

CODE OF ORDINANCES
CITY OF
GRAND JUNCTION, COLORADO

Published by Order of the City Council

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adopted February 18, 1998 as Authorized by the City Council
on the 5th day of August, 1998

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MUNICIPAL CODE CORPORATION
Tallahassee, Florida 1994

OFFICIALS

of the

CITY OF

GRAND JUNCTION, COLORADO

AT THE TIME OF THIS CODIFICATION

R. T. Mantlo

President of the Council

Linda Afman
Bill Bessinger
Reford C. Theobold

Jim Baughman
Ron Maupin
John Tomlinson

City Council

Mark K. Achen

City Manager

Dan E. Wilson

City Attorney

John P. Shaver

Assistant City Attorney

Stephanie Nye

City Clerk

PREFACE

This Code constitutes a complete recodification of the general and permanent ordinances of the City of Grand Junction, Colorado.

Source materials used in the preparation of the Code were the 1965 Code, as supplemented through February 5, 1992, and ordinances subsequently adopted by the city council or by referendum of the people. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1965 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Alyce A. Whitson, Supervising Editor, and Charles Vignos, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Dan Wilson, City Attorney, John Shaver, Assistant City Attorney, and Stephanie Nye, City Clerk, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

	MUNICIPAL CODE CORPORATION Tallahassee, Florida
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CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 2789

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE OF ORDINANCES FOR THE CITY OF GRAND JUNCTION, COLORADO; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE OF ORDINANCES AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE

Recitals.

The City's Ordinances were last codified November 23, 1965. The process of codification includes evaluation of the provisions of the existing Code for applicability and to delete and/or amend antiquated and obsolete provisions.

The Grand Junction City Council has determined that this codification is necessary for the preservation of health, safety and general welfare of the citizens of Grand Junction.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Section 1. Pursuant to the authority conferred by the home rule charter of the City and the Colorado Revised Statutes, Title 31, Article 16, Part 2, there is hereby adopted that certain Code, entitled the "Code of Ordinances, City of Grand Junction, Colorado," together with all ancillary codes duly described in said Code of Ordinances and incorporated therein by reference, hereinafter "Code".

Section 2. All ordinances of a general and permanent nature enacted on or before November 1, 1994, and not included in the Code or recognized and continued in force by reference therein are hereby repealed unless otherwise provided.

Section 3. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance being repealed by this ordinance.

Section 4. Nothing in this ordinance shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or occurring before the effective date hereof.

Section 5. The following codes are hereby adopted by reference and incorporated in the Code of Ordinances, City of Grand Junction, Colorado. One (1) copy of these codes are on file in the City Clerk's office and are available for public inspection.

- (a) The Uniform Building Code, 1988 Edition as published by the International Conference of Building Officials, as adopted and amended in Code § 8-51, et seq.;
- (b) The Uniform Building Code Standards, 1988 Edition as published by the International Conference of Building Officials, as adopted and amended in Code § 8-51, et seq.;
- (c) The Uniform Plumbing Code, 1988 Edition including appendices as published by the International Association of Plumbing and Mechanical Officials, as adopted and amended in Code § 8-54, et seq.;
- (d) The National Electrical Code, as published by the National Fire Protection Association and as adopted by the state pursuant to C.R.S. § 12-23-100.2 et seq., as adopted and amended in Code § 8-53, et seq.;
- (e) The Uniform Mechanical Code, 1988 Edition, including appendices as published by the International Conference of Plumbing and Mechanical Officials as adopted and amended by Code § 8-55, et seq.;
- (f) The Uniform Swimming Pool, Spa and Hot Tub Code, 1988 Edition as published by the International Association of Plumbing and Mechanical Officials as adopted and amended by Code § 8-56, et seq.;
- (g) The Uniform Code for the Abatement of Dangerous Buildings, 1988 Edition as published by the International Conference of Building Officials as adopted and amended by Code § 8-57, et seq.;
- (h) The Uniform Fire Code, 1991 Edition, including appendices as published by the Western Fire Chief's Association, Inc. and the International Conference of Building Officials as adopted and amended by Code § 18-56, et seq.;
- (i) The Uniform Fire Code Standards, 1991 Edition as published by the Western Fire Chief's Association, Inc. and the International Conference of Building Officials as adopted and amended by Code § 18-56, et seq.;
- (j) The "Model Traffic Code for Colorado Municipalities" 1977 Edition, Articles I to XXVI, as published by the State Department of Highways, as adopted and amended in Code § 36-2, et seq.

Section 6. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code, any code adopted by reference, any ordinance adopted or issued in pursuance thereof, or regulations promulgated hereunder shall be punished by a fine of not more than \$1,000.00 or imprisonment for a term not exceeding one year, or by both such fine and

imprisonment as provided in § 1-9. Unless otherwise indicated each day or portion thereof any violation continues shall constitute a separate offense. Any person under 18 years of age who violates any provision of this Code or the regulations promulgated hereunder shall be subject to a fine up to \$1,000.00 and/or be required to perform useful public service not to exceed 48 hours or any combination thereof. Violation of any requirement, term or provision of the wastewater pretreatment code or other federal enactment implemented pursuant to the federal law, is punishable as required by such federal act and its implementing regulations for such programs.

In addition to the penalties prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses and permits.

Section 7. Additions or amendments to the Code, when passed in the form as to indicate the intention of the City Council to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 8. The City Clerk shall distribute the Code and amendments thereto as may be necessary to the various departments of the city for official use of city officers, boards and commissions, and for exchange purposes for similar publications of other cities. All volumes designated for official use shall remain the property of the city for the use of such city officials and their successors and shall bear such designation. The City Clerk shall prepare or cause to be prepared a list of the city officers, boards and commissions who shall receive for official use copies of the Code. The City Clerk shall make the Code and supplements thereto available to the public and shall charge therefore such fees as the City Clerk deems reasonable.

Section 9. Ordinances adopted after November 1, 1994, that amend or refer to ordinances that have been codified the Code, shall be construed as if they amend or refer to those provisions of the Code.

Section 10. This ordinance shall become effective thirty days after final publication.

Introduced and ordered published on first reading this 2nd day of November, 1994.

Adopted on second reading this 16th day of November, 1994.

R.T. Mantlo
President of the Council

(SEAL)
ATTEST:

Stephanie Nye
City Clerk

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Sec. 1-1. Designation and citation of Code.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Grand Junction, Colorado," and may be so cited.

(Code 1965, § 1-1)

State law reference(s)—Adoption of code by reference, C.R.S. § 31-16-202; copies in city clerk's office, C.R.S. § 31-16-206.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless such construction would be inconsistent with the manifest intent of the city council.

Charter. The word "Charter" shall mean the Charter of the City of Grand Junction, Colorado.

City. The word "city" shall be construed as if the words "of Grand Junction, Colorado" followed it and shall extend to and include its several officers, agents and employees.

City council, council. The terms "city council" and "council" shall mean the city council of the City of Grand Junction, Colorado.

City officials or officers. Whenever reference is made to officers, officials, employees, boards, commissions, departments, etc., by title only, they shall be deemed to refer to those of the City of Grand Junction, Colorado.

Code. The word "Code" shall mean the Code of Ordinances, City of Grand Junction, Colorado.

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. When a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall

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be added to the prescribed period.

State law reference(s)--Similar provisions, C.R.S. § 2-4-108.

County. The word ``county" shall mean the County of Mesa, State of Colorado.

C.R.S. The abbreviation ``C.R.S." shall mean the latest edition or supplement of the Colorado Revised Statutes.

State law reference(s)--Cite for state statutes, C.R.S. § 2-4-402.

Delegation of authority. Whenever a provision appears authorizing or requiring the city manager or any other city official or officer or head of a department of the city to do some act or make certain inspections, it is to be construed to authorize that person to designate, delegate and authorize subordinates to perform the authorized or required act or make the authorized or required inspection unless the terms of the provision or section designates otherwise. Except as otherwise required in the Charter or state law, the city manager has the power to delegate authority and duties designated for the city manager in this Code.

State law reference(s)--Similar provisions, C.R.S. § 2-4-110.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

State law reference(s)--Similar provisions, C.R.S. § 2-4-103.

Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

State law reference(s)--Similar provisions, C.R.S. § 2-4-110.

Month. The word ``month" shall mean a calendar month.

State law reference(s)--Similar provisions, C.R.S. § 2-4-106.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

State law reference(s)--Similar provisions, C.R.S. § 2-4-101.

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Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

State law reference(s)—Similar provisions, C.R.S. § 2-4-102.

Oath. The word "oath" shall be construed to include 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" shall be equivalent to the words "affirm" and "affirmed."

State law reference(s)—Similar provisions, C.R.S. § 2-4-401(7).

Or, and. "Or" may be read "and" and "and" may be read "or" if the sense requires it.

Person. The word "person" shall include and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

State law reference(s)—Similar provisions, C.R.S. § 2-4-401(8).

Signature, subscription. The words "signature" or "subscription" shall include a mark when a person cannot write.

State. The word "state" shall be construed to mean the State of Colorado.

Street. The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public highways in the city and shall embrace all parts thereof within the designated right-of-way.

Tense. Words used in the present or past tense include the future as well as the present and past.

State law reference(s)—Similar provisions, C.R.S. § 2-4-104.

Week. The word "week" shall be construed to mean seven days.

Written, in writing. The words "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

State law reference(s)—Similar provisions, C.R.S. § 2-4-401(17).

Year. The word "year" shall mean a calendar year.

(Code 1965, § 1-2)

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State law reference(s)--Construction of state statutes, C.R.S. § 2-4-101 et seq.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(Code 1965, § 1-3)

Sec. 1-4. References to chapters or sections.

All references to chapters or sections are to the chapters and sections of this Code unless otherwise specified.

Sec. 1-5. History notes.

The history notes appearing in parentheses after certain sections of this Code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1-6. References and editor's notes.

References and editor's notes following certain sections of this Code are inserted as an aid and guide to the reader and are not controlling nor meant to have any legal effect.

Sec. 1-7. Provisions considered as continuation of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of the Code of Ordinances, City of Grand Junction, Colorado, 1965, and of ordinances existing at the time of adoption of this Code, shall be considered as a continuation thereof and not as new enactments.

Sec. 1-8. Code does not affect prior offenses, penalties or rights.

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

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Sec. 1-9. General penalty; continuing violations.

(a) It shall be unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any ordinance adopted by the city council or any provision of this Code, or commit any act or omission declared to be unlawful or an offense or a misdemeanor, and where no specific penalty is provided therefor, the violation of any provisions of this Code shall be punished as provided in subsection (b) of this section. Unless otherwise indicated, each day or portion thereof any violation of any provision of this Code shall continue shall constitute a separate offense.

(b) Any person 18 years of age or older who violates any provision of this Code or the regulations promulgated hereunder shall be subject to a fine of up to \$1,000.00 and/or up to one year in jail or any combination thereof unless a specific fine. Any person under 18 years of age who violates any provision of this Code or the regulations promulgated hereunder shall be subject to a fine up to \$1,000.00 and/or be required to perform useful public service not to exceed 48 hours or any combination thereof.

(c) Notwithstanding subsections (a) and (b) of this section, unless otherwise provided, violation of any requirement of an industrial wastewater pretreatment program implemented pursuant to the federal act, as defined in C.R.S. § 25-8-103(8), is punishable as required by such federal act and its implementing regulations for such programs.

(Code 1965, § 1-8)

State law reference(s)--Penalty for violation of ordinances, C.R.S. §§ 31-16-101, 31-16-204.

Sec. 1-10. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by motion of the city council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code during the period. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

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(c) When preparing a supplement to this Code, the codifier, meaning the person authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions.
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in catchlines, headings and titles.
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ through _____." The inserted section numbers will indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code.
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-11. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred before the effective date of this Code.
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the city, or authorizing the issue of any bonds of the city, or any evidence of the city's indebtedness, or any contract, right, agreement, lease, deed or other instrument or obligation assumed by the city.
- (3) Any administrative ordinances or resolutions of the city not in conflict or inconsistent with the provisions of this Code.

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- (4) Any right or franchise granted by any ordinance.
- (5) Any ordinance or resolution dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing, vacating, etc., any street or public way in the city.
- (6) Any appropriation ordinance or any ordinance adopting the budget.
- (7) Any ordinance levying or imposing taxes.
- (8) Any ordinances prescribing through streets, parking and traffic regulations, speed limits, one-way traffic, limitations on load of vehicles, or loading zones.
- (9) Any land use, zoning or rezoning ordinance or amendment to the zoning map.
- (10) Any ordinance establishing and prescribing the street grades of any street in the city.
- (11) Any ordinance providing for local improvements and assessing taxes therefor.
- (12) Any ordinance dedicating or accepting any plat or subdivision in the city.
- (13) Any ordinance annexing territory or excluding territory or any ordinance extending the boundaries of the city.
- (14) Any ordinance establishing positions, classifying positions, setting salaries of city officers and employees or establishing retirement systems or other employee benefits and any personnel regulations.
- (15) Any temporary or special ordinances.
- (16) Any ordinance calling elections or prescribing the manner of conducting the election in accordance with state law.
- (17) Any ordinance prescribing any rates, charges, deposits, fees or other payment of money to the city.
- (18) Any people's ordinance or any ordinance adopted by referendum pursuant to the Charter.

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1-11

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code and are on file in the city clerk's office.

Sec. 1-12. Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

(Code 1965, § 1-5)

Sec. 1-13. Numbering of ordinances.

All ordinances of a general nature passed by the city council shall be numbered consecutively, beginning with the number following the last numbered ordinance in the book of ordinances.

(Code 1965, § 1-9)

Editor's note--Ordinances adopted by referendum of the people are listed in appendix A.

Charter reference(s)--Ordinances, §§ 50--55.

Sec. 1-14. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to the adoption of this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code. In the case of repealed chapters, sections and subsections or any part thereof by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the city council.

(b) Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in the following language: ``That section _____ of the Code of Ordinances, City of Grand Junction, Colorado, is

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hereby amended to read as follows:" The new provisions shall then be set out in full as desired.

(c) If a new section not then existing in the Code is to be added, the following language may be used: ``That the Code of Ordinances, City of Grand Junction, Colorado, is hereby amended by adding a section (or article or chapter) to be numbered _____, which section reads as follows:" The new section shall then be set out in full as desired.

(d) All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

(Code 1965, § 1-6)

Charter reference(s)--Ordinances, § 50 et seq.

Sec. 1-15. Altering Code.

It shall be unlawful for any person in the city to change or amend, by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby. Any person violating this section shall be punished as provided in section 1-9.

(Code 1965, § 1-7)

Sec. 1-16. Severability.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

(Code 1965, § 1-4)

State law reference(s)--Similar provisions, C.R.S. § 2-4-204.

Chapter 2 ADMINISTRATION*

***Cross reference(s)**--Administration of the building regulations, § 8-26 et seq.; parks and recreation board, § 26-26 et seq.

Article I. In General

Sec. 2-1. City datum established.

Secs. 2-2--2-25. Reserved.

Article II. City Council

Sec. 2-26. Meetings.

Sec. 2-27. Disconnection of territory.

Secs. 2-28--2-50. Reserved.

Article III. Officers and Employees

Sec. 2-51. Bond required.

Secs. 2-52--2-60. Reserved.

Article IV. Administrative Regulations

Sec. 2-61. Administrative regulations.

Secs. 2-62--2-70. Reserved.

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Article V. Tort Liability

Sec. 2-71. Code provisions.

Sec. 2-72. Drivers of city-owned vehicles or emergency vehicles.

ARTICLE I. IN GENERAL

Sec. 2-1. City datum established.

A horizontal plane of reference is hereby established in the city to which all grades established or fixed for public improvement or otherwise shall refer. Such plane shall be known as the city datum and shall be established at an elevation of 4,589.236 feet above sea level, and according to the government benchmark situate upon the north side of Rood Avenue between Fourth and Fifth at the old post office building within the city.

(Code 1965, § 1-10)

Charter reference(s)--City boundaries, § 1.

Cross reference(s)--Streets, sidewalks and other public places, ch. 32.

Secs. 2-2--2-25. Reserved.

ARTICLE II. CITY COUNCIL*

***Charter reference(s)**--Elections, art. II; recall of elective officers, art. III; elective officers, art. IV; president of the council, art. V; the council, art. VI.

Cross reference(s)--Elections, ch. 14.

Sec. 2-26. Meetings.

The meetings schedule for the city council and the procedure for calling special meetings shall be established annually by resolution of the city council.

(Code 1965, §§ 2-2, 2-3)

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Charter reference(s)--Council to prescribe time, place of meetings, §§ 38, 45.

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Sec. 2-27. Disconnection of territory.

When the City Council desires to, or determines that it is necessary to, disconnect and/or de-annex a tract, lot or other area from the City, the Council shall direct the City Attorney to prepare an ordinance to disconnect such tract, lot, or area. Said ordinance may provide for exemption, imposition or relief from taxation as determined by the City Council to be in the best interest of the City. The Council may direct that the City Manager take such steps as are necessary to simplify the process of disconnection and/or de-annexation for affected persons. The City Council may provide in any disconnection and/or de-annexation ordinance that a tract, lot or area shall be required to pay taxes lawfully assessed or the City Council may provide that such tract, lot or area be exempt from the payment of ad valorem taxes, except that no property shall be exempted from the payment of such taxes, if during the time the property was annexed to the city, any indebtedness was lawfully subject to the taxes required to pay such indebtedness.

(Ord. No. 2910, §1, 4-17-96)

Secs. 2-28--2-50. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

***Charter reference(s)**--Executive and administrative departments, art. VII; department of public affairs, art. VIII; department of finance and supplies, art. IX; pensions, art. XI; department of water and sewers, art. XII; officers and employees, art. XIII.

Cross reference(s)--Alcoholic beverage hearing officer, § 4-26 et seq.; board of appeals and appeals procedure regarding the building regulation, § 8-26; building official, § 8-27; fire department, § 18-26 et seq.; division of fire prevention, § 18-60; law enforcement, ch. 20; municipal

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court, ch. 22; parks and recreation board, § 26-26 et seq.; forestry board, § 40-26 et seq.

Sec. 2-51. Bond required.

Certain employees of the city shall be bonded specifically or through a blanket bond in an amount not less than \$10,000.00, conditioned upon the true, honest and faithful performance of their respective duties. The city shall pay the premiums for the bonds required by this section.

(Code 1965, §§ 2-11, 2-12)

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Charter reference(s)--Bonds of officers and employees, § 100; bond of city manager, § 57.

State law reference(s)--Bonds, C.R.S. § 31-4-401 et seq.

Secs. 2-52--2-60. Reserved.

ARTICLE IV. ADMINISTRATIVE REGULATIONS

Sec. 2-61. Administrative regulations.

The department directors of the various departments of the city may promulgate, after public notice, administrative regulations for the purposes of interpreting, clarifying and effectuating the purposes of this Code. A violation of an administrative regulation shall constitute a violation of this Code.

Secs. 2-62--2-70. Reserved.

ARTICLE V. TORT LIABILITY*

***Cross reference(s)**--Nonassumption of tort liability, § 8-29.

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Sec. 2-71. Code provisions.

The city or its officers, employees or agents shall not be liable, nor is liability created, assumed or implied, by the adoption and/or enforcement of this Code, nor by the act or failure to act, pursuant to the provisions of this Code.

Sec. 2-72. Drivers of city-owned vehicles or emergency vehicles.

Provisions of this Code applicable to the drivers of vehicles upon the streets and highways shall apply to the drivers of all vehicles owned or operated by the city, subject to such specific exceptions as may apply to authorized emergency vehicles. No liability of the city or its officers, employees or agents shall be created or implied by the operation of authorized emergency vehicles unless the emergency vehicle is operated in such a manner as to indicate a willful and wanton disregard for the safety of other persons or property.

Cross reference(s)--Emergency medical services, § 18-86 et seq.; law enforcement, ch. 20; traffic and vehicles, ch. 36.

Chapter 3
RESERVED

Chapter 4 ALCOHOLIC BEVERAGES*

***Cross reference(s)**--Businesses, ch. 10; law enforcement, ch. 20; liquor occupational tax, § 34-26 et seq.

State law reference(s)--Colorado beer code, C.R.S. § 12-46-101 et seq.; Colorado liquor code, C.R.S. § 12-47-101 et seq.

Article I. In General

Sec. 4-1. Regulation of licensees.

Secs. 4-2--4-25. Reserved.

Article II. Hearing Officer

Sec. 4-26. Position established; appointment.

Sec. 4-27. Duties.

Sec. 4-28. Hearing procedures.

Sec. 4-29. Powers in the conduct of hearings.

Sec. 4-30. Determinations with respect to hearings.

Secs. 4-31--4-50. Reserved.

Article III. Licenses and Permits

Sec. 4-51. Application fees.

Sec. 4-52. Distance restriction.

Sec. 4-53. Temporary permits.

Sec. 4-54. Special event permits.

Sec. 4-55. Responsibility for conduct on licensed premises.

Sec. 4-56. Suspension of license; fines.

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ARTICLE I. IN GENERAL

Sec. 4-1. Regulation of licensees.

Under the authority granted in C.R.S. §§ 12-46-107 and 12-47-309 to the local licensing authority, the regulations in this chapter are adopted by the city council governing the conduct of operations by licensees under C.R.S. § 12-46-101 et seq. and C.R.S. § 12-47-101 et seq.

(Code 1965, § 4-1)

Secs. 4-2--4-25. Reserved.

ARTICLE II. HEARING OFFICER*

***Cross reference(s)**--Officers and employees, § 2-51 et seq.

***State law reference(s)**--Definitions, C.R.S. §§ 12-46-103(4), 12-47-103(17).

Sec. 4-26. Position established; appointment.

In accordance with the permission of C.R.S. §§ 12-46-103(4) and 12-47-103(17), there is established in the city, as the licensing authority, the position of hearing officer, who shall be appointed by and serve at the pleasure of the city council.

(Code 1965, § 4-30)

Sec. 4-27. Duties.

