as to prevent it from injuring any person or property.

(c) It is unlawful for the owner or keeper of a vicious animal to allow such animal to attack any domestic animal or fowl or any species of wildlife. (Ord. 324 §7, 1991)

Sec. 7-98. Care and keeping of animals.

(a) Cruelty to animals. A person commits cruelty to animals if, except as authorized by law, he or she overdrives, overloads, overworks, tortures, torments, deprives of necessary subsistence, unnecessarily or cruelly beats, needlessly mutilates, needlessly kills, abandons, carries in or upon any vehicle in a cruel manner or otherwise mistreats or neglects any animal, or causes or procures such acts to be done, or having the charge and custody of any animal, fails to provide it with proper food, drink or protection from the weather.

(b) Harassment of animals. It is unlawful to knowingly tease, tantalize or provoke any animal in a manner which causes fear or anger.

(c) Prohibited keeping of animals.

(1) It is unlawful for any person to keep, harbor, care for or possess any animal within the Town limits, which is not a pet animal as defined herein for the purpose of being kept as a household pet; except that skunks, monkeys and other subhuman primates shall not be defined as pet animals for the purposes of this Article except as otherwise provided for by this Code. In addition, birds of prey in the possession of handlers licensed by the State or federal government are excepted from this Section.

(2) Nothing in this Article shall be construed to permit the keeping of an animal, the keeping of which is otherwise prohibited or restricted by the laws and regulations of the State or the United States. (Ord. 324 §8, 1991)

Sec. 7-99. Offensive premises.

(a) The accumulation of animal feces compromises public health and constitutes a threat to public safety and welfare. It is unlawful for the owner or keeper of an animal to allow animal feces to accumulate so as to be a health hazard or so that odor is noticeable on adjoining property.

(b) Any premises upon which any animal is kept shall be maintained in a sanitary condition and shall comply with all sanitary regulations adopted by the Town.

(c) It shall be unlawful for any person who possesses, harbors or is in charge of a dog not to immediately remove excrement deposited by the dog upon a common thoroughfare, street, sidewalk, trail, play area, park or upon any private property when permission of the owner or tenant of the property has not been obtained, and such is hereby deemed to be a public nuisance and prohibited.

(1) It shall be unlawful for any person to place dog excrement in a storm sewer, ditch or water way, but it may be placed in trash containers if contained in a closed, plastic bag or other closed and airtight nonporous container.

(2) Any other provision of this Article notwithstanding, the penalty for violating the provisions of this Subsection shall be a fine of up to one hundred dollars (\$100.00) for a first

offense and up to two hundred dollars (\$200.00) for a second or subsequent offense within three (3) years of a previous offense. The Municipal Court, in its discretion, may impose community service cleaning up dog excrement in public areas within the Town as a condition of deferred judgment and sentence, deferred prosecution and/or probation. (Ord. 324 §9, 1991; Ord. 620 §1, 2006)

Sec. 7-100. Confinement of female animals in heat.

It is unlawful for the owner of a female dog or cat in the pre-estrus or estrus state to fail to confine such dog or cat either in a building, secure enclosure or kennel so as to prevent it from attracting by scent or coming into contact with male dogs or cats and creating a nuisance, except for planned breeding. (Ord. 324 §10, 1991; Ord. 435 §1, 1996)

Sec. 7-101. Seizure and impoundment.

(a) It shall be the duty of the Animal Control Division, whenever possible, to apprehend any animal found running at large, any animal which is not vaccinated and/or is not wearing a current rabies inoculation tag, any vicious animal not properly confined, or any animal being kept or maintained contrary to the provisions of this Article.

(b) When any animal has been apprehended by the Animal Control Division, the Animal Control Division may take any appropriate action including: returning the animal to its owner, impounding the animal and/or issuing a citation. If the animal is impounded, the Animal Control Division shall give notice of such impoundment to the owner, if known. If the owner is not known, the Animal Control Division shall take all reasonable steps to establish the identity of the owner.

(c) An animal impounded by the Animal Control Division shall be held for recovery by the owner for a maximum of five (5) days. During this five-day period the owner may recover possession of such animal upon payment of the costs of impoundment, including those costs incurred by the Animal Control Division, and upon verification that the animal is wearing a valid rabies inoculation tag. If no owner appears within five (5) days, the animal will be put up for adoption or humanely disposed of in accordance with local policy. The impoundment period for animals that have bitten a person so as to cause an abrasion and/or break of the skin and have no verification of a valid rabies shot is set forth in Section 7-92(e) above. (Ord. 324 §11, 1991)

Sec. 7-102. Commercial and noncommercial kennel licenses.