The hearing officer shall conduct all hearings required under the state liquor and beer codes for the issuance of all licenses and shall conduct all hearings to determine the renewal of licenses, for proposed changes of ownership of licenses and changes of the structure of licensed premises, and for proposed changes of location of licensed premises, and shall conduct all hearings brought under such codes when violations of the codes or the regulations under the codes have been alleged to have occurred.

(Code 1965, § 4-31; Ord. No. 2688, § 1, 6-16-93)

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Sec. 4-28. Hearing procedures.

The hearing officer may establish such procedures to be followed in actions before him as may be consistent with the terms and conditions of the state liquor and beer codes and special events provisions.

(Code 1965, § 4-34)

Sec. 4-29. Powers in the conduct of hearings.

The hearing officer shall have those powers given the local licensing authority under the state liquor and beer codes and special events provisions in conducting hearings.

(Code 1965, § 4-32)

Sec. 4-30. Determinations with respect to hearings.

The hearing officer shall make his determination after hearings in accordance with the state liquor and beer codes and special events provisions and established legal principles. The decision of the hearing officer shall be final, and appeal from that decision shall be to the district court of the 21st Judicial District.

(Code 1965, § 4-33)

Secs. 4-31--4-50. Reserved.

ARTICLE III. LICENSES AND PERMITS*

***State law reference(s)**--Fees, C.R.S. §§ 12-46-105, 12-47-505, Licensing, C.R.S. § 12-47-301, Local licensing authority, C.R.S. §§ 12-46-107, 12-47-309.

Sec. 4-51. Application fees.

(a) Under the provisions of 12-46-105, 12-46-107, 12-47-301 and 12-47-505(4), C.R.S., as applicable, there shall be filed with the city clerk with the application for a fermented malt beverage license an application fee as established by resolution of the city council and on file in the city clerk's office.

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(b) Under the provisions of 12-47-301 and 12-47-505(4) C.R.S. there shall be filed with the city clerk with the application for a license provided for in Title 12, Article 47 C.R.S. an application fee as established by resolution of the city council and on file in the city clerk's office.

(c) The city clerk may also, as established by resolution of the city council and on file in the city clerk's office, charge a background investigation fee, fingerprinting fee and any other fee lawfully established.

(Code 1965, § 4-1(d), (e); Ord. No. 3025, 10-1-97)

Sec. 4-52. Distance restriction.

That in accordance with and pursuant to Ordinance 2367 and 12-47-313(1)(d)(III) C.R.S. for any hotel-restaurant liquor license there shall be 300' feet separation between the licensed premises and any principal campus of a college or university. All other regulations not inconsistent herewith shall also apply.

(Code 1965, § 4-1(f); Sec. 4-52 Temporary Licenses repealed by Ord. No. 3025, 10-1-97; new Sec. 4-52, Ord. No. 3025, 10-1-97)

State law reference(s)--Temporary licenses, C.R.S. § 12-47-106(1), (b.5). Recodified to C.R.S. § 12-47-302 and Amended 7-1-97 deleting Temporary licenses; Restrictions for applications, C.R.S. § 12-47-313(1)(d)(III).

Sec. 4-53. Temporary permits.

(a) Notwithstanding anything in this article to the contrary, a local licensing authority shall have discretionary authority to issue a temporary permit to a transferee of any class of fermented malt beverage or liquor license issued by the state licensing authority. Such temporary permit shall authorize a transferee to continue selling beverages as permitted under the permanent license during the period in which an application to transfer the ownership of the license is pending.

(b) A temporary permit issued under this section shall authorize a transferee to conduct business and sell beverages at retail in accordance with the license of the transferor subject to compliance with all of the following conditions:

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- (1) The premises where such beverages are sold shall have been previously licensed by the state and local licensing authorities, and such license shall have been valid at the time the application for transfer of ownership was filed with the local licensing authority for a temporary permit.
- (2) The applicant has filed with the local licensing authority on forms provided by the state department of revenue an application for the transfer of the license. Such application shall include, but not be limited to, the following information:
 - a. The name and address of the applicant; if the applicant is a partnership, the names and addresses of all the partners; and, if the applicant is a corporation, association or other organization, the names and addresses of the president, vice-president, secretary, and managing officer thereof;
 - b. The applicant's financial interest in the proposed transfer;
 - c. The premises for which the temporary permit is sought; and
 - d. Such other information as the local licensing authority may require.

(c) The application for a temporary permit under this section shall be filed no later than 30 days after the filing of the application for transfer of ownership and shall be accompanied by a temporary permit fee as established by resolution of the city council and on file in the city clerk's office.

(d) A temporary permit under this section, if granted by the local licensing authority, shall be issued within three working days after the receipt of such application. A temporary permit issued pursuant to this section shall be valid until such time as the application to transfer ownership of the license to the applicant is granted or for 120 days, whichever shall first occur; except that, if the application to transfer the license has not been granted within the 120-day period and the transferee demonstrates good cause, the local licensing authority may extend, in its discretion, the validity of such permit for an additional period not to exceed 60 days.

(e) A temporary permit under this section shall also be authorized in the event of a transfer of possession of the licensed premises by operation of law, a petition in bankruptcy pursuant to federal bankruptcy law, the appointment of a receiver, a foreclosure action by a secured party, or a court order dispossessing the prior licensee of all rights of possession pursuant to C.R.S. title 13, art. 40.

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(f) A temporary permit under this section may be cancelled, revoked, or summarily suspended if the local or state licensing authority determines that there is probable cause to believe that the transferee has violated any provision of this article or has violated any rule or regulation adopted by the local or state licensing authority or has failed to truthfully disclose those matters required pursuant to the application forms of the department of revenue.

State law reference(s)—Similar provisions, C.R.S. § 12-47-303.

Sec. 4-54. Special event permits.

Under the authority granted in C.R.S. § 12-48-107(1), (2), an application for a special event permit shall be filed with the local licensing authority and shall be accompanied by a fee as established by resolution of the city council for both investigation and issuance of such permit.

(Ord. No. 2688, § 1, 6-16-93)

State law reference(s)—Special event permit, C.R.S. § 12-48-101 et seq.

Sec. 4-55. Responsibility for conduct on licensed premises.

A licensee under this article shall be required to notify the police department of the city whenever any customer within his establishment becomes disorderly in conduct by lewd or indecent display, rowdiness, fighting or challenging to fight, gambling, or any other conduct that would be offensive to the average citizen or to the residents of the neighborhood in which the establishment is located, and such requirement shall extend to such conduct in the area immediately adjacent to the premises as well as to the interior thereof.

(Code 1965, § 4-1(a))

Sec. 4-56. Suspension of license; fines.

(a) Payment of fine in lieu of suspension of license.

- (1) Whenever a decision of the hearing officer suspending a retail license for 14 days or less becomes final, whether by failure of the retail licensee to appeal the decision or by exhaustion of all appeals and judicial review, the retail licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having his retail license suspended for all or part of the suspension period. Upon the receipt of the petition, the hearing officer may, in his sole discretion, stay the proposed suspension and cause any

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investigation to be made which he deems desirable and may, in his sole discretion, grant the petition if satisfied that:

- a. The public welfare and morals would not be impaired by permitting the retail licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
 - b. The books and records of the retail licensee are kept in such a manner that the loss of sales of alcoholic beverages which the retail licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and
 - c. The retail licensee has not had his license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the retail license.
- (2) The fine accepted shall be the equivalent of 20 percent of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension; except that the fine shall be not less than \$200.00 nor more than \$5,000.00.
 - (3) Payment of any fine pursuant to the provisions of this subsection (a) shall be in the form of cash or in the form of a certified check or cashier's check made payable to the city.

(b) Upon payment of the fine pursuant to subsection (a) of this section, the hearing officer shall enter a further order permanently staying the imposition of the suspension. The city council shall cause such moneys to be paid into the general fund of the city.

(c) In connection with any petition pursuant to subsection (a) of this section, the authority of the hearing officer is limited to the granting of such stays as are necessary for him to complete his investigation and make findings and, if the hearing officer makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(d) If the hearing officer does not make the findings required in subsection (a)(1) of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the hearing officer.

(Code 1965, § 4-35)

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State law reference(s)—Suspension or revocation of license, C.R.S. § 12-47-601.

Chapter 5
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Chapter 6 ANIMALS*

***Cross reference(s)**--Improper depositing or disposal of animal or human waste declared a nuisance, § 16-61.

State law reference(s)--Cruelty to animals, C.R.S. §§ 18-9-201–18-9-207; rabies control, C.R.S. §§ 25-4-601–25-4-615; animals, C.R.S. § 35-40-100.2 et seq.; estrays, C.R.S. § 35-44-101 et seq.

Article I. In General

Sec. 6-1. Cruelty to animals.

Sec. 6-2. Abandonment of animals.

Sec. 6-3. Poisoning animals.

Sec. 6-4. Molesting birds.

Sec. 6-5. Injuring or meddling with police dogs.

Sec. 6-6. Prohibition against ownership or sale of certain animals; wild animals at large.

Sec. 6-7. Interference with enforcement.

Sec. 6-8. Inspection procedure.

Sec. 6-9. Dead animals.

Sec. 6-10. Refusal to pay fees.

Sec. 6-11. Board of animal control.

Sec. 6-12. Removal and disposal of dog excrement.

Secs. 6-13–6-30. Reserved.

Article II. Livestock, Fowl and Domestic Animals Other Than Dogs and Cats

Sec. 6-31. Cleanliness of premises.

Sec. 6-32. Reserved.

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Sec. 6-33. Poultry running at large.

Sec. 6-34. Impoundment regulations.

Secs. 6-35–6-55. Reserved.

Article III. Dogs and Cats

Sec. 6-56. Intent.

Sec. 6-57. Definitions.

Sec. 6-58. Licensing and vaccination.

Sec. 6-59. Dogs running at large.

Sec. 6-60. Vicious dogs.

Sec. 6-61. Barking dogs.

Sec. 6-62. Cruelty to animals or neglect of animals.

Sec. 6-63. Seizure and impoundment.

Sec. 6-64. Redemption from impoundment and disposition.

Sec. 6-65. Enforcement.

Sec. 6-66. Animal control center charges and fees.

Sec. 6-67. Violation unlawful; penalty.

Sec. 6-68. Penalty assessment; fine schedule.

Sec. 6-69. Additional remedies for violation of article; suspension of penalties.

Sec. 6-70. Indemnity clause.

Secs. 6-71–6-90. Reserved.

Article IV. Rabies Control

Sec. 6-91. Vaccination of animals.

Sec. 6-92. Biting animals; quarantine.

ANIMALS

Sec. 6-93. Exception to article provisions.

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ARTICLE I. IN GENERAL

Sec. 6-1. Cruelty to animals.

It shall be unlawful for any person to overdrive, overload, drive when overloaded, overwork, torture, deprive of necessary sustenance, cruelly beat, mutilate or kill needlessly, or to carry in any vehicle or otherwise transport in a cruel and inhumane manner, any animal, or to cause any of these acts or omissions to be done. It shall be unlawful for any animal owner to fail to provide any animal with proper food, drink, protection from the weather and necessary medical treatment to prevent suffering, or to cause any of these acts or omissions to be done.

(Code 1965, § 6-19(a))

State law reference(s)—Cruelty to animals, C.R.S. § 18-9-201 et seq.

Sec. 6-2. Abandonment of animals.

It shall be unlawful for any person to abandon any animal or to cause such to be done.

(Code 1965, § 6-19(e))

Sec. 6-3. Poisoning animals.

It shall be unlawful for any person to poison any animal or to distribute poison in any manner whatsoever with the intent to, or for the purpose of, poisoning any animal; provided, however, that for the purpose only of this section the word "animal" shall not include mice, rats, bats or other rodents, but shall include hamsters, guinea pigs, rabbits and squirrels. The distribution of any poison or poisoned meat or food, other than those specifically for insect or mouse, rat or bat or other rodent poisoning, shall be prima facie evidence of violation of this section.

(Code 1965, § 6-19(b))

Sec. 6-4. Molesting birds.

It shall be unlawful for any person within the city or within the cemeteries of the city to at any time wilfully frighten, shoot at, wound, kill, capture, ensnare, net, trap, or in any other manner molest any robin, lark, whippoorwill, finch, thrush, wren, martin, swallow, snowbird, bob-o-link, red-winged blackbird, raven, oriole, kingbird, mockingbird, song sparrow, or any waterfowl or other song or insectivorous birds; or to in any manner molest or

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injure the nest, eggs or young of any such birds or waterfowl.

(Code 1965, § 6-19(c))

Sec. 6-5. Injuring or meddling with police dogs.

It shall be unlawful for any person to wilfully or maliciously torture, torment, beat, kick, mutilate, injure, disable or kill any dog, including a guard dog, used by a law enforcement agency within the city in the performance of the functions and duties of such agency, or to unwarrantedly interfere or meddle with any such dog while being used by such agency or any member thereof in the performance of any of the functions or duties of such law enforcement agency or of such members.

(Code 1965, § 6-19(f))

Cross reference(s)--Law enforcement, ch. 20.

Sec. 6-6. Prohibition against ownership or sale of certain animals; wild animals at large.

(a) It shall be unlawful for any person to own, possess, harbor, sell, or in any other manner traffic in the following species of animals:

- (1) All poisonous snakes and poisonous reptiles; and all nonpoisonous snakes with a length greater than six feet;
- (2) Gorillas, chimpanzees, orangutans, and any other primates;
- (3) Any species of feline not falling within the categories of ordinary domesticated house cats;
- (4) Bears of any species;
- (5) Raccoons, porcupines, skunks, badgers, or other similar species, except ferrets (*mustela putruis*); or
- (6) Foxes, wolves, coyotes, or other species of canines other than dogs.

(b) The provisions of subsection (a) of this section shall not be applicable to any bona fide zoological garden or any circus or carnival licensed by the city or any bona fide research institute using wild, exotic or dangerous animals for scientific research.

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(c) It shall be the duty of the animal control officer, or any police officer, to apprehend any wild animal that may be at large within the city. Such wild animal may be impounded, released in wild areas outside of the city which are representative of the animal's natural habitat, or humanely destroyed, as the animal control officer, or police officer, in his discretion shall determine, subject to applicable state law. The animal control officer is hereby authorized to use any tranquilizer gun or other firearm to subdue or destroy any wild or dangerous animal that is determined by the animal control officer to be of danger to either itself or to the public health and safety.

(Code 1965, § 6-20)

Sec. 6-7. Interference with enforcement.

It shall be unlawful for any person to interfere with, molest, hinder or obstruct the animal control officer or any other city employee or official in the discharge of his official duties under this chapter.

(Code 1965, § 6-21(a))

Sec. 6-8. Inspection procedure.

Whenever the animal control officer or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises conditions such that the keeping or the maintaining of any animal is so hazardous, unsafe or dangerous as to require an inspection to safeguard the animal or the public health or safety, the animal control officer or his authorized representative is hereby authorized to enter such property at any reasonable time and to inspect such property and perform any duty imposed upon the animal control officer by this chapter or by other applicable law; provided that:

- (1) If such property is occupied, he shall first present proper credentials to the occupant and request entry, explaining his reasons therefor and the purpose of his inspection; and
- (2) If such property is unoccupied, he shall first make a reasonable effort to locate the owner or other person having charge or control of the property and request entry, explaining his reasons therefor. If such entry is refused or cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the animal control officer or his authorized representative shall have recourse to every remedy provided by law to secure lawful entry and inspect the property.

(Code 1965, § 6-21)

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Sec. 6-9. Dead animals.

(a) *Placing dead or sick animals, fowl in the city.* It shall be unlawful for any person to throw, put or place any dead dog, livestock, fowl or other animal, or part thereof, or any sick or injured dog, livestock, fowl or other animal, in or upon any street, alley, vacant lot, park or other public place within the city.

(b) *Disposal of dead animals on private property.* When any animal shall die in this city, it shall be the duty of the owner or keeper thereof to forthwith cause the removal of the body of such animal by an animal carcass removal and disposal company; or to remove the body of such animal for burial in an authorized animal cemetery; or to remove the body of such animal beyond the limits of the city and cause the carcass to be buried in the earth sufficiently deep to prevent the escape of effluvia injurious to public health. If such carcass shall not forthwith be removed, the same shall be deemed a nuisance and such owner or keeper shall be guilty of a misdemeanor.

(c) *Disposal of dead animals on public right-of-way.* When the body of a dead animal shall be in any street, alley, highway or public grounds and the owner or keeper cannot be determined, it shall be the duty of the chief of police, other police officer or animal control officer, when knowledge thereof shall come to him, to forthwith cause such body to be taken to or removed by an animal carcass removal and disposal company.

(Code 1965, § 6-22)

Sec. 6-10. Refusal to pay fees.

The refusal to redeem any impounded dog, livestock, fowl or other animal by the owner thereof shall not relieve the owner of the duty to pay the impoundment, license, boarding and veterinary charges and fees that may be assessed. The owner of any dog, livestock, fowl or other animal who fails or refuses to pay such fees and charges shall be in violation of this chapter and upon conviction shall be subject to both such fine and imprisonment as provided by this chapter.

(Code 1965, § 6-23)

Sec. 6-11. Board of animal control.

A five-member advisory board consisting of one representative of the city police department, county sheriff's department, county community services, Grand Valley Medical Society, and the director of the county health department is hereby established. The board shall provide advisory financial and budgetary input regarding the animal control division and shall recommend animal control fees and charges on an annual basis.

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(Code 1965, § 6-28; Ord. No. 2576, § 2, 5-20-92)

Sec. 6-12. Removal and disposal of dog excrement.

(a) The terms "*dog*" and "*owner*" as used in this section shall be as defined in section 6-57 of the Code of Ordinances of the City of Grand Junction.

(b) No person owning, keeping or in charge of any dog shall fail to prevent such dog from defecating upon any public property, sidewalk or way within the areas or boundaries as specified in this ordinance.

(c) It is an affirmative defense to a charge of violating this section 6-12 that the defecation occurred on private property and that the prior express permission of the owner or all tenants thereof had been obtained.

(d) It is an affirmative defense to a charge of violating this section 6-12 that the owner, keeper or person in charge of such dog immediately removed or cleaned up such deposit and disposed thereof by depositing it in a toilet or a receptacle ordinarily used for garbage or in an otherwise lawful and sanitary manner.

(e) No person shall fail to possess a shovel, scoop or other suitable equipment for removing dog excrement while the dog and the owner, keeper or person in charge of the dog are upon any public property, sidewalk or way within the jurisdictional boundary of this ordinance. For the purposes of this section 6-12, an animal control officer, police officer or other officer or agent of the City of Grand Junction having jurisdiction to enforce this code may make a *prima facie* determination as to the sufficiency of any scoop, shovel or removal device. The owner, keeper or person in charge of the dog shall be relieved from the obligations of this subparagraph (e) if the dog is: used or participating in a parade, exhibition or demonstration authorized by the City of Grand Junction; or the dog is being actively used or is participating as an operative in a law enforcement search, investigation or other official law enforcement activity; or the dog is being transported in an automobile, truck or similar conveyance and the dog remains confined within the automobile, truck or similar conveyance at all times while being transported on or within the specified areas. Law enforcement officers shall be required to properly remove and dispose of excrement of law enforcement canine(s) after completion of any search, investigation or official law enforcement activity.

(f) Violation of subparagraph (b) of section 6-12 constitutes a separate and distinct offense from violation of subparagraph (e) of section 6-12.

(g) Every person convicted of a violation of subparagraph (b) of section 6-12 shall pay at least a minimum fine, none of which may be suspended by the Court, according to the following schedule: first conviction - \$25.00; second conviction - \$50.00; third and each subsequent conviction, \$100.00. In applying this schedule the date when the actual violation

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occurred shall control, regardless of the date of conviction and the record of the violator for three years prior to the date of the current violation shall be considered.

(h) Every person convicted of a violation of subsection (e) shall pay at least a minimum fine, none of which may be suspended by the Court, according to the following schedule: first conviction - \$25.00; second conviction - \$50.00; third and each subsequent conviction, \$100.00. In applying this schedule the date when the actual violation occurred shall control, regardless of the date of conviction and the record of the violator for three years prior to the date of the current violation shall be considered.

(i) This ordinance is applicable in, and the jurisdictional boundary is designated to be, all public parks within the City of Grand Junction and including the Main Street "park" described as the area around Main Street bounded by the eastern edge of the right-of-way of 1st Street, the western edge of the right-of-way of 7th Street, the north edge of the right-of-way of the alley north of Main Street and the southern edge of the right-of-way of the alley south of Main Street and those portions of the Riverfront Trail, and other trail section or lengths, as designated by the resolution of the City Council so long as such trails, sections, or lengths are within the City's limits and the trail users are given notice by the use of the appropriate signs.

(j) Any person who is blind, as that term is defined in C.R.S § 26-2-103(3) and uses a guide dog shall be exempt from the provisions of this ordinance.

(Ord. No. 2884, 1-3-96)

Secs 6-13--6-30. Reserved.

ARTICLE II. LIVESTOCK, FOWL AND DOMESTIC ANIMALS OTHER THAN DOGS AND CATS

Sec. 6-31. Cleanliness of premises.

(a) It shall be unlawful for any person who keeps any chickens, ducks, geese, turkeys, pigeons or other domestic fowl within the city to permit the yard or place within which such fowl are kept, by reason of any want of care, food, ventilation, cleanliness or otherwise, to be or become dangerous or detrimental to human health.

(b) The city manager, his agent, or the county health department shall have the power to declare all yards or places where domestic fowl as described in subsection (a) are kept in any unclean condition a nuisance, and the same shall be abated as such.

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(c) It shall be unlawful for any person to permit any stable, stall, shed or apartment or any yard or appurtenance thereof in which any horse, cow, swine or any other animal is kept, or any other place in the city in which manure or liquid discharges of such animals shall collect or accumulate, to be kept in an unclean and unwholesome condition within the city so that an offensive smell is allowed to escape therefrom or otherwise to be or become dangerous or detrimental to human health; provided, that nothing in this subsection shall be construed to include manure deposits upon any private property for the purpose of cultivating such manure.

(d) The city manager, his agent, or the county health department shall have the power to declare any stable, stall, shed or apartment or any yard or appurtenance thereof kept in any unclean or unwholesome condition a nuisance, and the same shall be abated as such.

(Code 1965, § 6-14(b), (c))

Cross reference(s)--Nuisances, § 16-56 et seq.; solid waste, ch. 30.

Sec. 6-32. Reserved.

(Code 1965, § 6-14(d), repealed by Ord. No. 2823, 4-5-95)

Sec. 6-33. Poultry running at large.

(a) It shall be unlawful for any person who is the owner or keeper of any chickens, geese, ducks, turkeys or other poultry to permit the same to run or be at large within the city.

(b) The running at large of any chickens, geese, ducks, turkeys or other poultry within the city is hereby declared a nuisance and the same shall be abated as such.

(Code 1965, § 6-14(e))

Sec. 6-34. Impoundment regulations.

(a) *Impoundment, boarding and sale.*

- (1) The animal control officer may impound any domestic animal other than dogs and cats pursuant to this section which is at large or which is unclaimed.
- (2) Fees: After impounding and before any animal is released to the owner or person having lawful custody thereof, there shall be paid the following fees:
 - a. Impounding fee: Such fee as established by resolution of the city council.

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- b. Boarding fee: The actual cost incurred for boarding the impounded animal to be paid to the stable owner or keeper of the impounded animal.
- c. Advertising fee: All actual costs for public notice of sale.
- d. Veterinary care: All actual costs incurred for necessary veterinary care to be paid to the attending veterinarian.

(b) Disposition of impounded animals.

- (1) *Sale.* No animal other than dogs and cats shall be impounded and boarded for more than ten days, and prior to the expiration of such ten-day period, the chief of police shall advertise one time in a newspaper of general circulation in the city that such animal so described in the notice of sale will be sold to the highest bidder. If there is no bidder at such sale, the chief of police shall sell such animal at private sale. From the proceeds of such sale, there shall be withheld all costs incurred in impounding, boarding, veterinary care and advertising and conducting of the sale, and any excess remaining shall be returned to the owner, if known. If the owner cannot be located or does not claim such excess funds within 30 days after the sale by presenting satisfactory evidence of ownership, such excess, if any, shall be used to defray those costs incurred by the city for the impounding, boarding and sale of such animals.
- (2) *Bill of sale.* Upon the sale of any animal at public or private sale as provided in this subsection (b), the chief of police shall execute to the buyer thereof a bill of sale describing such animal, and such bill of sale shall extinguish any prior title or interest of any other person claiming an interest in such animal.

(c) Provisions not applicable to dogs, cats. This section shall not apply to the impoundment of dogs or cats, which subject is treated under article III of this chapter.

(d) Illegally taking animal from pound. It shall be unlawful for any person to break open or in any manner, directly or indirectly, aid or assist in breaking open any pound, pen, enclosure or other place used for the safekeeping of any animal taken up under the provisions of this section with the intent of releasing any animal therein confined.

(e) Disposal of injured or sick animals. Any injured or sick animal impounded and not readily identified to an owner may be immediately euthanized if it is deemed by the animal control officer or a representative to be in pain or contagious to other animals. If identified to an owner, the animal control center will make every reasonable effort to contact the owner for a period of 24 hours, after which time the animal may be immediately euthanized.

(Code 1965, § 6-15)

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Secs. 6-35–6-55. Reserved.

ARTICLE III. DOGS AND CATS*

***State law reference(s)**—Animal fighting, C.R.S. § 18-9-204; dangerous dogs, C.R.S. § 18-9-204.5; dog injuring livestock, C.R.S. § 35-43-126.

Sec. 6-56. Intent.

The city council intends by adopting this article to declare as a matter of public policy that the keeping of dogs in the city constitutes a potential threat to the health, safety, and welfare of the citizens of the city; that dog owners or keepers must therefore assume full responsibility for the actions and condition of their animals and dogs; that dogs at large, barking dogs, rabid dogs, vicious dogs, and similar type animals constitute a public nuisance; that the regulation of dogs and similar type animals and the actions of their owners through administrative regulation and civil and criminal enforcement is necessary to protect the citizens of the city and their property; and that the provisions of this article should be liberally construed and are intended to implement the maximum control of rabid animals under the home rule powers of this city and the statutes of the state.

Code 1965, § 6-27; Ord. No. 2576, § 1, 5-20-92)

Sec. 6-57. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon means the leaving of an animal without adequate provision for the animal's care by its owner, the person assuming responsibility for the animal's care and custody, or any other person having custody or control of such animal.

Animal means any living vertebrate creature, domestic or wild, including dogs but excluding estrays as defined in C.R.S. § 35-44-101(1).

Animal control center means the solely authorized facility or facilities designated by the city council or the city manager for the purposes of impounding, caring for, or disposing of animals held under the authority of this article or state law.

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Animal control director means the administrative director of operations of the county animal control program; also referred to as the “director.”

Animal control officer means any person designated by the city, the animal control director or the city police department. Animal control officers shall act under and in accordance with the authority of C.R.S. § 30-15-105.

Animal control sergeant means a supervisor of animal control for the county, as designated by the director; also referred to as the “sergeant.”

At large means to be off the premises of the owner or custodian and not under direct physical control of the owner or custodian by means of a leash or other mechanism of control. This requirement does not apply to any dog while actually working livestock, locating or retrieving wild game in a lawful season for a licensed hunter, assisting law enforcement officers, participating in obedience training, dog show or an obedience trial, or while being trained for any of these pursuits. Dogs tethered to a stationary object within range of a public street, sidewalk, or right-of-way shall be deemed to be at large if the owner or custodian of such dog is not immediately present.

This general definition of “at large” shall be superseded by the following if the animal is within the following geographic areas:

- (1) Downtown Grand Junction: Defined as the area bounded on the east by 12th Street and on the west by First Street; and on the north by the north side of the pavement of Grand Avenue, and on the south by the south side of the pavement of Colorado Avenue.
- (2) The North Avenue corridor: One-half block north and south of North Avenue from First Street on the west to 29 Road on the east.

In these areas, “at large” is defined as an animal off the premises of the owner or custodian and not under direct physical control by means of a leash.

Bodily injury means any physical pain, illness, impairment of physical or mental condition, or physical injury wherein the skin is broken, bleeding occurs, bruising occurs, or bone, tissue, or muscle damage is suffered or emergency medical treatment becomes reasonably necessary for a person or animal.

Cruelty means the act or omission to act of a person who knowingly or with criminal negligence overdrives, overloads, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, needlessly mutilates, needlessly kills, carries or confines in or upon vehicles in a cruel or reckless manner, or otherwise mistreats or neglects any animal, fails to provide proper food, drink or protection from the weather or abandons it.

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Dog means any member of the canine species, including dogs of wild extraction.

Dogs of wild extraction means a dog that is, or may credibly be alleged to be, in any hereditary part related to wild canines, including but not limited to the wolf family (*canis lupis*) and the coyote family (*canis latrans*).

Harboring means the act of keeping or caring for an animal or of providing a premises to which the animal returns for food, shelter or care for a period of at least three consecutive days.

Health department means the county or state health department.

Health officer means the county health officer, or any health department employee or other person authorized by the health officer.

Leash means a chain, cord, or tether not more than ten feet in length which is securely attached to and capable of restraining the animal.

Mistreatment means every act or omission to act which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering.

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

Owner means any person, or person acting as custodian, partnership, corporation, or an agent of the foregoing, who owns, co-owns, possesses, keeps, harbors, or who has control or custody of an animal; or the person named as owner in current county licensing records or on the dog identification license or rabies tag; or any parent, guardian or legal custodian of any unemancipated child under 18 years of age, which child owns, co-owns, possesses, keeps, harbors, or has control or custody of an animal.

Premises means property owned, leased, or expressly permitted to be used by an owner; or any confined area or locality such as a residence, business, room, shop, building, or motor vehicle in which the animal's presence is authorized by the owner of the premises. The term "premises" includes the open bed of a motor vehicle.

Provocation means harassment, teasing, threatening, striking, or attacking an animal or its owner in the animal's presence, by either a person or another animal. "Provocation" shall not include the lawful presence of an individual or animal in close proximity to but not within or upon property of another, or where a dog is tied, kept, kenneled or harbored.

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Public nuisance means and includes any dog whose owner, keeper or custodian has been charged with three or more violations of this article concerning the same dog within a two-year period.

Serious bodily injury means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body or breaks or fractures.

Vaccination means the vaccination of an animal with an antirabies vaccine approved by the state department of health and administered by a veterinarian licensed by the state.

Vicious dog means a dog which:

- (1) Causes serious bodily injury to a person;
- (2) Causes bodily injury to a person or animal on two or more occasions;
- (3) Is infected with rabies;
- (4) Is of wild extraction and that on any occasion causes bodily injury to a person or animal by biting, whether or not provoked, or is known to be infected with rabies;
- (5) Causes bodily injury to a person or animal and the bodily injury occurs off the dog owner's premises;
- (6) Is at large and exhibits repeated or continuous aggressive behavior;
- (7) Has engaged in a dogfighting contest with the owner's knowledge; or
- (8) Has been specifically found to be vicious by any court or jury;

provided, however, that a dog which attacks, terrorizes, or causes any bodily injury to a person or animal in immediate response to objectively unreasonable provocation shall not be found to be vicious if the dog owner establishes such facts as an affirmative defense to a charge for violation of section 6-60 or to the satisfaction of the investigating animal control officer. Any dog which is found to be vicious as defined by subsections (1), (2), (3) or (4) hereof may be destroyed in accordance with section 6-64(c)(1).

(Code 1965, § 6-28; Ord. No. 2576, § 2, 5-20-92)

Cross reference(s)--Definitions generally, § 1-2.

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Sec. 6-58. Licensing and vaccination.

(a) *Required.* No person shall own, keep or harbor in the city any dog or cat over four months of age unless such dog or cat is vaccinated against rabies and licensed. All dogs vaccinated at four months of age or older shall be revaccinated and relicensed one year from that date and each year thereafter. Any dog owner who moves into the city shall comply with this section within 30 days. If any dog has bitten any person or animal, the owner of such dog shall report that fact to the vaccinating veterinarian and to the animal control center. If unvaccinated at the time of the bite, no person shall administer a rabies vaccine to that dog until after a ten-day observation period. The vaccination requirement shall apply to dogs of wild extraction.

(b) *Certificate of vaccination and license.* After vaccinating a cat for rabies, the veterinarian shall give the owner written certification of such vaccination. After vaccinating a dog for rabies, the veterinarian shall take the dog owner's payment for a county license and give the dog owner a county license certificate and dog tag. A dog owner may choose to buy a county dog license certificate and tag from the animal control center rather than a veterinarian. If so, the veterinarian shall give the owner written certification of the dog's current vaccination, which the owner shall show to an animal control officer when purchasing a county license and tag. Fees for licenses shall be as established by resolution of the city council and on file in the city clerk's office. Certificates of license shall contain the following information:

- (1) The name, street address, and telephone number of the owner of the vaccinated dog;
- (2) The veterinarian's name, rabies tag number and expiration date;
- (3) The breed, age, color and sex of the dog; and
- (4) The county license number, license year, date of issue, license fee, and licensing agent.

Vaccination of dogs of wild extraction is required, as is the above information required for licensure of a dog of wild extraction.

(c) *License tags.* Concurrent with the issuance and delivery of the license referred to in subsection (b) of this section, the dog owner shall cause to be attached to the collar or harness of the vaccinated dog a metal tag, serially numbered and bearing the year of issuance, the name of Mesa County, and the telephone number of the animal control center. This license tag is distinct from a metal rabies tag, which the department of health may separately require to be issued to an owner and worn by the dog. No dog owner shall fail to place upon his dog the collar or harness to which the tag is attached, and no dog owner shall fail to ensure that the

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dog at all times wears the collar or harness displaying the license tag, unless the dog is participating in a sanctioned dog show; is securely confined within the owner's premises; is aiding law enforcement officers in the performance of lawful duties; is hunting or retrieving or is training to hunt or retrieve game; or in circumstances where attachment of a license tag would constitute a clear danger to the dog.

(d) *Duplicate tags.* In the event of loss or destruction of the original license tag provided for in this section, the dog owner shall obtain within 30 days a duplicate from the animal control center for a fee as established by resolution of the city council and on file in the city clerk's office and comply with the requirements set forth in this section.

(e) *Proof of licensing.* No person shall own or harbor any dog and fail or refuse to exhibit a license certificate or license tag within a reasonable time upon demand by any animal control officer.

(f) *Harboring unvaccinated dogs or cats.* No person shall own or harbor any dog or cat which has not been vaccinated against rabies within the last year as provided in this article. This subsection shall apply to dogs of wild extraction.

(g) *False and stolen license documents.* No person shall possess or make use of a stolen, counterfeit or forged license certificate or license tag.

(h) *Transferability.* Dog license certificates and license tags are not transferable. No person shall attach or cause to be attached any license tag to any dog other than the dog for which the tag was originally issued.

(i) *Records.* The animal control center and any veterinarian practicing in the city shall create a record of the contents and date of issuance of each certificate of dog or cat vaccination, dog license certificate and dog license tag. Such records shall be deemed to be public records for purposes of admissibility in any proceeding for violation of this article. Such records and the absence of entries in such records shall constitute prima facie evidence of dog or cat ownership and compliance or noncompliance with the licensing and vaccination provisions of this article.

(Code 1965, §§ 6-40–6-48; Ord. No. 2576, § 3, 5-20-92)

Sec. 6-59. Dogs running at large.

(a) *Confinement required.* No dog owner, or any person who harbors, keeps or is custodian of a dog, shall fail to physically, mechanically or electronically confine the dog. Such confinement shall ensure that the dog cannot leave the premises or be at large. No dog owner, or any person who harbors, keeps or is custodian of a dog, shall fail to prevent the dog from being or running at large. Any dog off its owner's premises shall be under leash control by its owner.

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(b) *Dogs in common and public areas.* No dog owner, or any person who harbors a dog, shall fail to prevent his dog from running at large in the yard of any multiple occupancy building which is occupied by other persons; or in the common areas of mobile home complexes, apartments, or condominium developments; or in open space areas of subdivisions; or in public or county parks or fairgrounds, unless permission is posted by public authorities allowing dogs at large.

(c) *Confinement during estrus.* Any unspayed female dog in the state of estrus (heat) shall be confined during estrus in a house, building, or secured enclosure constructed so that no other dog may gain access to the confined animal. Owners or keepers who do not comply with this subsection may be ordered by an animal control officer to remove the dog to a boarding kennel, veterinary hospital or the animal control center or be served with a penalty assessment notice. All expenses incurred as a result of such confinement shall be paid by the owner. Failure to comply with the removal order of an animal control officer shall be a violation of this article and any unspayed female dog in estrus may be summarily impounded in the event of noncompliance with such a removal order.

(d) *Evidence of running at large.* It shall be prima facie evidence that a dog is running at large if the dog is out of its owner's, harborer's or keeper's sight, or if the dog goes upon public or private property without the property owner's, manager's or tenant's consent.

(Code 1965, §§ 6-60–6-64; Ord. No. 2576, § 4, 5-20-92)

Editor's note—Dogs running at large during certain months is also prohibited by People's Ordinance Number 30 adopted by referendum on April 17, 1956, which ordinance provides for impoundment.

Cross reference(s)—Parks and recreation, ch. 26; streets, sidewalks and other public places, ch. 32.

Sec. 6-60. Vicious dogs.

(a) *Prohibited.* No person shall own or harbor a vicious dog within the city, except as provided in this article. Such dog shall be impounded as a public nuisance pursuant to the procedures set forth in section 6-63, and may be subject to disposition as provided by section 6-64(c).

(b) *Control of dogs.* No owner of a dog shall fail to prevent it from causing bodily injury to, or biting without provocation, any person or animal, including pets, domestic livestock, fowl, or wildlife.

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(c) *Guard dogs.* The owner of any dog which has been specifically trained to attack people shall:

- (1) Keep the dog confined to an area from which it cannot escape;
- (2) Keep the dog under complete control of the handler at all times; and
- (3) Post warning signs bearing letters not less than ten inches high conspicuously about the area of confinement indicating the presence of a guard dog.

(Code 1965, §§ 6-75–6-77; Ord. No. 2576, § 5, 5-20-92)

Sec. 6-61. Barking dogs.

(a) *Prohibition.* No owner of a dog shall fail to prevent it from disturbing the peace and quiet of any other person by loud and persistent barking, baying, howling, yipping, crying, yelping, or whining, whether the dog is on or off the owner's premises.

(b) *Provocation defense.* Provocation of a dog whose noise is complained of is an affirmative defense to any charge for violation of subsection (a) of this section.

(c) *Warning required.* No person shall be charged with a violation of subsection (a) of this section unless written warning as provided in subsection (d) of this section has been given at least seven days but not more than 37 days preceding the charge.

(d) *Warning process.* The warning process to be employed prior to a charge being instituted for notification of violation of subsection 6-61(a) shall be substantially as follows:

- (1) The warning must relate to a barking incident separate from the charged violation.
- (2) The animal control officer may issue a warning after receiving two complaints from two different persons who do not reside in the same household.
- (3) All complainants must clearly identify themselves by stating their name, address and telephone number. The complainant shall further state, if known, the name of the dog's owner, the owner's address and telephone number, a description of the dog, description of the offense, the date, time, place and duration of the offense.
- (4) A record or incident report shall be kept of any such complaint and investigation.

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- (5) A warning to a dog owner shall fully cite section 6-61(a) and advise the owner of penalty for the violation of section 6-61(a). The warning shall also state that a complaint has been received, recite the date of the alleged offense, and conclude that the owner's dog may have disturbed the peace of another individual. The warning must be identified as being issued by any animal regulation officer empowered by the city council to enforce the provisions of this article.

(e) *Notice and evidence of warnings.* An owner shall be deemed to have been issued and received a warning under subsection (d) of this section if the warning is personally served upon the owner or keeper, posted on the owner's or keeper's premises, or placed in the U.S. mail, postage prepaid and addressed to the owner of the dog according to the last address given by the owner or keeper at the time such owner obtained a license certificate or license tag.

(f) *Complainant's rights and responsibilities.*

- (1) The identity of a complainant shall be kept confidential until a violation of this section is charged.
- (2) If a violation of this section is charged, the complainant shall sign an affidavit on the citation attesting to the violation, or shall verify in writing the allegations of a complaint prior to its service upon the owner.
- (3) No person or owner shall be convicted at trial for violation of this section unless testimony is presented by at least two complaining witnesses or by one complaining witness when there is only one occupied residence within three blocks or one-quarter mile in any direction.

(Code 1965, §§ 6-86–6-91; Ord. No. 2576, § 6, 5-20-92)

Cross reference(s)--Noise, § 16-106 et seq.

Sec. 6-62. Cruelty to animals or neglect of animals.

(a) *Violation.* A person commits the offense of cruelty to animals if he knowingly or with criminal negligence engages in conduct defined as "cruelty" in this article.

(b) *Warning not required.* A warning process substantially similar to that set forth in section 6-61(d) may be, in the sound discretion of the animal control officer, utilized prior to charging a violation of this section.

(Code 1965, §§ 6-101, 6-102; Ord. No. 2576, § 7, 5-20-92)

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Sec. 6-63. Seizure and impoundment.

(a) Impoundment of dogs authorized.

- (1) An animal control officer may, in his discretion, seize and impound any dog which is:
 - a. At large;
 - b. Off the owner's premises and not wearing a current license tag; or
 - c. Is an unconfined, unspayed female dog in estrus.
- (2) An animal control officer may, in his discretion, seize and impound any animal which:
 - a. Is required to be observed for rabies symptoms;
 - b. Is, or appears to be, abandoned, abused or neglected;
 - c. Is a domestic animal, appears to be or is sick or injured, and whose owner cannot be identified or located; or
 - d. Is being kept or maintained contrary to the provisions of this article.

If a dog found running at large is properly licensed, the animal control officer shall return the dog to its owner in lieu of impounding the dog upon payment of any seizure or release fee which may be required.

(b) Impoundment of vicious dogs. An animal control officer shall forthwith investigate any credible complaint that a dog is vicious. If the officer reasonably believes the dog is vicious, it shall be immediately seized and impounded. If impoundment of a vicious dog cannot be made with safety to the animal control officer or other persons, the vicious dog may be summarily destroyed without notice to its owner, and the animal control officer shall not be held liable for such action.

(c) Notice of impoundment and disposition alternatives. When any animal has been impounded, animal control personnel shall as soon as practicable give notice in person, by letter, telephone, or service of a citation upon the owner, of the animal's impoundment and disposition alternatives. If the animal's owner is unknown at the time of impoundment, animal control personnel shall take all reasonable steps to identify the owner and provide such notification. If the animal's owner still cannot be established, animal control personnel may

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proceed with any disposition authorized by this article. Animal control personnel shall maintain records of the times, dates and manner of any notification or attempts at notification. Such records shall constitute prima facie evidence of notification or attempted notification.

(d) *Length of impoundment.*

- (1) *Minimum period.* Except as otherwise provided in this article, an impounded animal shall be held at the animal control center for 72 hours after impoundment, or for 48 hours after notification to the owner of the animal's impoundment, whichever is shorter. If the owner does not properly claim and redeem the animal within these periods of impoundment, the animal may be subject to disposition under section 6-64.
- (2) *Sick or injured animal.* An impounded animal which is sick or injured and in pain or contagious to other animals and which is not identifiable to an owner is not subject to a minimal impoundment period and may immediately be humanely disposed of through euthanasia. If a sick or injured animal which is in pain or is contagious to other animals is identifiable to an owner, animal control personnel shall diligently attempt to contact the owner within 24 hours after impoundment, after which time the dog may be euthanized if unclaimed.
- (3) *Vicious dog.* A vicious dog shall not be released from impoundment during the pendency of any criminal proceeding for violation of section 6-60(a). If no such action has been or will be commenced, such dog shall be disposed of pursuant to section 6-64.
- (4) *Observation period.* Notwithstanding any other provision of this section to the contrary, any dog or cat which is known or credibly alleged to have bitten any person shall be immediately impounded or quarantined for observation for rabies infection until ten days after the date of the bite and for such further time as deemed necessary by the director. During the observation period, the dog or cat shall not have any physical contact with any other person or animal outside the immediate family, nor shall it be removed from the location of quarantine unless authorized by animal control personnel. Additionally, the dog or cat shall not be vaccinated against rabies, have ownership transferred, or be destroyed or euthanized unless authorized by animal control personnel.
- (5) *Dogs of wild extraction.* Any dog of wild extraction which is known or credibly alleged to have bitten any person shall be immediately impounded. Unless otherwise ordered, dogs of wild extraction shall, at the discretion of the sergeant or director, be quarantined according to the direction of the state health department or killed by humane euthanasia, avoiding damage to the brain, and the remains tested

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for rabies as provided by state law.