(a) It is unlawful to own or harbor more than three (3) of any one (1) species or no more than five (5) of any combination of species.

(b) Any person who owns or harbors more animals than allowed pursuant to Subsection (a) above, but less than eight (8) animals for noncommercial purposes, not for breeding, sale nor for board at any one (1) household must make application to the Town Clerk for a noncommercial kennel license. Every application must be accompanied by the written consent to such noncommercial kennel by at least seventy-five percent (75%) of all persons in occupancy of premises within five hundred (500) feet of the premises upon which said kennel is to be maintained. Every application must be accompanied by a license fee as set forth in Section 4-151. Noncommercial kennel licenses are nontransferable. A noncommercial kennel license does not preclude the requirement for

individual dog licenses. This license may be revoked should the owner be found negligent or in repeated violation of this Article.

(c) Any person who owns or harbors more than one (1) animal for commercial purposes of breeding, for sale or for board, or any person who owns or harbors more than seven (7) dogs for any purpose, must make application to the Board of Trustees for a commercial kennel license. Every application must be accompanied by a petition of one hundred (100) signatures of Town residents including seventy-five percent (75%) of all persons in occupancy of premises within five hundred (500) feet consenting to such a kennel. Fees as set forth in Section 4-151 for each dog maintained will be required for each license granted. A commercial kennel must be maintained to the satisfaction of the County Health Department and the County Humane Society and be open to inspection by these agencies and by the licensing authority at all times. A commercial kennel must have distemper and rabies vaccination certificates for all dogs and cats maintained, as required herein, but will not be required to purchase Town licenses for individual dogs. Commercial kennels are nontransferable, and cannot be relocated. These licenses will expire on December 31 of the application year, and may be revoked by the Board of Trustees for cause, including, but not limited to, the failure to meet the above requirements. (Ord. 324 §12, 1991; Ord. 435 §1, 1996)

Sec. 7-103. Enforcement.

The Animal Control Division may issue citations enforcing the animal control ordinance without regard to certification requirements as authorized by Section 30-15-105, C.R.S. (Ord. 324 §13, 1991)

Sec. 7-104. Penalties for violations not involving bodily injury to persons.

(a) Any violation of this Article, the punishment for which is not otherwise specifically provided for herein, not involving bodily injury to any person, shall be punishable by a fine as set forth in Section 1-72 of this Code.

(b) Except as provided in Section 7-94 of this Article, whenever the Town Marshal's office has personal knowledge of any violation set forth in this Article, he or she may issue a citation or summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of said charge to the violator.

(c) An Animal Control Officer, as defined in Paragraph 7-91(2) of this Article, may use the penalty assessment procedure defined under Section 16-2-201(1), C.R.S., for those violations listed in this Article. Said statute and this Article permit an Animal Control Officer to give a person arrested for a class 2 petty offense a penalty assessment notice and release him or her upon its terms or take him or her before a county court judge. The penalty assessment notice shall be a summons and complaint and shall contain the identification of the offender, the specification of the offense, the applicable fine and the amount of pending fines on the owner's prior offenses.

(d) When an Animal Control Officer uses the penalty assessment procedures, the Officer shall use the Schedule of Fines set by the Municipal Judge then in effect.

(e) All boarding or impoundment fees are in addition to fines.

(f) The penalty assessment procedure and fine schedule shall not be used in violations involving bodily injury to any person or animal. (Ord. 324 §14, 1991; Ord. 435 §1, 1996)

Sec. 7-105. Penalties for violations involving bodily injury to persons.

(a) Whenever the Animal Control Division has probable cause to believe that any violation of this Article involving bodily injury has been committed, the Animal Control Division may issue a citation to the violator, stating the nature of the violation with sufficient particularity to give notice of said charge to the violator.

(b) Any violation of this Article involving bodily injury to any person shall be punishable as set forth in Section 1-72 of this Code. In addition to any other penalty, the Municipal Court may order the destruction of any animal found to be vicious. (Ord. 324 §15, 1991; Ord. 435 §1, 1996)

Sec. 7-106. Applicability of control provisions.