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- (6) *Release from quarantine; failure to comply with quarantine order or conditions.* Any owner of an animal, or person harboring or keeping an animal, who has been ordered by an animal control officer to quarantine such animal shall release such animal only to the animal control officer ordering the quarantine. The animal control officer may allow the owner of the animal to board the animal at a licensed and approved animal hospital, kennel or veterinary facility approved by the animal control center. The animal control officer may allow the owner to quarantine the animal at the owner's residence provided the owner can establish or maintain conditions of the ten-day quarantine period to the satisfaction of animal control. No person or owner shall fail to meet the conditions established pursuant to subsection (d)(4) of this section. Failure to comply with a quarantine order or comply with the conditions of quarantine shall result in the animal being impounded by animal control and shall be a violation of this article.

(e) *Liability for seizure and impoundment expenses.* An owner or keeper shall be obligated to reimburse the animal control center for all expenses incurred as a result of seizure or impoundment of an animal. Such fees shall be assessed against the owner or keeper of any impounded animal, and shall be payable upon redemption, release or abandonment of the animal. Owners of unwanted animals and persons in custody of abandoned animals may bring in and release them to the animal control center at no cost to the owner.

(f) *Removal of impounded animals.* No person shall remove any impounded animal from the animal control center or from the official custody of an animal control officer without the consent of the director, sergeant or officer.

(g) *Impoundment alternatives.* Nothing in this section shall be construed to prevent an animal regulation officer from taking whatever action is reasonably necessary to protect his person or members of the public from injury by any animal.

(Code 1965, §§ 6-111–6-117; Ord. No. 2576, § 8, 5-20-92)

Sec. 6-64. Redemption from impoundment and disposition.

(a) *Redemption fees authorized.* Any dog or animal may be claimed and redeemed from impoundment by the owner and released from the animal control center only upon timely demand at the animal control center by a properly identified owner and upon payment of all seizure fees, impoundment fees, license fees, veterinary charges, charges for unusual care and feeding, redemption fees and such other costs or fees as may be reasonably set by animal control personnel or as provided in section 6-66, concerning animal control center charges and fees.

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(b) *Disposition of impounded animals.* Any animal not properly redeemed by the end of any required impoundment or observation period shall become the property of the city. The animal may then be disposed of by animal control personnel by sale, donation, adoption to a suitable owner, or by humane euthanasia. No animal shall be released from the animal control center for the purpose of medical research or experimentation.

(c) *Disposition of vicious dogs.*

- (1) A dog found to be vicious by any court, as defined by subsections 6-57(1), (2), (3) or (4) of this article, shall be finally disposed of by humane euthanasia. The owner of the dog shall be assessed and shall be liable for all applicable costs and fees pursuant to section 6-66.
- (2) The owner of a dog which is found to be vicious as defined by subsections 6-57(5), (6), (7) or (8) of this article shall be subject to any reasonable sentencing orders set by the court prior to or after redemption of the dog. Such orders and conditions may include but are not limited to delayed release of the dog, the posting of bond, construction of secure areas of confinement, restrictions on travel with the dog, neutering the dog, muzzling the dog, compensation of victims, restrictions on sale or transfer of the dog, destruction, and any other terms or conditions deemed necessary to protect the public or to abate a public nuisance. Such orders and conditions shall require payment of all fines and fees and expenses for seizure, impoundment and redemption, together with penalties and court costs, if any.
- (3) In the event of noncompliance with the conditions imposed pursuant to subsection (c)(2) of this section, the dog may be summarily impounded by animal control personnel and disposed of at their discretion, or in accordance with court order. Such disposal shall be in addition to any other civil or criminal remedies, including contempt proceedings for noncompliance with any sentencing orders or with administrative conditions for release of a vicious dog.
- (4) A dog found or declared not to be vicious shall thereupon be forthwith returned to its owner, subject to payment of redemption fees, licensing and veterinarian care, but excluding liability for boarding expenses.

(d) *Adoption of dogs and cats.* No person may adopt a dog or cat from the animal control center until such person has guaranteed sterilization of the dog or cat. A deposit shall be required to ensure the sterilization of the animal. Transfer of ownership of the dog or cat shall not be effected until sterilization has occurred. Failure of the person adopting a dog or cat to sterilize it shall be a violation of this article and shall be punishable as an offense under this article. Additionally, animal control personnel may seize and impound an animal which has

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been adopted by a person who fails to sterilize the animal within the time specified. Animals may be adopted at the discretion of animal control personnel and subject to reasonably prescribed conditions.

(Code 1965, §§ 6-126–6-128; Ord. No. 2576, § 9, 5-20-92)

Sec. 6-65. Enforcement.

(a) *Responsibility.* The provisions of this article shall be enforced within the city by those persons designated by the city council. Animal control officers, as designated by this article, shall be deemed "peace officers" without regard to certification requirements as authorized by C.R.S. § 30-15-105. The city attorney may prosecute any violation of this article.

(b) *Procedure.* Whenever an animal control officer has personal knowledge or probable cause to believe that a violation of this article has occurred, he may arrest the alleged violator, and either issue a penalty assessment notice pursuant to C.R.S. § 16-2-201 et seq., or issue a summons and complaint pursuant to C.R.S. § 16-2-101 et seq.

(c) *Penalty assessment procedure.*

- (1) *Penalty assessment.* The penalty assessment procedure consists of personal service of written notice upon a person charged with violating this article. Personal service may be waived by the recipient. The alleged violator may be released upon conditions of the notice, may choose to appear before a judge in a court of competent jurisdiction if conditions for release are not met. Conditions for release shall include payment of the applicable fine.
- (2) *Summons and complaint.* The summons and complaint procedure consists of personal service, or waiver by the recipient, of a summons and complaint. The summons requires the recipient to appear before the municipal court judge at a specified time and place to answer to charges of violating this article, as set forth in the complaint.
- (3) *Mandatory court.* A summons and complaint shall be issued to anyone who is:
 - a. Charged under section 6-60 involving a vicious dog;
 - b. Charged under section 6-62 involving cruelty to an animal;
 - c. Charged under section 6-64 involving failure to comply with impound/quarantine requirements;

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- d. Known to have been issued three or more penalty assessment notices for violation of this article within the last two years; or
 - e. Charged with a violation of this article involving serious bodily injury to or death of any person or animal.
- (4) *Optional court.* Except for the mandatory requirement for court set forth in subsection (c)(3) of this section, an animal control officer may, at his discretion, issue either a penalty assessment notice or a summons and complaint.
- (5) *Content.* A penalty assessment notice as well as a summons and complaint shall contain the following:
- a. Document sworn to by the arresting officer;
 - b. Verification by the complaining party, if any;
 - c. Name of the alleged offender;
 - d. Specific offense;
 - e. Applicable fine;
 - f. The amount of pending fines for prior offenses;
 - g. Identity of any victims; and
 - h. A brief summary of the circumstances of the offense, including the alleged offender's attitude.

(d) *Interference with animal regulation officers.* No person shall interfere with, molest, hinder, or prevent the director, sergeant or any other animal control officer from discharging their duties as prescribed by this article or other law.

(e) *Compliance with impoundment requests.* No person shall refuse to immediately deliver up or release any animal to an animal control officer upon lawful demand by the officer to seize and impound the animal.

(f) *Search and seizure of dogs.* An animal control officer shall have the right to enter upon private property when necessary to seize a vicious dog, or a dog that has been running at large, when in reasonable pursuit of such dogs. Authorized entry upon such property shall

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not include entry into a residence or any structure that confines the dog except with authorization of the property owner. In the event of a property owner's refusal to allow entry upon property or release of the dog and upon presentation of motion and an affidavit establishing probable cause that the dog is a public nuisance as defined in this article, a court may issue an ex parte order requiring the owner to immediately surrender the dog to an animal control officer. Noncompliance with such order shall be grounds for proceedings to establish contempt of court. The court is also authorized to issue an ex parte warrant for search and seizure of a public nuisance dog or abandoned, abused, or neglected animals in order to preserve evidence or to protect the public safety and welfare. An animal control officer seizing a public nuisance dog may impound the dog, release the dog in lieu of impoundment, and/or issue a penalty assessment notice or a summons and complaint to the dog owner, unless otherwise required by court order or this article.

(Code 1965, §§ 6-141–6-144; Ord. No. 2576, § 10, 5-20-92)

Cross reference(s)—Municipal court, ch. 22.

Sec. 6-66. Animal control center charges and fees.

(a) *Charges and fees authorized and required.* Charges and fees for seizure, impoundment, boarding, licensing, veterinarian care and adoption of an animal shall be cumulatively assessed to any animal owner according to the schedules adopted by resolution of the city council. Payment of all applicable fees shall be a condition of release, redemption or adoption of any animal. Such fees shall be assessed to defray the administrative expenses incurred in impounding, boarding, adoption of, licensing and euthanizing animals. The deposits authorized under subsection (b) of this section are to ensure vaccination and spaying or neutering of adopted animals in an effort to help control the pet overpopulation.

(b) *Deposits.* A spay/neuter deposit and rabies vaccination deposit as established by resolution of the city council and on file in the city clerk's office shall be required for adoption of an animal. A rabies vaccination deposit shall be required for redemption of an unvaccinated animal. Deposits shall be returned upon proof of spay/neuter and vaccination, as applicable. If proof is not provided to animal control by the date prescribed on the sterilization or vaccination contract the deposit shall be forfeited.

(c) *Veterinary care.* Actual, reasonable costs of necessary veterinarian treatment shall be charged to the owners of any animals impounded under this article, as applicable.

(Code 1965, §§ 6-156, 6-157; Ord. No. 2576, § 11, 5-20-92)

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Sec. 6-67. Violation unlawful; penalty.

No person shall violate any provision of this article, as amended. Any such violation is unlawful, and upon conviction of any violation, the offender shall be punished as set forth in this article.

(Code 1965, § 6-166; Ord. No. 2576, § 12(12.1), 5-20-92)

Sec. 6-68. Penalty assessment; fine schedule.

If the penalty assessment procedure is used by the animal control officer or any arresting law enforcement officer, the following fine schedule shall be applied for violations of any section of this article which are committed or repeated by the same person within two years from the date of any prior offense:

First offense (up to) \$ 25.00

Second offense (up to) 50.00

Third offense (up to) 250.00

Fourth and subsequent offenses (up to) 500.00

(Code 1965, § 6-169; Ord. No. 2576, § 12(12.4), 5-20-92)

Sec. 6-69. Additional remedies for violation of article; suspension of penalties.

(a) In addition to payment of any fine or other punishment, any person violating this article shall be required as a condition of probation or sentencing to pay to the animal control center all applicable fees and charges pursuant to section 6-66, and costs of prosecution as may be required by the court.

(b) Suspension of any penalty or punishment for violation of this article may be conditioned upon compliance with any reasonable order or condition designed to protect the public or abate a public nuisance caused by an owner's animal. Such conditions may include but are not limited to those set forth in section 6-64(c).

(Code 1965, § 6-170; Ord. No. 2576, § 12(12.5), 5-20-92)

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Sec. 6-70. Indemnity clause.

The city council, the health officer, director, animal control officers, or any other employees, persons or agents authorized to enforce the provisions of this article shall not be held responsible for any accident or subsequent disease or for any loss or damages resulting from administration of this article.

(Ord. No. 2576, § 14, 5-20-92)

Secs. 6-71--6-90. Reserved.

ARTICLE IV. RABIES CONTROL*

***State law reference(s)**--Rabies control, C.R.S. § 25-4-601 et seq.

Sec. 6-91. Vaccination of animals.

All animals lawfully kept as pets which are capable of transmitting rabies and which are harbored, possessed or maintained within the city shall be inoculated against rabies by a licensed veterinarian and such vaccination shall be repeated annually thereafter. The owner acquiring such animal shall have the animal inoculated within 30 days after its acquisition, or before the animal reaches four months of age, whichever occurs last.

(Code 1965, § 6-16)

Sec. 6-92. Biting animals; quarantine.

(a) *Notification; confinement and observation.* The owner of any dog or other animal that is capable of transmitting rabies which has bitten any person shall immediately notify the animal control officer or a police officer of such.

- (1) It shall be unlawful for the owner of any dog or other covered animal that has bitten any person or that has been exposed to another animal that is believed to have rabies to destroy such animal before it can be properly confined and observed under the supervision of the county health department and/or the animal control officer.

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- (2) Any dog or other covered animal that has bitten any person or has been exposed to another animal that is believed to have rabies shall be immediately confined and observed for a period of no fewer than ten days from the date of the bite or exposure.
 - a. Such confinement may be, at the discretion of the animal control officer or police officer, on the premises of the owner if deemed appropriate with sufficient safeguard. If not on the owner's premises, the confinement shall be at the animal control center or at any licensed veterinary hospital of the owner's choice. Such confinement shall be at the sole expense of the owner.
 - b. When any dog or other covered animal is confined on the owner's premises, the animal control officer shall make frequent checks to determine the condition of the confined animal.
- (3) Failure to produce animal; penalty. The owner of any dog or other covered animal that has been reported as having inflicted a bite on any person shall, on demand of the animal control officer or a police officer, produce the animal for examination and quarantine. It shall be unlawful for the owner of any such animal to fail or refuse to produce the animal on demand, and any such failure or refusal shall subject the owner to immediate arrest if there shall exist probable cause to believe that the animal in question has inflicted a bite upon a person and that the owner is harboring or keeping the animal and wilfully refuses to produce the animal upon such demand. Upon arrest, the owner shall be taken by an officer of the police department before a judge of the municipal court, who may order the immediate production of the animal. Each day of such willful refusal to produce the animal shall constitute a separate violation and offense.
- (4) Diagnosis by veterinarian:
 - a. When an animal under quarantine has been diagnosed by a licensed veterinarian as being rabid, the veterinarian making such diagnosis shall immediately notify the county health department and advise it of any reports of human contact with such rabid animal. The county health department shall, pursuant to its rules and procedures, humanely destroy such rabid animal.
 - b. If any animal under quarantine dies while under observation and before a diagnosis has been made, the animal control officer shall immediately notify the county health department, which will take action to obtain a pathological and inoculation examination of the animal.

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- c. If after the ten-day or longer confinement and observation period provided for in this section, the dog or other covered animal has not been diagnosed by a licensed veterinarian as having rabies, the quarantined animal shall be released from confinement by the animal control officer upon payment of all impoundment and other quarantine fees as applicable and vaccination for rabies.

(b) *Removal from quarantine for rabies.* It shall be unlawful for any person to remove from any place of quarantine any animal which has been quarantined pursuant to subsection (a) of this section without the expressed consent of the animal control officer.

(Code 1965, § 6-17)

Sec. 6-93. Exception to article provisions.

Except where specific reference is made in this article to dogs, the provisions of this article shall not apply to dogs, which are treated in article III of this chapter.

(Code 1965, § 6-18)

Chapter 7

RESERVED

Chapter 8 BUILDINGS AND BUILDING REGULATIONS*

***Cross reference(s)**--Regulations regarding alarm system installers, § 10-51 et seq.; regulations and requirements regarding contractors, § 10-81 et seq.; solid waste collection and disposal requirements, § 30-26 et seq.; driveways, § 32-31 et seq.; utilities required, ch. 38.

State law reference(s)--Building and fire regulations, C.R.S. § 31-15-601 et seq.

Article I. In General

Sec. 8-1. Scope and application of building codes.

Sec. 8-2. Adoption of unamended codes.

Sec. 8-3. Copies of codes available for inspection.

Secs. 8-4--8-25. Reserved.

Article II. Administration

Sec. 8-26. Board of appeals; appeals procedure.

Sec. 8-27. Building official's duties, authority.

Sec. 8-28. Conflicts; permits previously issued.

Sec. 8-29. Nonassumption; nonwaiver.

Secs. 8-30--8-50. Reserved.

Article III. Technical Codes

Sec. 8-51. Adoption of Uniform Building Code and Standards.

Sec. 8-52. Amendments to Uniform Building Code.

Sec. 8-53. Adoption of National Electrical Code.

Sec. 8-54. Adoption of Uniform Plumbing Code; amendments.

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Sec. 8-55. Adoption of Uniform Mechanical Code; amendments.

Sec. 8-56. Reserved.

Sec. 8-57. Adoption of Uniform Code for the Abatement of Dangerous Buildings; amendments.

Secs. 8-58–8-110. Reserved.

Article IV. Energy Efficiency Construction and Renovation Standards

Sec. 8-111. Standards adopted.

Sec. 8-112. Amendments to standards.

Sec. 8-113. Filing of code copies.

Secs. 8-114–8-135. Reserved.

Article V. Moving Buildings

Sec. 8-136. License, bond required.

Sec. 8-137. Permit required; scope.

Sec. 8-138. City to be represented.

BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

Sec. 8-1. Scope and application of building codes.

The codes adopted in this chapter shall apply throughout the city.

(Code 1965, § 7-83)

Sec. 8-2. Adoption of unamended codes.

All sections of the referenced codes adopted in this chapter not specifically amended by this Code are adopted as published in such codes.

(Code 1965, § 7-86(a))

Sec. 8-3. Copies of codes available for inspection.

At least one copy of each of the codes adopted in this chapter, all certified to be true copies, shall remain on file with the city clerk.

(Code 1965, § 7-86(c))

State law reference(s)--Copies to be kept in office of the clerk, C.R.S. § 31-16-206.

Secs. 8-4--8-25. Reserved.

ARTICLE II. ADMINISTRATION*

*Cross reference(s)--Administration, ch. 2.

Sec. 8-26. Board of appeals; appeals procedure.

(a) A common appellate procedure and board of appeals to hear all appeals arising under codes adopted in this chapter, except with respect to the National Electrical Code, is contained within this section.

(b) In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of these codes, there shall be and is hereby created a board of appeals consisting of five members who are qualified by

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experience and training to pass upon matters pertaining to building construction and who are not employees of the city. The building official shall be an ex officio member of and shall act as secretary to such board. The board of appeals shall be appointed by the city council and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

(c) The board of appeals shall have jurisdiction to decide any appeal from the building official if the decision of the building official concerns suitability of alternate materials, methods of construction or a reasonable interpretation of these codes. The board of appeals shall not hear appeals which regard life safety items or administrative provisions of codes, nor shall the board of appeals be empowered to waive requirements of the codes. The first order of business at any hearing of the board of appeals shall be to determine if it has jurisdiction to hear the appeal.

(d) A decision of the board of appeals shall be final unless an aggrieved party first files a written appeal to the building official, who shall reply in writing within ten days of the written appeal. The decision of the building official may be appealed to the board of appeals, by filing with the city clerk, within ten days from the date of the decision of the building official, a notice of appeal together with a copy of the original written appeal to the building official and a copy of the building official's decision. The notice of appeal must be accompanied by a fee as established by resolution of the city council and on file in the city clerk's office.

(e) The board of appeals shall meet within 30 days of the receipt by the city clerk of the written appeal, hear evidence and argument if it deems appropriate, and shall render all decisions and findings in writing to the building official with a duplicate copy to the appellant.

(Code 1965, § 7-82)

Cross reference(s)--Officers and employees, § 2-51 et seq.

Sec. 8-27. Building official's duties, authority.

(a) The city building official is hereby authorized by the city council to administer and enforce such codes as is provided in the codes adopted in this chapter and C.R.S. § 30-28-205.

(b) The "chief building official," within the meaning of this chapter and the codes adopted by reference in this chapter, is the public works director. The words "building official" shall be used in this chapter and the codes adopted by reference in this chapter to mean either the chief building official or one of his deputies.

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(c) The chief building official is hereby authorized and directed to enforce all the provisions of this chapter. For such purposes, he and his deputies shall have the powers of law enforcement officers.

(Code 1965, §§ 7-30, 7-84)

Cross reference(s)--Officers and employees, § 2-51 et seq.

Sec. 8-28. Conflicts; permits previously issued.

Any and all ordinances or parts thereof in conflict with this chapter to the extent of such conflicts or inconsistencies are hereby amended; provided, however, this chapter shall not affect the construction of buildings for which permits were issued prior to the effective date of the ordinance from which the provision was derived and all buildings now under construction pursuant to permits existing on the effective date of the ordinance from which the provision was derived shall be constructed in conformance with the building code applicable at the time of the issuance of such permit; provided further, however, that no construction authorized by an existing permit shall be altered without complying with the provisions of the newly adopted building codes. Nor shall the adoption of this chapter prevent the prosecution of violations of any prior ordinance adopting prior building codes which occurred prior to the effective date of this chapter. Where this chapter and the codes adopted in this chapter by reference are in conflict with other ordinances of the city, the more restrictive provisions shall apply.

(Code 1965, § 7-86(b))

Sec. 8-29. Nonassumption; nonwaiver.

The city and its officers, officials, employees and agents shall not be deemed to have assumed a duty of care where none otherwise existed by the performance of a service or an act of assistance for the benefit of any person under this chapter. The adoption of codes in this chapter is not intended to and shall not give rise to any duty of care. The enforcement or failure to enforce this chapter or the mere fact that an inspection was conducted in the course of enforcing this chapter shall not give rise to a duty of care where none otherwise existed. Enactment of this chapter shall not constitute a waiver of sovereign immunity by the city, its officials, employees and agents.

(Code 1965, § 7-86(d))

Cross reference(s)--Tort liability, § 2-71 et seq.

Secs. 8-30--8-50. Reserved.

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ARTICLE III. TECHNICAL CODES*

***Cross reference(s)**--Adoption of the fire code, § 18-56.

State law reference(s)--Codes adopted by reference, C.R.S. § 31-16-201 et seq.; state housing act, C.R.S. § 24-32-701 et seq.

Sec. 8-51. Adoption of Uniform Building Code and Standards.

(a) The Uniform Building Code, 1994 edition, Volumes I, II, and III; promulgated by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, together with amendments set forth below (hereinafter "UBC or Uniform Building Code"), is hereby adopted to provide minimum standards to safeguard life and limb, health, property and the public welfare by regulating and controlling various matter including but not limited to the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction, and certain equipment specifically regulated in this chapter.

(b) The following chapters of the Appendix of the Uniform Building Code, 1994 edition, are adopted:

Chapter 3, Division I - Detention and Correction Facilities

Chapter 3, Division II - Agricultural Buildings

Chapter 4, Division II - Aviation Control Towers

Chapter 13 - Energy Conservation in New Buildings

Chapter 15 - Re-roofing

Chapter 29 - Minimum Plumbing Fixtures

Chapter 31, Division II - Membrane Structures

Chapter 31, Division III - Patio Covers

No other chapters of the Appendix are adopted.

(Code 1965, § 7-81(a)(1), Ord. No. 2812, 2-15-95)

State law reference(s)--Copies to be kept in office of the clerk, C.R.S. § 31-16-206.

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Sec. 8-52. Amendments to Uniform Building Code.

The Uniform Building Code adopted in section 8-51 is hereby amended as follows:

- (1) *Section 105.* Section 105 is amended by deletion thereof. The board of appeals established by section 8-26 shall serve as the board of appeals.
- (2) *Section 106.2.* Section 106.2 is amended by the addition of the following new sub sections;
 12. Re-roofing of R-3 occupancies that do not exceed the limits of Appendix 1517.2, 1517.3, 1527.4, and 1517.5.
 13. Re-siding of R-3 occupancies.
- (3) *Section 107.* Section 107 is amended to read in its entirety:

Fees shall be assessed in accordance with this Section; except that no fee shall be required for a building permit for Agricultural Buildings as defined at section 202A. This agricultural building fee exception is not an exception to fees for electrical, plumbing or mechanical permits or requirements for said structures.
- (4) *Section 108.1.* Section 108.1 of the Uniform Building Code is amended by the addition, to the first paragraph, of the following new sentence:

No inspection shall be required for a building permit obtained for Agricultural Buildings as defined at section 202A. However, this Agricultural Building exception to building inspections is not an exception to the minimum building standards set forth by the Uniform Building Code nor to the other requirements of inspections for electrical, plumbing or mechanical permits.
- (5) *Section 108.5.* Section 108.5 is amended by the deletion of section 108.5.5.
- (6) *Table 1-A--Building Permit Fees.* Table 1-A is amended by adoption of the schedule of fees established by resolution of the city council and on file in the city clerk's office.
- (7) *Section 217.* Section 217 is amended to add the following definition of "place of employment":

Place of employment: A specific area set aside or occupied by a person or persons who perform a task for another in return for financial or other compensation.

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- (8) *Section 302.4, Exception #3.* Section 302.4 Exception #3 is amended by deleting the words: "self closing."
- (9) *Section 310.11.* Section 310.11 is amended by adding: such facilities shall be designed to minus ten (-10) degrees fahrenheit or less and five thousand six hundred (5600) degree days heating or less.
- (10) *Section 708.2.1.* Section 708.2.1 **EXCEPTION** is amended by replacement with the following:
- Fire stops may be omitted at floor and ceiling levels when approved smoke-actuated fire dampers are installed at these levels, or when approved smoke detectors are placed not more than fifteen feet from side wall of attic and not more that thirty feet from detectors. Detectors shall be connected to sound all alarms throughout the building.
- (11) *Section 903.* Section 903 is amended by adding: Story, any habitable level used or occupied by humans.
- (12) *Section 904.2.2.* Section 904.2.2 is amended by adding subsection 6 to read as follows:
6. In any building four stories or more in height.
- (13) *Table 10-A--Minimum Egress Requirements.* Table 10 A is amended by adding use:
- | | | | |
|-----|------------------------|----|-----|
| #31 | Agricultural Buildings | 10 | 500 |
|-----|------------------------|----|-----|
- (14) *Section 1203.3.* Section 1203.3 is amended by deleting the words: "laundry rooms and similar rooms."
- (15) *Section 1701.1.* Section 1701.1 is amended to read: in addition to the inspections required by section 108, the owner or the engineer or architect of record acting as the owner's agent shall employ one or more special inspectors who shall provide inspections during construction on the types of work listed under section 1701.5 and section 108.
- (16) *Section 2109.9.* Section 2109.9 is amended to read as follows:
- 2109.9.1 General. Masonry of stabilized unburned clay units shall not be used in any building more than two stories in height. The unsupported height of every wall of unburned clay units shall not be more than 10 times the thickness

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of such walls. Bearing walls in any case shall not be less than 10 inches. All footing walls which support masonry of unburned clay units shall extend to an elevation not less than 6 inches above the adjacent ground at all points.

2109.9.2 Compressive Strength. The units shall have an average compressive strength of 300 pounds per square inch, when tested in accordance with ASTM C 67. One sample out of five may have a compressive strength of not less than 250 pounds per square inch.

2109.9.3 Modules of Rupture. The unit shall average 50 pounds per inch in modules of rupture when tested according to the following procedure:

2109.9.3 (a). A cured unit shall be laid over cylindrical supports two inches in diameter, located two inches from each end, and extended across the full width of the specimen.

2109.9.3 (b). A cylinder two inches in diameter shall be laid midway and on top of the unburned clay specimen parallel to the supports.

2109.9.3 (c). Load shall be applied to the top cylinder at the rate of 500 pounds per minute until rupture occurs.

2109.9.3 (d). Modules of rupture is equal to $S=3WL/2B(DD)$

S = Stress in specimen at midspan.

W = Maximum load indicated by testing machine.

L = Distance between supports in inches.

B = Average overall width, face to face, of specimen, in inches.

D = Average overall depth, bed surface to bed surface, of specimen, in inches.

2109.9.4 Soil. The soil used for unburned masonry units shall contain not less than twenty five percent (25%) and not more than forty five percent (45%) of material passing through a number 200 mesh sieve. The soil shall contain sufficient clay to bind the particles together but, shall not contain more than two tenths of a percent (0.2 %) of water soluble salts. Most clay loams, except with those of high clay content, are suitable, but it is not practicable to make a selection on the basis of soil analysis only. Soils having a high clay content shrink or crack badly when drying, and sandy soils do not have sufficient binding material to prevent crumbling. Neither of these soils should be used alone for unburned masonry units, but a very good building material can be created by mixing the two types of soil together in proportions that will overcome the undesirable qualities of each. The best way to determine the fitness of a soil is to make a sample unit and allow it to cure in the open, protected from moisture. The unit should dry without serious warping or cracking to be deemed fit.

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2109.9.5 Stabilizers. A stabilizing agent shall be used, and shall be uniformly

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mixed with the soil in amounts sufficient to provide the required resistance to absorption of water ("waterproof") into the soil, to cement particles of the soil together, and to keep the soil from shrinking or sweating. A list of the most common stabilizers are:

1. Portland cement and lime.
2. Asphalt.
3. Straw.
4. Flyash and lime.
5. Sodium silicate.
6. Sulfite liquid.
7. Aliquate 11226 (quarternary amine).
8. Wood ash.
9. Resins.
10. Coconut oil.
11. Tannic acid.
12. Cattle urine.
13. Cow dung.
14. Molasses.
15. Gum arabic.

Note: Due to the diverse types of soils and numerous types of stabilizers, the only sure method to determine results is through testing.

2109.9.6 Sampling. Each of the tests prescribed in this section shall be applied to five sample units selected at random from each five thousand (5000) bricks or units to be used.

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2109.9.7 Moisture Content. The moisture content of the unit shall be not more than four percent (4 %) by weight.

2109.9.8 Absorption. A dried four inch (4 ") cube cut from a sample unit shall not absorb more than two and one half percent (2.5 %) moisture by weight when placed upon a constantly saturated porous surface.

2109.9.10 Shrinkage Cracks. No unit shall contain more than three shrinkage cracks, and no shrinkage crack shall exceed three inches in length or one-eighth inch in width.

2109.9.11 Size. Each unit shall not be less than a nominal size of ten inches by fourteen inches by four inches (10 " X 4 "). No adobe shall be laid in a wall for at least three weeks after making.

2109.9.12 Foundations. Unburned clay units shall not be used for foundation or basement walls. All unburned clay unit walls shall have a continuous concrete foundation of at least eight inches (8 ") thick and at least four inches (4 ") wider on each side than the foundation wall above. All foundation walls that support unburned clay units shall extend at least six inches (6 ") above the finished grade. Foundations shall be designed for each specific use when constructing with unburned clay units.

2109.9.13 Exterior Walls. All walls of unburned clay units shall have a minimum thickness of ten inches (10") for one story and fourteen inches (14") for the lower story of two story buildings. All bricks shall be laid up in adobe or lime mortar with full slush joints and shall be bonded not less than five inches (5"). All exterior walls shall be topped with a continuous tie beam. At the time of laying, all units shall be clean and damp at the surface.

2109.9.14 Wood Lintels and Tie Beams shall be a minimum size of six inches by ten inches (6" X 10") overlapped, or spliced, and at least six inches (6") at all joints. All joints shall have a wall bearing of at least twelve inches (12"). Wood joists, vegas, and beams shall be spiked to the wood tie beam with large nails or large screws. All lintels, wood or concrete, in excess of nine feet (9') shall not be installed until the specific approval of the building official is obtained.

2109.9.15 Plastering. All unburned clay units shall have all weather exposed wall plastered with portland cement plaster, minimum three quarters of an inch (3/4") thickness in accordance with section 2320. Metal lath shall be securely nailed to the unburned clay units by 16 penny nails spaced not more than twelve inches (12") on center. All exposed wood surfaces in walls shall be treated with an approved wood preservative before the application of metal lath. No unburned clay units shall be used for isolated piers, porch columns, or wall sections of less than twenty eight inches by ten inches (28" X 10"). A minimum twelve inch (12") wall section will be permitted

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between openings provided a continuous lintel of concrete or timber is installed spanning all openings and wall sections.

2109.9.16 Floors and Roofs may be constructed of wood in accordance with chapter 16.

2109.9.17 Partitions of Wood shall be in accordance with chapter 16. Wood partitions shall be nailed to nailing blocks the size of a brick or bolted through the wall with one half inch (1/2") bolts twenty four inches (24") on center with large washers or plates.

(Code 1965, § 7-81(a)(2)–(20); Ord. No. 2666, § 1, 4-7-93, Ord. No. 2812, 2-15-95)

Sec. 8-53. Adoption of National Electrical Code, amendments.

(a) The National Electrical Code, as promulgated by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts, consistent with C.R.S. § 12-23-104, is hereby adopted as amended by this section:

(1) Article 220-4. Article 220-4 is amended by adding sub-section (e) which reads:

In dwelling units and residential garages the maximum number of current consuming openings on a fifteen (15) ampere circuit shall be ten (10). The maximum number of current consuming openings on a twenty (20) ampere circuit shall be twelve (12), except for kitchen and dining room circuits which shall have a maximum of six (6) current consuming openings.

(b) Applicants shall pay, for each electrical permit at the time of issuance, a fee for electrical permits and inspections as determined pursuant to section 107 of the Uniform Building Code, as amended in section 8-52(6).

(Code 1965, § 7-81(b), Ord. No. 2812, 2-15-95)

State law reference(s)--Copies to be kept in office of the clerk, C.R.S. § 31-16-206.

Sec. 8-54. Adoption of Uniform Plumbing Code; amendments.

The Uniform Plumbing Code, 1994 edition, as promulgated by the International Association of Plumbing and Mechanical Officials, 20001 Walnut Drive South, Walnut, California, along with the appendices published therein, is hereby adopted as amended in this section:

(1) *Section 103.4.* Section 103.4 of the Uniform Plumbing Code is replaced in its entirety as follows:

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Applicants shall pay, for each permit at the time of issuance, a fee for plumbing permits and inspections as determined pursuant to section 107 of the Uniform Building Code, as amended in section 8-52(6).

- (2) *Section 103.9.* Section 103.9 of the Uniform Plumbing Code is added to read: The Colorado State Plumbing Board shall serve as the Board of Appeals for any plumbing appeals.
- (3) *Section 509.0.* Section 509.0 of the Uniform Plumbing Code is amended by replacing the last sentence with the following:

It is prohibited to install a water heater, which depends on the combustion of fuel for heat, under a stairway or landing.

(Code 1965, § 7-81(c), Ord. No. 2812, 2-15-95)

State law reference(s)--Plumbers, C.R.S. § 12-58-101 et seq.; copies to be kept in office of the clerk, C.R.S. § 31-16-206.

Sec. 8-55. Adoption of Uniform Mechanical Code; amendments.

(a) The Uniform Mechanical Code, 1994 edition, as promulgated by the International Conference of Plumbing and Mechanical Officials, 5360 South Workman Mill Road, Whittier, California, with appendices and amendments are provided below, is hereby adopted to provide minimum standards to safeguard life or limb, health, property, and the public welfare by regulation and controlling the design, construction, installation, quality of materials, location, operation and maintenance of heating, ventilation, cooling, refrigeration systems, incinerators and other miscellaneous heat-producing appliances.

(b) The following amendments to the Uniform Mechanical Code adopted in subsection (a) of this section, are hereby adopted:

- (1) *Section 110.* Section 110 is amended by the deletion of section 110. The board of appeals established by section 8-26 shall serve as the board of appeals.
- (2) *Section 111.2.* Section 111.2 is created to read as follows:

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure or cause or permit the same to be done in violation of this code.
- (3) *Section 115.* Section 115 is amended by replacement of the section with the following:

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Applicants shall pay, for each permit at the time of issuance, a fee for necessary permits and inspections as determined pursuant to section 107 of the Uniform Building Code, as amended in section 8-52(6).

- (4) *Section 315.1.* Section 315.1 is amended with the addition of item 8., which reads:

No appliance, which depends on the combustion of fuel, shall be installed under any stairway or landing.

- (5) *Table 3-A.* Table 3-A is amended as follows:

Fireplace Stove Clearances: from back thirty six inches (36") and from side thirty six inches (36").

Footnote 5 to: "The thirty six inch (36 ") clearance may be reduced to eighteen inches (18") when protection equivalent to that provided by items (1) through (8) of Table 3-B is applied to combustible construction."

(Code 1965, § 7-81(d) Ord. No. 2812, 2-15-95)

State law reference(s)--Copies to be kept in office of the clerk, C.R.S. § 31-16-206.

Sec. 8-56. Reserved.

(Code 1965, § 7-81(e), Ord. No. 2812, 2-15-95)

Sec. 8-57. Adoption of the Uniform Code for the Abatement of Dangerous Buildings, amendments.

The Uniform Code for the Abatement of Dangerous Buildings, 1994 Edition, promulgated by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, is hereby adopted as amended in this section.

- (1) Section 403. Section 403 is amended by the deletion of paragraph 403(1)(1.3).

(Code 1965, § 7-81(f), Ord. No. 2812, 2-15-95)

State law reference(s)--Codes adopted by reference, C.R.S. § 31-16-201 et seq.

Secs. 8-58--8-110. Reserved.

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**ARTICLE IV. ENERGY EFFICIENCY CONSTRUCTION AND RENOVATION
STANDARDS**

Sec. 8-111. Standards adopted.

Pursuant to C.R.S. § 31-16-201 et seq., there is hereby adopted as the energy efficiency construction and renovation standards for nonresidential buildings and residential buildings over three stories in height of the city, by reference thereto, the Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings, adopted November 1977, and published March 1978, by the State of Colorado, Office of State Planning and Budgeting, Board for Energy Efficient Nonresidential Building Standards, and as the energy efficiency

(this section continued on page 8-19)

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construction and renovation standards for residential buildings of the city, by reference thereto, the Colorado Recommended Energy Conservation Performance Code for New Construction and Renovation of Residential Buildings, adopted November 1977, and published March 1978, by the State of Colorado, Division of Housing, State Housing Board, both to have the same force and effect as if set forth in this article in every particular. The subject matter of the adopted standards includes comprehensive provisions and standards regulating energy efficiency in the design, construction, renovation, erection, enlargement, alteration, repair, conversion, occupancy, equipment and maintenance of certain nonresidential and residential buildings and structures for the purpose of protecting the public health, safety and general welfare.

(Code 1965, § 7-61)

Sec. 8-112. Amendments to standards.

(a) The Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings adopted in section 8-111 is hereby amended as follows:

- (1) *Section 103.0.* Section 103.0 is amended to read:

103.0. Scope. This code sets forth minimum requirements for the design of new buildings and structures or portions thereof and additions to existing buildings that comply with occupancy types other than types R-1 three stories or less, R-3, or M, as defined in the Uniform Building Code, designed primarily for human occupancy, regulating their exterior envelopes and election of their HVAC, service water heating, electrical distribution and illuminating systems and equipment for effective use of energy. Buildings shall be designed to comply with the requirements of either section 4, 5, or 6 of this code. (For residential, also see appendix B, section 103.0.)

- (2) *Section 101.1.* Section 101.1 is deleted in its entirety.

- (3) *Section 107.0.* Section 107.0 is deleted in its entirety.

- (4) *Section 108.0.* The following new section 108.0 is added to read:

108.0. Administrative and appeal procedures. Administrative and appeal procedures set forth in sections 201, 202 and 204, and chapter 3 of the Uniform Building Code, shall be applicable and followed in the administration of this code.

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- (5) *Section 302.1.* Section 302.1 is amended by the inclusion of the following:
- Winter design dry-bulb 7 degrees.
- Summer design dry-bulb 94 degrees.
- Summer design wet-bulb 63 degrees.
- Degree days heating 5600.
- Degrees north latitude 39 degrees.
- (6) *Section 502.2(a), table 5-1.* Section 502.2(a), table 5-1, is amended by the addition of the following specific values:
- Walls, three stories or less, heating, U_0 not exceeding 0.28; walls, three stories or less, cooling, OTTV not exceeding 33.2; walls, over three stories, heating, U_0 not exceeding 0.34; walls, over three stories, cooling OTTV not exceeding 33.2; roof/ceiling, heating or cooling, U_0 not exceeding 0.08; floors over unheated spaces, heating U_0 not exceeding 0.08; slab on grade, heating, minimum R value 6.75; solar factor, cooling 126.
- (7) *Section 701.0.* Section 701.0 is amended by the addition of the following:
- SMACNA refers to Sheet Metal and Air Conditioning Contractors National Association.
- NESCA refers to National Environmental System Contractors Association.
- NWMA refers to National Woodwork Manufacturers Association, Inc.
- (8) *Section 101.1, Foreword.* Section 101.1 is amended to read as follows:
- Incorporated by reference in this code is the foreword, which contains a concise general statement of the basis and purpose of the code, including an analytical evaluation of the scientific and technological rationale justifying the code. Subsequent statements of basis and purpose for amendments adopted in 1978 and 1979 are also incorporated by reference in this code, and are on file with the office of the secretary of state.
- (9) *Section 103.0, Scope.* Section 103.0 is amended to read as follows:
- This code sets forth minimum requirements for the design of new buildings

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and structures or portions thereof and additions to existing buildings that comply with occupancy types other than types H, I or J, as defined in the Uniform Building Code, or types M, R-1 or R-3, as defined in the Uniform Building Code, regulating their exterior envelopes and selection of their HVAC, service water heating, electrical distribution and illuminating systems and equipment for effective use of energy. Buildings shall be designed to comply with the requirements of either section 4, 5 or 6 of this code.

- (10) *Section 103.2, Additions, alterations, or repairs of existing buildings.* Section 103.2 is amended to read as follows:

(a) Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply, except as hereinafter provided. The new addition shall conform to the provisions of this code as they relate to the new construction only.

(b) Any renovation, alteration or repair which results in, or is likely to result in, 50 percent or greater increase in replacement value, as determined by the county assessor, shall require such building or structure to conform to the following requirements:

1. The combined thermal transmittance value (U_0) for the roof/ceiling shall not exceed that specified in section 502.2, table 5-1, Colorado Energy Conservation Standards; and exterior joints around windows and door frames; openings between walls and foundations; openings at penetrations of utility services through walls, floors and roofs; and all other such openings in the building envelope shall be caulked, gasketed, weatherstripped or otherwise sealed against leakage in an acceptable manner; and

If in the course of renovation, change of occupancy or use, the mechanical equipment identified in sections 503 through 510 of the Colorado Energy Conservation Standards is replaced, replacement equipment shall conform to the requirements specified in those sections; or

2. Computations submitted, stating that the total fossil fuel or electrical energy required in the renovated building through design, utilization of nondepletable energy resources or otherwise, equals or is less than the total fossil fuel energy used if the building is renovated according to paragraph 1

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above, shall be considered an acceptable alternative for conformance with the standards set forth in paragraph 1 above. Computations shall be considered acceptable when calculated by acceptable engineering procedures. Where state statutes require design by an architect or engineer, the statement of compliance shall be prepared by an architect or engineer.

- (11) *Section 103.3, change of occupancy.* Section 103.3 is amended to read as follows:

Any change of occupancy or use of any building or structure, as specified in the Uniform Building Code, which would require an increase in demand for either fossil fuel or electrical energy supply shall not be permitted unless such building or structure is made to comply with the requirements of section 103.2.

- (12) *Section 502.1.* Section 502.1(c) is amended to read as follows:

- (c) The proposed design of a subterranean building may take into consideration the insulating values of undisturbed earth or fill as approved by the building official.