The control provisions of this Article shall apply to all animals in the entire incorporated area of the Town except for those dogs working livestock, locating or retrieving wild game in season for licensed hunters, dogs assisting a law enforcement officer, dogs housed in kennels, dogs being trained in training facilities, dogs at veterinarian offices and hospitals or dogs being trained for any of the above pursuits. (Ord. 324 §16, 1991)

Sec. 7-107. Liability clause.

The Board of Trustees, the Town Marshal's office, the Animal Control Division or any of its assistants or employees, or any other person authorized to enforce the provisions of this Article shall not be held responsible for any accident or subsequent disease that may occur to the animal in connection with the administration of this Article. (Ord. 324 §18, 1991)

Sec. 7-108. Continuation of certain nonconforming actions.

(a) The owners of animals covered by Section 7-102 shall have five (5) years from the effective date of the ordinance codified herein to come into compliance with the provisions of this Section, provided that within sixty (60) days of the effective date of the ordinance codified herein, such owners register with the Town Marshal's office the total number and species of animals then in possession of the owner. Under no circumstances will said owner be allowed to increase the number of or replace lost or dead animals until compliance has been reached.

(b) All other provisions of this Article shall be effective as against all persons unless otherwise excepted. (Ord. 324 §21, 1991; Ord. 435 §1, 1996)

Secs. 7-109—7-120. Reserved.

ARTICLE VI

Horses and Llamas

Sec. 7-121. Scope.

(a) This Article has been established for the purpose of setting forth minimum regulations and requirements necessary for keeping horses and llamas in the Town. These requirements have been set forth in order to protect the health, safety, welfare and convenience of all residents in the area, as well as to accommodate those whose lifestyles include raising and keeping of horses and llamas, who prefer living within the Town while retaining rural amenities.

(b) While the keeping of horses and llamas is permitted according to these regulations, the sanitary conditions under which the animals are kept shall be enforced by the County Health Department as well as the Town. The basic sanitary conditions set forth herein will be enforced by the Town. With all requirements met, no violations should occur. However, if a nuisance complaint continues, the County Health Department could be the agency to enforce regulations. Other specific conditions regarding the keeping of horses and llamas, shelter or sanitation, as may be specified by the Planning Commission or Board of Trustees, shall be complied with.

(c) Any person keeping, maintaining, housing or possessing horses and llamas in compliance with the requirements of this Article as set forth on May 6, 1986, and in compliance with all other relevant ordinances and local laws of the Town, as of the effective date of the ordinance codified herein, shall be exempt from the requirements as set forth in Subsection 7-122(b) below. All others shall be brought into compliance within one (1) year. Horse facilities being maintained on parcels not herein zoned conforming status or on any other nonconforming parcels prior to the effective date of the ordinance codified herein shall be removed from said parcels within one (1) year from this date. (Ord. 270 §1, 1986)

Sec. 7-122. Permit required.

(a) Horses and llamas shall be permitted for noncommercial use only. Permits for private home stables may be issued to owners of property for their personal use only, provided that all minimum requirements herein set forth are met.

(b) No person shall keep or maintain a horse within the Town limits unless such person has a valid permit to do so. Application for a permit shall be made to the Town Clerk and shall contain an adequate description of the real property upon which horses and llamas are to be kept and maintained. Following application, the Building Inspector shall cause the premises to be inspected, and authorize the issuance of a permit if the premises meets the conditions. The Town Clerk shall issue all permits upon the payment of a fee as set forth in Section 4-151 of this Code. A permit shall continue unless revoked as herein provided. Permits shall not be transferable.

(c) The premises upon which horses and llamas are kept shall be maintained in a sanitary condition and shall comply with all regulations adopted by the Town. The premises shall at all reasonable hours be subject to inspection by certain representatives of the Town. It is unlawful for any person to refuse such inspection. The owner of horses and llamas shall be able to produce, upon demand, a valid permit for each horse. The owner of horses and llamas shall be able to produce, upon

demand, a proof of compliance with all applicable county, state and federal laws and regulations as to the testing, inoculation and vaccination of horses and llamas.

(d) The Building Inspector and/or Town Marshal may recommend the revocation of any permit upon the grounds that the permittee is violating or has violated any of the provisions of this Article. Such recommendation shall be filed with the Town Clerk, who shall cause a written notice to be mailed to the permittee notifying him or her that a hearing on the Building Inspector's recommendation will be held not less than ten (10) days from the date of mailing such notice. Such notice shall specify the time and place of the hearing. If, upon such hearing, the Board of Trustees finds that the permittee has violated any of the provisions of this Article, the Board of Trustees may herewith revoke his or her permit and the permittee shall be allowed forty-eight (48) hours within which to remove all horses and llamas and ten (10) days to remove any offensive or prohibited materials.