- (13) *Section 508.1.* Section 508.1(d) is amended to read as follows:

- (d) Combination service water heating/space heating boilers. Service water heating equipment shall not be dependent on year-round operation of space heating boilers (that is, boilers that have as another function winter space heating).

Exceptions:

1. Exempt from these requirements are systems with service/space heating boilers having a standby loss Btu/h less than:

$$13.3 \text{ pmd} + 400/n$$

pmd = Probable maximum demand in gallons/hour as determined in accordance with chapter 37 of Std RS-11.

n = Fraction of year when outdoor daily mean temperature exceeds 64.9F.

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The standby loss is to be determined for a test period of 24-hour duration while maintaining a boiler water temperature of 90 degrees Fahrenheit above ambient.

2. Exempt from these requirements are systems with service/space heating boilers where the Btu requirement for a service water heating exceeds the Btu requirements for space heating.

(14) *Section 508.6.* Section 508.6(e) is amended to read as follows:

(e) Lavatories in restrooms of public facilities shall:

1. Be equipped with outlet devices which limit the flow of hot water to a maximum of 0.5 gallon per minute, or be equipped with self-closing valves that limit delivery to a maximum of 0.25 gallon of hot water.
2. Be equipped with devices which limit the outlet temperature to a maximum of 110 degrees Fahrenheit.

Exception: Separate lavatories for physically handicapped persons shall not be equipped with self-closing valves.

(15) *Section 510.5, Calculation procedure.* Section 510.5 is hereby amended as follows:

To establish a lighting power budget, the following procedure must be used. To reduce calculation effort and where applicable, the IES unit power density procedure may be used as an alternate to the standard procedure described here.

(16) *Section 510.5.* Section 510.5(a)3 is hereby amended to read as follows:

(a) Determining illumination levels and areas.

3. Calculate the total task areas to be illuminated to the same level by multiplying the number of work locations by 50 square feet per work location. If actual task area is greater than 50 square feet, the actual area shall be used. If the sum of all task areas is greater than 50 percent of the total space area, then the task area per work location shall be reduced proportionally, so that the total task area is limited to one-

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half of the total space area. If special task lighting or localized lighting is to be employed, use actual task areas and point calculation procedures.

- (17) *Section 701.0.* Section 701.0 is amended as follows:

RS-15 1979, ASHRAE Handbook and Product Directory, Equipment Volume.

RS-16 Heating and Air Conditioning Systems—Installation Standards for One- and Two-Family Dwellings and Multi-Family Housing, NESCA/SMACNA, First Edition, 1977.

RS-19 Fibrous Glass Duct Construction Standards, SMACNA, Fifth Edition, 1979.

SMACNA refers to the Sheet Metal and Air Conditioning Contractors National Association, Inc., 82240 Old Courthouse Road, Tyson's Corner, Vienna, VA 22180.

(b) The Colorado Recommended Energy Conservation Performance Code for New Construction and Renovation of Residential Buildings is hereby amended as follows:

- (1) *Appendix B, section 101.1.* Appendix B, section 101.1, is deleted, and is replaced by the following new section 101.1, to read as follows:

101.1. Application. The provisions of sections 1 through 7 of the Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings, as amended, shall apply to residential buildings except where residential buildings are exempted from such provisions and except where the provisions of this code differ from the provisions of the Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings.

- (2) *Table 5-2.* Section 2(#2)(b), section 502.2(c), table 5-2, is amended by the addition of the following site specific values:

Walls, heating or cooling, types A-1 and A-2 building, U_0 not exceeding 0.20.

Roof ceiling, heating or cooling, types A-1 and A-2 buildings, U_0 not exceeding 0.05.

Floors over unheated spaces, heating or cooling, types A-1 and A-2

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buildings, U_0 not exceeding 0.08.

Slab on grade, heating, types A-1 and A-2, minimum R value 4.6.

- (3) *Appendix B, section 103.0, scope.* Appendix B, section 103.0, is amended to read as follows:

This code sets forth minimum requirements for the design of new buildings and structures or portions thereof and additions to existing buildings that provide facilities or shelter for occupancy types H and I, as defined in the Uniform Building Code, or occupancy types R-1 or R-3, as defined in the Uniform Building Code (residential occupancies); regulating their exterior envelopes and selection of their HVAC, service water heating, electrical distribution and illuminating systems, and equipment for effective use of energy. Buildings shall be designed to comply with the requirements of either section 4, 5 or 6 of this code.

Exception: The statutory definitions of "residential" and "nonresidential" buildings do not include new construction or renovation of hotels, motels, or apartment buildings over three stories. Local governmental entities are strongly encouraged to include hotels, motels, and apartment buildings over three stories in their locally adopted energy conservation building code.

- (4) *Appendix B, section 103.2, additions, alterations or repairs to existing buildings.* Appendix B, section 103.2, is amended to read as follows:

- (a) Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply, except as hereinafter provided. The new addition shall conform to the provisions of this code as they relate to the new construction only.
- (b) Any renovation, alteration or repair which results in, or is likely to result in, 50 percent or greater increase in replacement value, as determined by the building official, shall require such building or structure to conform to the following requirements:
 - 1. The combined thermal transmittance value (U_0) for the roof/ceiling shall not exceed that specified in C.R.S. § 6-7-105(2)a, table 2, as amended (Residential Building Energy Conservation Act), or in the section 502.2, table 5-2, appendix B, Colorado Energy Conservation Standards; and

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Exterior joints around windows and door frames; openings between walls and foundations; openings at penetrations of utility services through walls and foundations; openings at penetrations of other such openings in the building envelope shall be caulked, gasketed, weatherstripped or otherwise sealed against leakage in an acceptable manner; or

2. Computations submitted, stating that the total fossil fuel or electrical energy required in the renovated building through design, utilization of nondepletable energy resources or otherwise, equals or is less than the total fossil fuel energy used if the building is renovated according to paragraph 1 above, shall be considered an acceptable alternative for conformance with the standards set forth in paragraph 1 above. Computations shall be considered acceptable when calculated by acceptable engineering procedures. Where state statutes require design by an architect or engineer, the statement of compliance shall be prepared by an architect or engineer.
- (5) *Appendix B, section 103.3, change of occupancy.* Appendix B, section 103.3, is amended to read as follows:
- Any change of occupancy or use of any building or structure, as specified in the Uniform Building Code, which would require an increase in demand for either fossil fuel or electrical energy supply, shall not be permitted unless such building or structure is made to comply with the requirements of section 103.2, appendix B.
- (6) *Appendix B, section 502.1.* Appendix B, section 502.1(c), is amended to read as follows:
- (c) The proposed design of a subterranean building may take into consideration the insulating values of undisturbed earth or fill as approved by the building official.

(Code 1965, § 7-62)

Sec. 8-113. Filing of code copies.

At least one copy of the Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings, the Colorado Recommended Energy Conservation Performance Code for New Construction and Renovation of Residential

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Buildings, and of each secondary code adopted therein, all certified by the mayor and the city clerk to be true copies, are on file in the office of the city clerk, and may be inspected by any interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted, except that one copy of each code may be kept in the office of the chief enforcement officer instead of the office of the clerk. The Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings and the Colorado Recommended Energy Conservation Performance Code for New Construction and Renovation of Residential Buildings will be available for purchase by the public.

(Code 1965, § 7-63)

Secs. 8-114--8-135. Reserved.

ARTICLE V. MOVING BUILDINGS*

*Cross reference(s)--Streets, sidewalks and other public places, ch. 32.

Sec. 8-136. License, bond required.

No person shall engage in the business of housing moving, or move any building in, along, or across any public street, alley or public ground in the city, unless such person shall first have secured a license from the city to engage in such business; provided that before such license shall be granted, an annual fee as established by resolution of the city council and on file in the city clerk's office shall be paid to the city treasurer and a good and sufficient surety bond in the sum of \$10,000.00 be approved by the building department, such bond to be conditioned upon the faithful performance of all things required under the provisions of this article and the payment of all damages caused in the moving of such building or part thereof.

(Code 1965, § 7-14)

Sec. 8-137. Permit required; scope.

Before any person licensed under this article shall move any building in, along, or across any public street or ground in the city, he shall obtain a permit so to do from the city manager, in which permit shall be described the route to be taken in the moving of such building, and the length of time which may be consumed in the work. No permit for moving will be considered to cover repairing or any construction work of any nature on the building. Any person desiring such a permit shall, at the time of filing an application therefor, pay to the city clerk a fee as established by resolution of the city council and on file in the city clerk's office.

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(Code 1965, § 7-15)

Sec. 8-138. City to be represented.

Before entering upon any street, alley or public ground with any building, the licensed house mover shall notify the city manager, whose duty it shall be to see that due care is taken to prevent damage to any street, alley, or public ground and to report any damage to the city manager. The cost of such representative must be paid by the licensed house mover.

(Code 1965, § 7-16)

Chapter 9
RESERVED

Chapter 10 BUSINESSES*

***Cross reference(s)**--Alcoholic beverages, ch. 4; certain businesses designated as nuisances, § 16-61; smoking restricted in certain places, § 16-127; emergency medical services, § 18-86 et seq.; license required for tree trimming, cutting, pruning, removing, etc., § 40-61.

State law reference(s)--Power to regulate business, C.R.S. § 31-15-501.

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ARTICLE I. IN GENERAL

Secs. 10-1--10-25. Reserved.

ARTICLE II. GENERAL LICENSES

Sec. 10-26. Payment of fees, issuance of licenses.

Every person who obtains a license or permit to conduct or carry on any business, avocation, trade, or calling mentioned in this Code, or in any ordinance of the city, shall pay to the city manager in cash, check or certified funds, in advance of issuance, the specified license fee. The city manager shall thereupon issue to such person a license for the purpose specified, except as otherwise provided.

(Code 1965, § 17-1)

Sec. 10-27. Duration, expiration.

No license shall be granted by the city at any time for a longer period than one year, and every license shall expire on or before December 31 following the issuance thereof. In all cases, the term of the license shall be expressed thereon. There shall be no prorations of any fee nor partial fees (for part of a year), nor any refunds of any fees paid.

(Code 1965, § 17-2)

Sec. 10-28. Licenses subject to laws and ordinances; revocation for violations.

All licenses shall be subject to the ordinances, resolutions and regulations of the city and the statutes of the state which may be in force at the time of issuance thereof, or become effective during the period covered by such license. A license may be revoked at the discretion of the city council when it shall appear by a preponderance of the evidence that the licensee has violated any of the ordinances, resolutions or regulations of the city or any of the laws of the state, or has knowingly permitted any of the ordinances of the city or the laws of the state to be violated by any person in his employ for which a license has been issued.

(Code 1965, § 17-3)

Sec. 10-29. Scope of licenses; nontransferability.

Licenses shall not be assigned or transferred, nor shall any license authorize any person to do business or act under it, other than the person named therein.

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(Code 1965, § 17-4)

Sec. 10-30. Form of licenses.

All licenses shall be issued under the seal of the city, be signed by the city manager and city clerk and shall be in a form as approved by the city manager.

(Code 1965, § 17-5)

Sec. 10-31. Records.

The city manager shall keep a license register in which shall be entered the name of each and every person licensed pursuant to the ordinances of the city, the date of the license, the purpose for which the license is granted and the license fee paid. The fee for each license required by this article shall be established by resolution of the city council.

(Code 1965, § 17-6)

Secs. 10-32--10-50. Reserved.

ARTICLE III. ALARM SYSTEM INSTALLERS*

*Cross reference(s)—Buildings and building regulations, ch. 8; burglar alarm systems, § 20-56 et seq.

Sec. 10-51. License required; exemptions.

It shall be unlawful for any person to install or maintain police alarm systems in the city without first having obtained a license so to do. Nothing in this section shall be construed to apply to persons that sell but neither install nor maintain alarm systems, or to individuals who either purchase and install their own systems or design and install their own systems.

(Code 1965, § 22-45)

Sec. 10-52. Issuance of license; expiration.

A license under this article shall be issued by the city manager after approval of the applicant and his employees, if any, by the city manager and upon payment of a fee as established by resolution of the city council and on file in the city clerk's office. Each such license shall expire on December 31.

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(Code 1965, § 22-46)

Sec. 10-53. Investigation, fingerprinting, photographing of applicant; grounds for denial of license; identification cards.

(a) Such information as may be required by the city manager shall be furnished by all persons who will be doing installations or maintenance work as may be required by him to enable a background investigation to determine the fitness of the applicant for a license to install or maintain police alarm systems. Applicants will be fingerprinted and photographed in conjunction with such investigation. Identification cards shall be issued by the city.

(b) The license required by this article shall be denied by the city manager if:

- (1) The character or reputation of the applicant is determined to be inimical to the safety or general welfare of the community;
- (2) The applicant, his employee or agent has knowingly made any false, misleading or fraudulent statement of a material fact in the application for a permit, or in any report or record required to be filed with any city agency; or
- (3) The applicant has had a similar type permit previously revoked for good cause within the past year, unless the applicant can show a material change in circumstances since the date of revocation.

(c) Approved identification cards shall be carried at all times by persons licensed under this article, and such cards will be shown on demand.

(Code 1965, § 22-47)

Sec. 10-54. Approval of identification cards for agents of nonresident companies.

The city manager may approve identification cards for use in the city by agents of companies based elsewhere without background identification upon payment of the license fee.

(Code 1965, § 22-48)

Sec. 10-55. Bond requirement.

No license required under this article shall be issued until the applicant files with the city manager a surety bond or other surety guarantee in the amount of not less than \$10,000.00 conditioned for the faithful and honest conduct of the business and individuals under the license. Such bond shall run in favor of the city and citizens thereof who are served by the licensee, his agents and employees.

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(Code 1965, § 22-49)

Sec. 10-56. Direct dial systems.

No installer may code a direct dial alarm system to any telephone without the express permission of the person to whose telephone it is to be coded. Direct dial alarm systems shall not be coded to call 911.

(Code 1965, § 22-50)

Sec. 10-57. Audible alarm requirements.

Every person maintaining an audible alarm shall post a notice containing the names and telephone numbers of the persons to be notified to render repairs or service and secure the premises during any hour of the day or night that the burglar alarm is actuated. Such notice shall be posted near the alarm in such a position as to be legible from the ground outside the building where the alarm system is located. Such requirement shall not apply to audible automobile alarms.

(Code 1965, § 22-51)

Sec. 10-58. Appeal.

Appeals from decisions of the city manager under this article shall be taken to the city council.

(Code 1965, § 22-52)

Secs. 10-59–10-80. Reserved.

ARTICLE IV. CONTRACTORS*

***Cross reference(s)**--Buildings and building regulations, ch. 8.

Sec. 10-81. Contractor defined.

- (a) A "contractor," within the meaning of this article, is any person who:
- (1) Undertakes with or for another, within the city, to build, construct, alter, repair, add to, move, or wreck any building or structure or any portion thereof,

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or who undertakes the improvement of any building or structure for which improvement a charge is made, either by a fixed sum, price, fee, percentage, or other combination besides wages, or any combination beside wages. Such definition shall include those normally denominated in the building trades as "subcontractors" or "special contractors."

- (2) Builds, constructs, alters, adds to, moves, or wrecks any building or structure, either on his own or other property, for purpose of resale or rental. A homeowner may secure a permit on only one residence in any 12-month period, and the construction of more than one residence by a person in any one year shall be construed to mean that such extra construction will be for resale or rental purposes, and that such party is to be classified as a contractor.

(b) The definition of "contractor" shall not include:

- (1) A person who is paid wages by a homeowner, as defined in subsection (a)(2) of this section, if the owner of the building or structure buys his own building material.
- (2) Plumbers, electricians or other specialized trades for which special licenses are required.
- (3) Owners making nonstructural repairs or maintenance in their buildings where a contractor is not employed, except as such owner is governed by subsection (a)(2) of this section.
- (4) Construction managers who provide design, inspection and administration services with the owner entering into separate contracts for construction or material purchases.

(Code 1965, § 7-31)

Sec. 10-82. Contractors classified.

For the purposes of this article, contractors shall be divided into the following classifications for definition:

- (1) *General contractor unlimited.* A contractor on an unlimited type or size of structure, as may by ordinance be permitted, shall be known as a "general contractor unlimited."
- (2) *General contractor not to exceed \$750,000.00.* A contractor on a type or size of structure, as may by ordinance be permitted, on which the total value of all labor and materials used shall not exceed \$750,000.00, shall be known as a

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“general contractor not to exceed \$750,000.00.”

- (3) *General contractor not to exceed \$250,000.00.* A contractor on a type or size of structure, as may by ordinance be permitted, on which the total value of all labor and materials used shall not exceed \$250,000.00, shall be known as a “general contractor not to exceed \$250,000.00.”
- (4) *General contractor not to exceed \$150,000.00.* A contractor on a type or size of structure, as may by ordinance be permitted, on which the total value of all labor and materials used shall not exceed \$150,000.00, shall be known as a “general contractor not to exceed \$150,000.00.”
- (5) *General contractor not to exceed \$75,000.00.* A contractor on a type or size of structure, as may by ordinance be permitted, on which the total value of all labor and materials used shall not exceed \$75,000.00, shall be known as a “general contractor not to exceed \$75,000.00.”
- (6) *General contractor not to exceed \$25,000.00.* A contractor on a type or size of structure, as may by ordinance be permitted, on which the total value of all labor and materials used shall not exceed \$25,000.00, shall be known as a “general contractor not to exceed \$25,000.00.”
- (7) *General contractor not to exceed \$10,000.00.* A contractor on a type or size of structure, as may by ordinance be permitted, on which the total value of all labor and materials used shall not exceed \$10,000.00, shall be known as a “general contractor not to exceed \$10,000.00.”
- (8) *Special contractor.* A person who contracts for labor or for labor and material involving only one trade or one particular kind of work with the building industry shall be known as a “special contractor.” The following categories of special contractor are established based upon the contract amount of the total of labor and material for the performance of the specialty:
 - a. Special contractor unlimited.
 - b. Special contractor not to exceed \$750,000.00.
 - c. Special contractor not to exceed \$250,000.00.
 - d. Special contractor not to exceed \$100,000.00.
 - e. Special contractor not to exceed \$50,000.00.

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- f. Special contractor not to exceed \$25,000.00.
- g. Special contractor not to exceed \$10,000.00.

(Code 1965, § 7-32; Ord. No. 2563, § 1, 3-4-92)

Sec. 10-83. License required.

No person shall engage in the business of a contractor within the city without having first obtained a license from the city. No building permits shall be issued to, nor any work performed by, any contractor who has not first obtained a license, or is delinquent in the payment of his annual fee, or whose license has been suspended or revoked by action of the building board of appeals. On any work requiring a licensed contractor, permits shall be issued only to the contractor or to his authorized representative. If any portion of the work is excluded from the contract, the application for a permit shall state the portions so excluded. Should the contractor be discharged, or abandon the work, he shall notify the chief building official in writing of the fact. No further work shall be done until a new licensed contractor has been selected, who shall notify the chief building official in writing of his selection to complete the work.

(Code 1965, § 7-38)

Sec. 10-84. License fees.

For the purpose of providing for the regulation and licensing of contractors and special contractors, such contractors and special contractors are divided into separate classifications under this article and shall pay the annual license fee therefor as established by resolution of the city council and on file in the city clerk's office.

(Code 1965, § 7-39; Ord. No. 2563, § 1, 3-4-92)

Sec. 10-85. Fees not to be prorated.

License fees required by this article shall not be prorated for any portion of a year.

(Code 1965, § 7-40)

Sec. 10-86. Scope of licenses.

A person licensed as a special contractor shall be limited to the trade or particular kind of work specified in such license and such other work as may be incidental thereto, but shall not contract to do any work other than that so specified in his license. Nothing contained in this section shall prohibit the issuance of one or more licenses for different trades or particular kinds

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of work to the same individual; provided, however, that such person shall be first duly examined and qualified by the building official as to each trade or particular kind of work.

(Code 1965, § 7-41)

Sec. 10-87. Duties of building official; requirements for issuance of license.

(a) The building official shall receive and consider license applications, hold examinations for licenses, and issue new licenses as appropriate. Each applicant shall submit in writing, on forms made available by the building official, a completed application for license, information establishing the applicant's net worth, assets and liabilities, additional personal information, and such fees as are required. The building official shall review the license application and shall issue the license if he finds the application to be complete and proper; if the required examinations have been successfully completed; and if the appropriate fees and charges have been tendered.

(b) Prior to issuing a contractor's license, the building official shall see that the following conditions are met:

- (1) No general or special contractor license shall issue unless the applicant establishes that the applicant's net worth is equal to at least 25 percent of the stated dollar amounts in section 10-82. An applicant for a "general contractor unlimited" license shall establish that the applicant's net worth is at least 25 percent of \$750,000.00.
- (2) The building official shall obtain a credit report, from a credit reporting agency approved by him, which establishes that:
 - a. There are no unsatisfied judgments against the applicant; and
 - b. There are no overdue accounts. For the purpose of this subsection (b)(2)b, "overdue" shall mean not having been paid within 60 days of the due date.
- (3) As an alternative to satisfying subsections (b)(2)a and (b)(2)b of this section, the applicant may provide written evidence from a surety company licensed to do business in the state that the applicant is entitled, upon payment of the required fees, to obtain a bond at least equal to the dollar amount in the category for which the license is requested.
- (4) With respect to partnerships, joint ventures and limited liability companies, the applicant shall submit the necessary financial information or proof for the partnership, joint venture or company, as well as for each individual comprising

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the partnership, joint venture or company.

- (5) The building official may require additional information, and may investigate at any time that a license is in effect in order to determine if a licensee is acting pursuant to the requirements of this Code. Failure or refusal of the licensee to supply such information shall constitute grounds for suspension or revocation of the license, which suspension or revocation shall be referred to the building board of appeals for action by it.
- (6) If an owner of a structure for which a building permit is required pays wages to a person, and such owner purchases such owner's own building materials, the building official may require of the owner that either the person performing the work and being paid wages or the owner provide proof that the owner is purchasing directly from the supplier.

(c) At any time that the building official has reasonable grounds to believe that a licensee's net worth is not sufficient to satisfy the standards of an applicant for such license, the building official may require that such licensee submit additional and/or updated information to evaluate whether or not to suspend or revoke such license. A licensee's failure to supply such information, or evidence of inadequate net worth, shall be grounds for suspension or revocation of the license by the building board of appeals.

(Code 1965, § 7-37; Ord. No. 2616, § 3, 11-18-92)

Sec. 10-88. License application, examination and issuance procedure.

The determination of eligibility for licenses shall be made by the building official. All hearings for suspension or revocation of licenses and matters pertaining thereto shall be by the building board of appeals. Applications for contractor's licenses shall be on such forms, and the applicant shall furnish such information, as the building official may prescribe. Such applications shall be accompanied by an examination fee as established by resolution of the city council and on file in the city clerk's office. Examinations shall be given at reasonable intervals and if, in the opinion of the building official, the applicant is qualified by training and/or experience and is financially and morally responsible to fulfill the obligations of a contractor, he shall direct the city manager to issue the applicant a license upon payment of the annual license fee.

(Code 1965, § 7-42)

Sec. 10-89. License renewal.

Licenses may be renewed annually without further examination upon payment of the annual license fee on or before January 31 of each successive year. Licenses which are one year

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or more in arrears may be renewed by the city manager only upon reexamination and payment of all fees as set forth in this article.

(Code 1965, § 7-43)

Sec. 10-90. Contractor's responsibility; license revocation.

(a) A contractor shall be responsible for all work included in his contract, whether or not such work is done by him directly or by a subcontractor. He shall be responsible for all funds or property received by him for prosecution or completion of a specific contract or for a specific purpose. The chief building official may, upon his own motion, and shall upon the verified complaint in writing of any person, require any contractor to appear before the building board of appeals for hearing upon five days' notice in writing, mailed to his last known post office address, and the board shall have the power to temporarily suspend or permanently revoke a license if the holder thereof is found guilty of, or commits, any one or more of the following acts or omissions:

- (1) Abandonment of any contract without legal cause.
- (2) Diversion of funds or property received for performance or completion of a specific contract, or for a specified purpose in the performance or completion of any contract, and their application or use for any other contract, obligation or purpose, or the failure, neglect or refusal to use such funds or property for the performance or completion of such contract.
- (3) Fraudulent departure from, or disregard of, plans or specifications in any material respect without consent of the owner or his duly authorized representative and the building official.
- (4) Willful and deliberate disregard and violation of the building code of the city or failure to comply with any lawful order of the building official.
- (5) Failure to keep records showing all receipts and disbursements of the licensee in all of his transactions as a contractor, and to produce such records for examination by the building board of appeals when so required.
- (6) Misrepresentation of a material fact by the applicant in obtaining a license.
- (7) The doing of any willful, fraudulent act by the licensee as a contractor in consequence of which another is substantially injured.
- (8) Fraudulent use of a license to obtain building permits for another.

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- (9) Carelessness or negligence in providing reasonable safety measures for the protection of workmen and the public.
- (10) Failure to obtain a building permit for any work as required by this Code.
- (11) Conduct by the licensee or an employee thereof consisting of threats of violence, direct or implied, against or harassment of any person, including harassment consisting of destruction of property of another or imposition by improperly altering boundary lines of property or improper use of property so as to burden adjoining properties, while the licensee or employee is engaged in work under the license.

(b) The building board of appeals may reinstate a revoked license if sufficient evidence is presented to the board.

(Code 1965, §§ 7-44, 7-45; Ord. No. 2616, § 4, 11-18-92)

Sec. 10-91. Building board of appeals--Generally.

(a) Appeals from administrative decisions made by the building official shall be heard by the building board of appeals, which is established pursuant to section 8-51. An appeal to such board shall be initiated by an applicant for a license by submitting a completed appeal on an approved form to the building official within five days of mailing of notice of denial or other adverse decision.

(b) The building board of appeals, when meeting as the contractors' licensing appeal board, shall be governed by the rules applicable to the building board of appeals, insofar as applicable. The building board of appeals shall be governed by such rules as will afford due process and fairness, as determined by such board.

(Code 1965, §§ 7-33, 7-34; Ord. No. 2616, §§ 1, 2, 11-18-92)

Sec. 10-92. Same--Meetings; quorum; removal of members for absence; personal interest prohibited.

Meetings of the building board of appeals shall be called by the building official in his capacity as secretary of the board in order to give proper service to applicants for licensing under this article. A majority of the members of the board shall also have the power to call a special meeting upon their own motion. Four members of such board shall constitute a quorum and a majority. Continued absence of any member from regular meetings of the board shall, at the discretion of the city council, render any such member liable to immediate removal from the board. No board member shall act in a case in which he has a personal interest.

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(Code 1965, § 7-35)

Sec. 10-93. Same--Officers.

At the first meeting in each year, the building board of appeals shall elect officers to serve for a term of one year. These officers shall consist of a chairman and vice-chairman, and the building official shall act as secretary.

(Code 1965, § 7-36)

Sec. 10-94. Same--Powers and duties.

The building board of appeals shall have the following powers and duties:

- (1) To consider appeals of license applications or rejections.
- (2) To decide appealed issues concerning examinations and other administrative tasks assigned to the building official and to revoke/suspend any license, as well as to adopt reasonable rules and regulations for the conduct of its business.
- (3) To render all decisions and findings in writing to the building official, with a copy to the city manager and a copy to the licensee or the applicant for the license.
- (4) If undue hardship has arisen which results in an unfair application of the terms of this article, the board may, in a specific case, by unanimous action, vary the application of the regulations in this article, so long as such variance is consistent with the general purpose and intent to protect the public and to maintain equal treatment among all licensees.

(Code 1965, § 7-37; Ord. No. 2616, § 3, 11-18-92)

Sec. 10-95. Violation of article; penalties.

In addition to suspension or revocation of licenses by the board as provided by this article, any person violating any of the provisions of this article or any lawful rule or regulation of the building board of appeals, or any lawful order of the building inspector, shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this article are committed, continued or permitted.

(Code 1965, § 7-48)

Secs. 10-96–10-145. Reserved.

ARTICLE V. PAWNBROKERS*

***State law reference(s)**--Authority to regulate, C.R.S. § 12-56-102

Sec. 10-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contract for purchase means a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker upon the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, not to exceed 90 days, has the option to cancel such contract.

Fixed price means the amount agreed upon to cancel a contract for purchase during the option period. A fixed price shall not exceed:

- (1) One-tenth of the original purchase price for each month, plus the original purchase price, on amounts of \$50.00 or more; or
- (2) One-fifth of the original purchase price for each month, plus the original purchase price, on amounts under \$50.00.

Fixed time means the period, not to exceed 90 days, as set forth in a contract for purchase, for an option to cancel such contract.

Local law enforcement agency means the police department of the city.

Option means the fixed time and fixed price agreed upon by the customer and the pawnbroker, in which a contract for purchase may be, but does not have to be, rescinded by the customer.

Pawnbroker means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of business.

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Purchase transaction means the purchase by a pawnbroker in the course of business of tangible personal property for resale, other than newly manufactured tangible personal property which has not been previously sold at retail, when such purchase does not constitute a contract for purchase.

Tangible personal property means all personal property other than choses in action, securities or evidence of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of business in connection with a contract for purchase or purchase transaction.

(Code 1965, § 17-70)

Cross reference(s)—Definitions generally, § 1-2.

State law reference(s)—Definitions, C.R.S. § 12-56-101.

Sec. 10-147. License required.

Any person who shall engage in the business of pawnbrokering shall be termed a pawnbroker and be subject to licensure and the other provisions of this Code.

(Code 1965, § 17-71)

Sec. 10-148. Qualifications of licensee and business.

No license required by this article shall be granted to any person who has been convicted of a felony. No license required by this article shall be granted in conjunction with any business where beer or other alcoholic beverages are sold or consumed or in conjunction with which there is operated any card room, billiard room or other place of amusement.

(Code 1965, § 17-72)

Sec. 10-149. License fee.

The fee for each license required by this article shall be as established by resolution of the city council and on file in the city clerk's office and shall be payable in advance.

(Code 1965, § 17-73)

Sec. 10-150. Bond required.

Each applicant for a pawnbroker's license shall, prior to being issued a license, give a bond in the sum of \$2,000.00 to ensure the faithful observance of the provisions of this article and for the safekeeping and return of the articles held under a contract of purchase.

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(Code 1965, § 17-74)

Sec. 10-151. Required acts of pawnbrokers.

(a) A pawnbroker shall keep a numerical register in which he shall record the following information: The name, address and date of birth of the customer and driver's license number or other identification number from any other form of identification which is allowed for the sale of valuable articles pursuant to C.R.S. § 18-16-103, or for the sale of secondhand property pursuant to C.R.S. § 18-13-114; the date, time and place of the contract for purchase or purchase transaction; and an accurate and detailed account and description of each item of tangible personal property, including but not limited to any trademark, identification number, serial number, model number, brand name or other identifying marks on such property. The pawnbroker shall also obtain a written declaration of the customer's ownership which shall state that the tangible personal property is owned by the customer, or shall have attached to such declaration a power of sale from an owner to the customer; how long the customer has owned the property; whether the customer or someone else found the property and, if the property was found, the details of the finding.

(b) The customer shall sign his name in the pawnbroker's register and on the declaration of ownership and shall be given a copy of the contract for sale or a receipt of the purchase transaction.

(c) The pawnbroker's register shall be made available to any local law enforcement agency for inspection at any reasonable time.

(d) The pawnbroker shall keep each register required by this section for at least three years after the date of the last transaction entered into the register.

(e) A pawnbroker shall hold all contracted goods for a period of ten days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(f) A pawnbroker shall hold all property purchased by him through a purchase transaction for 30 days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in any form or altered in any way.

(g) Every pawnbroker shall provide the local law enforcement agency, on a daily basis, with two records, on forms to be provided or approved by the local law enforcement agency, of all tangible personal property accepted during the preceding week and one copy of the customer's declaration of ownership. The forms shall contain the same information required to be recorded in the pawnbroker's register pursuant to subsection (a) of this section.

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(Code 1965, § 17-75)

State law reference(s)--Similar provisions, C.R.S. § 12-56-103.

Sec. 10-152. Prohibited acts.

(a) No pawnbroker shall enter into a contract for purchase or purchase transaction with any individual under the age of 18 years, or with any person who is visibly intoxicated.

(b) No pawnbroker licensed under this article shall purchase outright any secondhand goods for the purpose of resale without first obtaining a license to deal in secondhand goods as required by this Code.

(Code 1965, § 17-76)

State law reference(s)--Similar provisions, C.R.S. § 12-56-104.

Secs. 10-153--10-175. Reserved.

ARTICLE VI. SECONDHAND GOODS DEALERS*

***State law reference(s)**--Valuable articles, C.R.S. § 18-16-101 et seq.

Sec. 10-176. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business of dealing in secondhand goods means and includes the purchase or sale of any secondhand articles of whatever nature, which shall include secondhand automobile parts and accessories, except when such parts and accessories are acquired by the purchase of the entire vehicle to which they are attached, provided that nothing contained in this definition shall be construed to apply to pianos, books, magazines, tapestries, paintings, drawings, etchings, engravings, automobiles or to exchanges, returns or credits of merchandise when the articles exchanged, returned or credited are accepted in full or part payment for like merchandise; provided, however, that any person holding a valid junk dealer's license may also engage in the business of dealing in secondhand merchandise conducting such business in accordance with the

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provisions of this Code under such license. Any person who shall engage in the business of dealing in secondhand goods shall be termed a secondhand goods dealer and be subject to licensure and the

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other provisions of this Code.

Junk means and includes, but is not limited to, ferrous and nonferrous metals, wood or wood products, appliances not being used for their intended purposes, glass, rubber or plastic products, dismantled or inoperable machinery, equipment, tools, junk vehicles or similar materials. Any person who shall buy, sell, barter, handle, trade or deal in junk shall be termed a junk dealer and be subject to licensure and other provisions of this Code.

(Code 1965, §§ 17-55, 17-90)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 10-177. License required; fee.

Any secondhand goods dealer as defined in this article shall first procure a license therefor before conducting any business. The cost of such license shall be established by resolution of the city council.

Sec. 10-178. Records, reports required.

(a) *Records*. Every person licensed under this article shall keep a book in the form prescribed by the city manager in which shall be written at the time of purchase an accurate description of goods, articles or things purchased; the date of receipt of the same; and the name, address and description of the person selling the same; which book as well as the article purchased shall at all times be available to inspection by any member of the police department.

(b) *Reports*. Every person licensed under this article shall make a weekly report in writing, in the form prescribed by the city manager, giving an accurate description of the goods, articles or things purchased or received; the date of the receipt of the same; and the name, address and description of the person selling the same.

(Code 1965, § 17-92)

Sec. 10-179. Duty to hold goods five days.

No person licensed under this article shall sell or remove from his place of business any secondhand goods, articles or things purchased by him until the same shall have been in his possession at least five days.

(Code 1965, § 17-94)

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State law reference(s)--Similar provisions, C.R.S. § 18-16-106.

Sec. 10-180. Purchases from minors, drunks and thieves.

No person licensed under this article shall purchase, or contract for purchase, any tangible personal property or secondhand goods, articles or things from any person under 18 years of age or from any person who at the time of purchase is intoxicated or from any person known by the purchaser to be a thief or an associate of thieves or receiver of stolen property, or from any person reasonably suspected of being such.

(Code 1965, § 17-95)

Chapter 11

RESERVED

Chapter 12 CEMETERIES*

***Cross reference(s)**--Streets, sidewalks and other public places, ch. 32.

State law reference(s)--Municipal cemeteries, C.R.S. § 31-25-701 et seq.

Sec. 12-1. Management; funding.

Sec. 12-2. Rules and regulations.

Sec. 12-3. Perpetual care funds.

CEMETERIES

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Sec. 12-1. Management; funding.

The city manager shall be responsible for the management of the city cemeteries, and may delegate the duties involved in improvement, maintenance and operation thereof. The city manager shall report to the city council the financial and physical status of the cemeteries and perpetual care funds, and shall incorporate in a proposed annual budget such allocations of funds as may be necessary for their proper management. The city council shall levy and appropriate for the cemeteries the necessary funds in a manner consistent with all budgeting requirements.

(Code 1965, § 8-3)

Sec. 12-2. Rules and regulations.

The city manager is hereby authorized and empowered to make, enforce, and modify or repeal, from time to time, such rules and regulations as may be advisable for the management, use, improvement and maintenance of the cemeteries and for the administration of endowment funds, not inconsistent with the provisions of this chapter.

(Code 1965, § 8-13)

Sec. 12-3. Perpetual care funds.

All payments made and received for perpetual care of grave spaces in city cemeteries shall be recorded and maintained in a separate fund from all other funds of the city, and shall constitute permanent trust funds, for the purposes provided in this chapter, to be known as the cemetery perpetual care fund, and such funds shall be invested in accordance with the investment policy of the city. The principal of such funds shall be preserved as an endowment for the perpetual care and maintenance of grave spaces in the cemeteries, and the income from such fund shall be used solely for such purpose. The aforesaid funds shall be entirely independent of, and in addition to, payments made for the purchase of lots or burial spaces for which perpetual care is purchased.

(Code 1965, § 8-11)

Chapter 13

RESERVED

Chapter 14 ELECTIONS*

***Charter reference(s)**--Elections, art. II.

Cross reference(s)--City council, § 2-26 et seq.

State law reference(s)--Municipal election code, C.R.S. § 31-10-101 et seq.

Sec. 14-1. Colorado Municipal Election Code of 1965 adopted.

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Sec. 14-1. Colorado Municipal Election Code of 1965 adopted.

The Colorado Municipal Election Code of 1965, as enacted by the state legislature, is hereby adopted by reference.

(Code 1965, § 10-1)

Chapter 15

RESERVED

Chapter 16 ENVIRONMENT*

*State law reference(s)--Abatement of nuisances, C.R.S. § 16-13-301 et seq.

Article I. In General

Secs. 16-1--16-25. Reserved.

Article II. Junk, Rubbish and Weeds

Sec. 16-26. Definitions.

Sec. 16-27. Duties of property owner and lessee; unlawful accumulations; inspections.

Sec. 16-28. Cutting and removal required.

Sec. 16-29. Notice to cut and remove.

Sec. 16-30. Notice to abate; cutting, removal by city.

Sec. 16-31. Assessing costs.

Sec. 16-32. Notice of assessment.

Sec. 16-33. Collection of assessments.

Sec. 16-34. Penalty for violations.

Sec. 16-35. Administrative hearing.

Secs. 16-36--16-55. Reserved.

Article III. Nuisances

Sec. 16-56. Common law and statutes adopted.

Sec. 16-57. Prohibited; abatement authorized.

Sec. 16-58. Bringing nuisance into city.

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Sec. 16-59. Responsibility for nuisances.

Sec. 16-60. Notice and abatement procedures.

Sec. 16-61. Enumeration of nuisances.

Secs. 16-62--16-80. Reserved.

Article IV. Litter

Sec. 16-81. Unlawful deposits.

Sec. 16-82. Securing of vehicle contents to prevent spillage.

Secs. 16-83--16-105. Reserved.

Article V. Noise

Sec. 16-106. Unnecessary and unusually loud noise.

Secs. 16-107--16-125. Reserved.

Article VI. Air Pollution

Sec. 16-126. Control of dust-producing areas.

Sec. 16-127. Smoking restricted in public places.

Sec. 16-128. Air quality; declaration of policy.

Sec. 16-129. Definitions.

Sec. 16-130. Regulation of new solid fuel burning devices--clean stoves only.

Sec. 16-131. Solid fuel burning during high pollution days--prohibited

Sec. 16-132. Elimination of nonconforming wood stoves.

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Sec. 16-133. Entry in order to inspect.

Sec. 16-134. Appeals.

Sec. 16-135. Exemptions—economic need and sole source of heat.

Sec. 16-136. Severability.

Sec. 16-137. Nuisance; injunction.

Sec. 16-138. Penalty.

Sec. 16-139. No duty created.

Sec. 16-140. Wood stove incentive replacement fund.

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ARTICLE I. IN GENERAL

Secs. 16-1–16-25. Reserved.

ARTICLE II. JUNK, RUBBISH AND WEEDS

Sec. 16-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Brush means natural growth of bushes and vegetation such as is growing out of place in the location where growing, and shall include all cuttings from trees and bushes, and high and rank vegetable growth, which may conceal filthy deposits.

Junk means and includes, but is not limited to, ferrous and nonferrous metals, wood or wood products, appliances not being used for their intended purposes, rubber or plastic products, dismantled or inoperable machinery, equipment, tools, junk vehicles or trash or similar materials.

Rubbish means all combustible or noncombustible waste, including but not limited to ashes, bottles, cans, carcasses of dead animals, cardboard, cloth, crockery, human or animal excrement, glass, abandoned or unusable household furnishings or appliances, metals, plastics, tree branches, limbs, waste building materials or items discarded in such a manner as to create a reasonable likelihood of becoming a harborage for insects or vermin or disease, or otherwise create a health or safety hazard.

Weed means an unsightly, useless, troublesome or injurious herbaceous plant and such plant as is out of place at the location where growing, and includes all rank vegetable growth which exudes unpleasant or noxious odors, and also high and rank vegetable growth that may conceal filthy deposits, specifically including, but not limited to, five designated undesirable plants known commonly as leafy spurge, purple loosestrife and diffuse, russian and spotted knapweed.

(Code 1965, § 14-24, Ord. No. 2832, 5-3-95)

Cross reference(s)--Definitions generally, § 1-2.

State law reference(s)--Junk defined, C.R.S. § 31-15-401(1)(d).

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Sec. 16-27. Duties of property owner and lessee; unlawful accumulations; inspections.

(a) (i) It shall be the duty of each and every owner and each and every lessee of any tract or parcel of real property in the City to keep the property free of junk and rubbish and to cut to within three inches of the ground all weeds and brush exceeding six inches in height and to keep such growth down on each lot or tract of ground on or along any street or avenue adjoining such lot or tract between the property line and the curbline thereof, and on or along any alley adjoining such lot or tract between the property line and the center of such alley;

(ii) The requirements of (i), above, shall not apply to undeveloped lands over one acre in size, instead, such owners or lessees of such lands shall be required to keep weeds down or cut between the property line of such land and the center of any adjacent right-of-way and shall be required to keep the weeds down or cut within twenty feet (20') feet of any adjacent tract, parcel or area on which the weeds are kept down or cut, as provided or required in (i) above or as otherwise set forth in this chapter.

(iii) The requirements of (i), above, shall not apply to agricultural lands (as defined in 39-1-102 (1.6)(a), C.R.S.) instead, such owners or lessees of such lands shall not be required to keep weeds down or cut between the property line of such land and the center of any adjacent right-of-way and shall be required to keep the weeds down or cut within twenty feet (20') of any adjacent tract, parcel or area on which the weeds are kept down or cut, as provided or required in (i) or (ii) above or as otherwise set forth in this chapter.

(iv) Notwithstanding any language to the contrary in (i) through (iii), above, every owner and every lessee of any tract or parcel, whether or not agricultural or undeveloped, shall remove and cut the five undesirable plants from such property.

(b) It is unlawful for any owner or lessee of any lot or tract of ground in the city to pile, store or allow to accumulate any junk or rubbish on the premises. This section does not apply to salvage yards permitted under section 4-3-1 of the zoning and development code of the city.

(c) The city, through its agents or employees, shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purpose of inspecting for the existence of violations, when at least one of the following circumstances has occurred:

- (1) The landowner or occupant has requested an inspection;
- (2) A neighboring landowner or occupant has reported a suspected weed, junk or rubbish violation and requested an inspection; or

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(3) An authorized agent of the city has made a visual observation from a public right-of-way or area and has reason to believe that a violation exists.