(e) It is unlawful to ride, lead or allow any horse or llama on any sidewalk. It is unlawful to allow any waste deposits from such animal on public property. The owner and the person in possession of the animal shall be responsible for removing all waste deposits of the animal.

(f) Upon denial of a permit under the provisions of this Article, the Town Clerk shall cause a written notice of such denial to be mailed to the applicant notifying the applicant thereof. An applicant desiring to appeal such denial shall, within ten (10) days of the receipt of the notice of denial, file with the Town Clerk a written request for hearing. The Town Clerk shall give notice of the hearing to the applicant in the manner provided in Subsection (d) above for hearing upon revocation. The Board of Trustees shall, following such hearing, direct that the permit should be either issued or denied. (Ord. 270 §2, 1986; Ord. 435 §1, 1996)

Sec. 7-123. Minimum requirements.

(a) Sanitation and feeding.

(1) The premises where horses and llamas are to be kept shall be maintained in a clean, neat and sanitary condition at all times in order to ensure the public health, safety, comfort, convenience and general welfare.

(2) A fresh water supply shall be provided and fresh water shall be provided daily. All watering troughs shall be maintained so as to prevent the breeding of mosquitoes.

(3) Feeding shall require adequate containers or feeding troughs of size, kind and number to eliminate scatter and unsanitary conditions.

(4) Said premises shall be maintained in accordance with all applicable ordinances, rules, laws and regulations pertaining to the care of animal habitation, manure removal, fly-producing conditions, dust or odor-producing conditions, noise and water pollution as set forth by the County Health Department and the Town. Any such premises which are not at all times kept and maintained, covered, closed, protected, cleaned, drained and disinfected as to prevent any and all offensive noxious gases and odors arising therefrom, or which are allowed or suffered to become a breeding place for flies and insects or rodents, or to become offensive or noxious to the residents

in the immediate neighborhood, are hereby declared to be nuisances and subject to summary abatement.

(b) Minimum area and fencing requirements.

(1) The minimum property area required is one-half (½) acre. Any such property classified shall not keep or maintain any more than one (1) horse per first one-half (½) acre, and shall not keep or maintain any more than one (1) horse per each additional one-half (½) acre of lot area. All areas devoted to, and utilized for, the keeping and maintenance of horses and llamas shall be subject to the minimum requirements as forth in this Article.

(2) Location of corral or confinement area must meet the following setback requirements:

a. Distance from any well, one hundred (100) feet.

b. Distance from other residence or any other structure used for human habitation, fifty (50) feet.

c. Distance from any property line, five (5) feet.

(3) Fences shall be provided for confinement area and shall be maintained not less than three (3) feet in height, which fence shall be constructed at least five (5) feet from the outside boundary line of the property described in the application for a permit.

(4) In conjunction with a fenced corral or confinement area, an adequate wind break shall be provided, allowing protection from the prevailing winds.

(5) The construction of feeding facilities and the construction, drainage, flooring, ventilation and fly screening of all sheds or other shelters shall be governed by any regulations adopted by the Board of Trustees, as found in sections of the International Building Code, related to Agricultural Buildings.

(6) All stalls, sheds, stables and fences shall be continuously maintained with preservatives, fasteners and other materials so as to maintain appearance and prevent deterioration and animal escape.

(7) The owners of adjoining properties may by mutual agreement request that the Board of Trustees waive the requirement of Paragraph (2) above until such time as the mutual agreement is terminated, at which time the original requirement shall again be in effect. (Ord. 270 §3, 1986)

Sec. 7-124. Tethering.

An equine or llama may be tied or tethered in any front, side or back yard under the following conditions:

(1) The animal's owner has the permission of the property owner for tethering use.

(2) The animal shall be removed immediately if the situation causes distress to either the property owner or any neighbor.

(3) The animal shall not be left tethered or tied on said property when there is no longer adequate grazing.

(4) The animal's owner shall be responsible for removal of all manure.

(5) The animal shall be kept off all roadways and public rights-of-way. (Ord. 270 §4, 1986)

Secs. 7-125—7-140. Reserved.