No entry upon premises, lands or places shall be permitted until the landowner or occupant has been notified, either orally or by a notice being posted in a conspicuous location at the property. Where possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(d) If after the city has given a notice of a pending inspection or requested an inspection and the landowner or occupant denies access to the city employee, agent or inspector, the city may seek an inspection warrant issued by the municipal court. The court shall issue an inspection warrant upon presentation of an affidavit which contains information which gives the inspector reasonable cause to believe that a provision of this article is being or has been violated, establishes that the occupant or landowner has denied access to the inspector, and which describes the land. No landowner or occupant shall deny access to such land when presented with an inspection warrant. Denial of access when presented with an inspection warrant shall be deemed a violation and shall be deemed, in addition to other civil or criminal remedies, contempt of court.

(Code 1965, § 14-25, Ord. No. 2832, 5-3-95)

Sec. 16-28. Cutting and removal required.

It shall be the duty of the owner, agent or lessee of any lots, tracts or parcels of land, except as stated in section 16-27, to cut weeds or brush and to remove such weeds or brush, together with rubbish, and to keep such weeds down each year. All such weeds and brush shall immediately, upon cutting, be removed with the rubbish to the appropriate disposal site.

(Code 1965, § 14-26)

Sec. 16-29. Notice to cut and remove.

The city manager shall publish for three consecutive days each spring a notice in the official newspaper of the city notifying all owners of property, without naming them, that it is their continuing duty to cut the weeds and brush and to remove the weeds and brush, together with the rubbish, from their properties and from the streets and alleys as provided in this article, during the time provided in this article, and that, in default of such cutting and removal, the work may be done under order of the city manager and the cost thereof, together with the penalties provided in this article, will be charged to the respective lots, tracts or parcels of land.

(Code 1965, § 14-27)

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Sec. 16-30. Notice to abate; cutting, removal by city.

(a) In case of the failure of any owner or lessee of any lot, tract or parcel of land to cut and remove weeds, brush, junk or rubbish, as provided in this article, and upon the election of the city to remove such weeds, brush, junk or rubbish, the city manager is authorized to give notice by certified mail addressed to the last-known post office address of the owner of such land as that address appears in the records of the county recorder. Such notice shall require:

- (1) Compliance with the terms of the notification;
- (2) Acknowledgment by the addressee of the notification and submission to the city manager of an acceptable plan and schedule for the completion of a management plan; or
- (3) A request from the addressee for an administrative hearing, within ten days of the date of the notice.

If such election is not made within ten days, or the land owner or occupant otherwise fails to comply with the notice, the city may then proceed to enforce a management plan, which may include, but not be limited to, cutting of such weeds and brush or removal of junk and/or rubbish.

(b) A management plan shall be prepared by the city and shall include, but not be limited to, a document containing the signatures of the owner and the lessee, if the owner is not in actual possession of the property, a mutually agreed upon date for elimination or removal of weeds, brush, junk and/or rubbish, and a bond, cash deposit or other acceptable form of security payable to the city in an amount reasonably calculated to approximate the cost of cleanup, and/or to secure performance of the management plan.

(c) An administrative hearing, if requested by the party in interest, shall be specific as to the condition of weeds, brush, accumulated junk and/or rubbish, and evidence shall be heard by the duly appointed board as to these matters only. Statements and evidence, if offered, shall be taken from all parties in interest, which evidence must be relevant to the existence of and/or the removal or elimination of the infestation of weeds, brush and/or the accumulation of junk and/or rubbish. The board shall make findings of fact from the evidence presented at the hearing as to whether the conditions complained of exist and should be eliminated. If the board determines that weed or brush infestation exists or if an accumulation of junk and/or rubbish exists and should be cut or removed, the city manager may issue an order based on the findings of the board, directing that the infestation or accumulation be removed or eliminated. The order of the city manager shall be a final decision and may only be appealed to the district court, pursuant to Colorado rule of civil procedure 106(a)(4). Failure of a party in interest to timely file an appeal constitutes a bar and a waiver of any right to contest the city's right to eliminate or remove the weeds, brush, junk and/or rubbish from the property and charge the

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resulting costs against the person and/or the property. The city, through its agents or employees, shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purpose of ensuring compliance with the requirements of this article. If an order of the city manager has not been complied with within 30 days after its issuance, the city, at the discretion of the city manager or his designee, may cause the elimination or removal of the infestation of weeds or brush and/or the removal or elimination of accumulated junk and/or rubbish. Any owner, lessee or other party in interest who fails to comply with an order issued by the city manager or his designee is hereby obligated to pay administrative costs and expenses incurred in the elimination or removal of the conditions complained of. Such administrative costs shall include the cost of removal or elimination, legal costs and fees and a 25 percent administrative surcharge which is occasioned by enforcement of this article. All costs are independent of any other penalties or powers of enforcement of the city.

(d) No agent or employee of the city shall have a civil cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land for purposes consistent with this section except when such damages were willfully or deliberately caused by the landowner or occupant.

(Code 1965, § 14-28)

Sec. 16-31. Assessing costs.

Upon completion of the work done by city forces under this article, a charge shall be made against the owner of the property. The charge shall be the actual costs for labor, equipment and materials plus 25 percent for administration, supervision and inspection, or a minimum charge to be set by the city manager, whichever is greater.

(Code 1965, § 14-29)

State law reference(s)—Authority to assess costs, C.R.S. § 35-5.5-109.

Sec. 16-32. Notice of assessment.

The community development department, as soon as may be practicable after an assessment is made under this article, shall send by mail, addressed to the owner of the affected lots or tracts of land, at the reputed post office address of such owner as it appears in the records of the county assessor, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner or owners, and the amount of the assessment.

(Code 1965, § 14-30)

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Sec. 16-33. Collection of assessments.

It shall be the duty of the owner to pay the assessment levied under this article within 20 days after the mailing of such notice, and in case of his failure so to do, he shall be liable personally for the amount of the assessment, and such assessment shall be a lien upon the respective lots or parcels of land from the time of such assessment. In case the owner shall fail to pay such assessment within 20 days after notice has been mailed to him, as provided by this article, then it shall be the duty of the city manager to certify the amount of the assessment to the county treasurer or other officer of the county having custody of the tax list at the time of such certification, to be by him placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, with a 25 percent administrative surcharge thereon to defray the costs and to provide an economic disincentive for violations and the continuation of violations; and all of the laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and the redemption thereof, shall apply to and have full effect for the collection of all such assessments.

(Code 1965, § 14-31)

Sec. 16-34. Penalty for violations.

The fact that assessments have been made against property as provided in this article for cutting and removing weeds, brush and rubbish shall not prevent the owner, agent or lessee from being punished by fine or jailing under the general provisions of this Code, but such fine or penalty may be imposed on those found guilty of violating the provisions of this article in all cases, whether an assessment has or has not been made in accordance with the provisions of this article.

(Code 1965, § 14-32)

Sec. 16-35. Administrative hearing.

(a) *Hearing board.* The city council shall, as needed, appoint an administrative hearing board which shall hear evidence and render findings of fact as outlined in this section. The board shall serve as the undesirable plant management advisory commission. The members of the board shall be residents of the city. The board shall annually elect a chairperson and a vice-chairperson. A majority of the members of the board shall constitute a quorum for the conduct of business.

(b) *Management plan.* The administrative hearing board in its capacity as the undesirable plant management advisory commission shall develop a recommended management plan for the integrated management of designated undesirable plants within the city. The management plan shall be reviewed at regular intervals but not less often than once every three

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years. The management plan shall be transmitted to the city council for approval, modification or rejection.

(c) *Designation of undesirable plants.* The administrative hearing board shall designate undesirable plants which are subject to management. Plant species may be in addition to those designated in section 16-26.

(d) *Individual management plans.* The administrative hearing board shall require that identified landowners or lessees be required to submit an individual management plan to control undesirable plants upon such person's property.

(e) *Authority of city council.* The city council shall have the sole and final authority to approve, modify or reject the management plan, management criteria and management practice recommendations of the administrative hearing board as to the requirements of weed management in and for the city. The city council shall not hear appeals from the board on enforcement actions taken by the board, the city manager or city staff.

(Code 1965, § 14-33)

Secs. 16-36–16-55. Reserved.

ARTICLE III. NUISANCES*

***Cross reference(s)**—Cleanliness of premises where domestic animals are kept, § 6-31; lost, stolen, confiscated or abandoned property, § 20-26 et seq.

Sec. 16-56. Common law and statutes adopted.

In all cases where no provision is made defining what are nuisances and how the same may be removed, abated or prevented, in addition to what may be declared such in this Code, those offenses which are known to the common law of the land and state statutes as nuisances may, in case such nuisances exist within the city limits or within a mile thereof, be treated as such and proceeded against as in this article provided, or in accordance with any other provision of law.

(Code 1965, § 19-60)

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Sec. 16-57. Prohibited; abatement authorized.

Each and every nuisance mentioned, declared or defined by any ordinance of the city is hereby prohibited, and the county health department or city manager shall have power to abate such nuisances by filling up, draining, clearing, purifying or removing such nuisances, as the case may be.

(Code 1965, § 19-61)

Sec. 16-58. Bringing nuisance into city.

No person shall bring into the city or keep therein for sale or otherwise, either for food or for any other purpose whatever, any animal, dead or alive, matter, substance or thing which shall be or which shall occasion a nuisance in the city, or which shall be dangerous or detrimental to health.

(Code 1965, § 19-62)

Sec. 16-59. Responsibility for nuisances.

Where a nuisance exists upon private property, and is the outgrowth of the usual, natural or necessary use of the property, the owner thereof or his agent is hereby declared the author thereof; but where any such nuisance shall arise from the unusual or unnecessary use to which any such property may be put or from any business thereon conducted, the occupant shall be deemed the author thereof; and any person who shall by himself or agent cause or create any nuisance in any place or manner, or shall suffer his agent or family to so create or cause such nuisance shall be deemed the author of such nuisance.

(Code 1965, § 19-64)

Sec. 16-60. Notice and abatement procedures.

It shall be the duty of the county health department or the city manager, or his authorized agent, to serve notice upon the owner, occupant, agent or person in possession, charge or control of any lot, building or premises in or upon which any nuisance may be found or who may be the cause or owner of such nuisance, requiring them to abate such nuisance in such manner as he shall prescribe within a reasonable time.

- (1) The notice may be given or served by any officer directed to give or make such notice.

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(2) If the person so notified shall neglect or refuse to comply with the requirements of such order by abating the nuisance within the time specified such person shall be guilty of a misdemeanor.

(3) It shall be the duty of the city manager, his agent or the county health department to proceed at once, upon the expiration of the time specified in such notice, to cause such nuisance to be abated; provided, that whenever the owner, agent or person in possession, charge or control of the premises in or upon which any nuisance may be found is unknown or cannot be found, the city manager, his agent or the county health department shall proceed to abate such nuisance without notice.

(4) In either case, the expense of such abatement shall be collected from the person who created, continued or suffered such nuisance to exist.

(Code 1965, § 19-65)

Sec. 16-61. Enumeration of nuisances.

In addition to those things which are elsewhere by ordinance of the city or statutes of the state declared to be and constitute nuisances, the following are hereby declared to be a nuisance, or an act in the nature of a nuisance, and it shall be unlawful for any owner, agent or occupant to create, permit or maintain any such nuisance:

(1) *Businesses:* To so negligently conduct any business or use any premises as to create such an offensive smell as may taint the air and render it unwholesome or disagreeable to the neighborhood.

(2) *Dangerous trade, business or condition:* Whenever any trade, business or manufacturer, or the maintenance of any substance or condition or thing, shall be dangerous to the public health.

(3) *Garbage in watercourses:* To throw or deposit, or cause to be thrown or deposited, any offal or any offensive matter, or the carcass of any animal, in any watercourse, pond, spring or well, or on land within the city which results in offensive or unwholesome conditions.

(4) *Animal or human fecal material:* To deposit any animal or human fecal material, dead animal, or other filthy, offensive or noisome substance upon any lot, street, alley, highway, park or place other than an approved wastewater system or lawfully designated sanitary landfill site.

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- (5) *Impure water:* To corrupt or render unwholesome or impure the water of any drinking fountain, spring, stream, pond or lake, to the injury or prejudice of others, or any part of the city water supply system.
- (6) *Cross connection:* It shall be unlawful to cross connect with the city water supply system by introducing into such system any foreign water not a part of the treated city water supply system. Provided, it shall be permissible to introduce into the city water supply system water of another approved water system.
- (7) *Noxious emissions:* To erect, continue or use any building or other place for the exercise of any trade, employment or manufacture which by occasioning noxious emissions, offensive smells or otherwise is offensive or dangerous to the health of individuals or of the public.
- (8) *Private drain/sewers:* For any person to suffer or permit any cellar, vault, private drain, pool, sewer or sink upon any premises belonging to or occupied by him to become nauseous, foul, offensive or injurious to the public health.
- (9) *Stagnant water:* The permitting or maintaining of stagnant water on any lot or piece of ground within the limits of the city is hereby declared to be a nuisance, and every owner or occupant of a lot or piece of ground within the city is hereby required to drain or fill up such lot or piece of ground whenever such draining or filling is necessary so as to prevent stagnant water or other nuisance accumulating thereon.
- (10) *Encouragement of illegal activities:* Any public or private place or premises which encourages professional gambling, unlawful use of drugs, unlawful sale or distribution of drugs, furnishing or selling intoxicating liquor to minors, furnishing or selling fermented malt beverages to persons under 21 years of age, solicitation for prostitution, or trafficking in stolen property.

(Code 1965, § 19-66)

Cross reference(s)--Animals, ch. 6; businesses, ch. 10; parks and recreation areas, ch. 26; solid waste, ch. 30; waste water system, § 38-26 et seq.; water system, § 38-96 et seq.

Secs. 16-62--16-80. Reserved.

ARTICLE IV. LITTER

Sec. 16-81. Unlawful deposits.

It shall be unlawful for any person to cast, throw, place, sweep or deposit anywhere within the city any refuse in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway, or other public or private place; nor shall any person place or deposit his refuse in the container of another in a manner so it will be collected as though it had been generated by that other.

(Code 1965, § 19-74)

Sec. 16-82. Securing of vehicle contents to prevent spillage.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded or the load thereof securely covered so as to prevent any of its load from dropping, sifting, leaking, blowing or otherwise escaping therefrom; except that sand may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway.

(Code 1965, § 19-71)

Cross reference(s)--Traffic and vehicles, ch. 36.

State law reference(s)--Similar provisions, C.R.S. § 42-4-1407.

Secs. 16-83--16-105. Reserved.

ARTICLE V. NOISE*

***Cross reference(s)**--Barking dogs prohibition, § 6-61.

Sec. 16-106. Unnecessary and unusually loud noise.

(a) *Prohibition during certain hours.* It shall be unlawful for any person to make, continue or cause to be made or continued any unnecessary, unusually loud or unusual noise between the hours of 8:00 p.m. and 6:00 a.m. which either annoys, injures or endangers the comfort, repose, health or safety of other persons. For the purpose of this section, a member of the police department of the city is empowered to make a prima facie determination as to

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whether such noise constitutes a public nuisance.

(b) *Near schools and hospitals.* It shall be unlawful for any person, by himself or in the operation of any instrument, machine or vehicle, to make any unnecessary noise within 150 feet of any hospital or other institution reserved for the sick, or any school during school hours.

(c) *Exemptions.* Persons actively engaged in lawful employment or other lawful pursuits in the area described in subsection (b) of this section, shall be exempt from the provisions of this section.

(Code 1965, § 19-4)

Secs. 16-107--16-125. Reserved.

ARTICLE VI. AIR POLLUTION

Sec. 16-126. Control of dust-producing areas.

It shall be unlawful for any person to own, possess or control any cleared area, parking lot, vacant lot or other site used by vehicular traffic without implementing an effective abatement or preventive fugitive dust-control measure, as may be required, which may include, but is not limited to, the following:

- (1) Wetting down of the dust-producing area;
- (2) Landscaping;
- (3) Covering, shielding or enclosing;
- (4) Paving on a temporary or permanent basis;
- (5) Treating through the use of palliatives and chemical stabilization.

(Code 1965, § 19-70)

Sec. 16-127. Smoking restricted in public places.

(a) *Legislative intent.* Because the smoking of tobacco or any other plant, whether such smoking is active or passive, is a danger to health and is a cause of material annoyance and

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discomfort to those who are present in confined areas, the city council hereby finds, determines and declares it is necessary and conducive to the protection of the public health, safety, welfare and economic well-being to provide for the maintenance of smokefree areas of reasonable sizes and locations within public places in order to prevent persons from being subjected, against their will or desire, to the discomforts and hazards associated with smoking.

(b) *Definitions.* As used in this section:

Designated smoking area means an area or areas within a public place which a proprietor, owner or person in charge of the public place is permitted under this section to designate, and has designated therein an area as a smoking area; in a designated smoking area in a restaurant, only cigarette, and not pipe and cigar, smoking shall be permitted.

Public place means any enclosed, indoor area used by the general public, including, but not limited to, restaurants, retail stores, other commercial establishments, governmental offices, waiting rooms, public conveyances, elevators, airports, bus stations, train stations, educational facilities, hospitals, nursing homes, child care centers, auditoriums, theaters, arenas, assembly and meeting rooms and restrooms, but the term does not include enclosed offices occupied exclusively by smokers, even though such offices may be visited by nonsmokers. Bleachers, stands or other seating facilities for spectators in stadiums or other sports arenas, whether or not indoors, shall be deemed to be public places.

Smoke or *smoking* means the smoking or carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind and includes the lighting of a pipe, cigar or cigarette of any kind.

Smoking prohibited means no smoking shall be allowed in a public place except in a designated smoking area, or as otherwise provided by this section.

Workplace means an enclosed area in which three or more persons work at gainful employment.

(c) *Smoking prohibited in public places.* Except in designated smoking areas permitted by this section, there shall be no smoking permitted in public places.

(d) *Designated smoking areas.* The owner, proprietor, or person in charge of a public place may designate a portion thereof as a designated smoking area, provided that such designation shall be in accordance with all of the terms and provisions of this section, inclusive of, but not limited to, the following:

(1) In restaurants with a seating capacity for over 30 persons, the owner, proprietor, or person in charge may provide a designated smoking area of sufficient size to accommodate

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without unreasonable delay patrons who request to be seated in such an area. The delay shall be deemed reasonable if it is equal for smokers and nonsmokers. If a waiting area is provided, such area may not be a designated smoking area. Patrons shall be advised orally or by signs that nonsmoking areas are available. Restaurants having a seating capacity for 30 or fewer persons shall be exempt from the restrictions imposed by this section; provided, that the owner, proprietor, or person in charge may, if so desired, provide smoking and nonsmoking areas.

(2) In retail stores primarily engaged in the sale of tobacco, tobacco products and smoking implements and in establishments in which malt, vinous and/or spirituous liquors are sold for consumption on the premises, pursuant to a license other than an arts license, and except for those areas within such establishments which are utilized primarily for restaurant or recreational purposes, the owner, proprietor or person in charge may designate the entire facility or portions thereof as a designated smoking area.

(3) Except as permitted by subsection (d)(2) of this section, areas of stores or shops in which merchandise is displayed for sale, corridors utilized for access to such displays and checkout areas in such stores shall not be designated as smoking areas.

(4) In all public places, the owner, proprietor or person in charge who is permitted to designate a smoking area under this section shall designate such an area so that it is not necessary for nonsmokers to pass through such area to reach other nonsmoking areas.

(5) Elevators, public restrooms, and, except as provided in this subsection, waiting rooms and hallways, shall in no event be designated as smoking areas. In respect to public places having unpartitioned spaces of more than 5,000 square feet, no more than 25 percent of such space may be a designated smoking area. In a workplace in which smokers and nonsmokers work in the same office or room, it shall be the responsibility of employers to provide smokefree work areas to accommodate employees who request smokefree work areas.

(6) The proprietor or person in charge of any nursing home, hospital or health care facility shall provide smokefree rooms for nonsmokers, and shall not require a nonsmoker to share a room or other facility with a person who smokes, except with the express consent of the nonsmoker.

(e) *Signs.* To advise persons of the prohibition against smoking in public places and the availability of designated smoking areas, if any, signs shall be posted as follows:

(1) In public places where the owner, proprietor or person in charge prohibits smoking in the entire public place, a sign using the words "no smoking" or the international no smoking symbol, or both, shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the public place.

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(2) In public places where there are designated smoking areas pursuant to this section, the statement "no smoking except in designated areas" shall be conspicuously posted either on all public entrances or in a position clearly visible on entering into the public place.

(3) In public places where smoking is permitted in the entire building or area, a sign using the words "this area is a smoking area in its entirety" shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the area or building.

(f) *Prohibited smoking areas.* Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the fire chief, state statute, ordinances, fire code regulations, or other regulations of the city.

(g) *Responsibilities of proprietors.* Any designated smoking areas permitted to be made under this section shall be made by the proprietor or person in charge of a public place in such a manner as may reasonably carry out the intents and purposes of this section. Such proprietor or person in charge shall make reasonable efforts to obtain compliance with this section in such places by:

- (1) Posting and maintaining posted appropriate signs, as required by this section.
- (2) Arranging work areas to provide a smokefree area, as required by this section.
- (3) Asking smokers to refrain from smoking upon request of a client or an employee suffering discomfort from the smoke.
- (4) Affirmatively directing smokers to designated smoking areas.

(Code 1965, § 19-77; Ord. No. 2581, 7-1-92)

Cross reference(s)—Businesses, ch. 10; fire prevention and protection, ch. 18; parks and recreation areas, ch. 26; streets, sidewalks and other public places, ch. 32.

Sec. 16-128. Air quality; declaration of policy.

Air quality is an important part of the health, safety and welfare of the community. City Council desires to protect and improve air quality in and around the City, not only for the health, safety and general welfare of its citizens, but also because air pollution resulting from the use of wood stoves hurts the aesthetic and economic welfare of the community. Present levels of air pollution which occur during winter inversions in the Grand Valley are unacceptable. The Grand Valley Air Quality Planning Committee has studied and made

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recommendations concerning local efforts which can protect the air quality in the Grand Valley. The City Council endorses such efforts.

To assist in maintaining existing air quality levels and to improve air quality in the City, and its environs, the City Council endorses:

- (a) The continuation of City support of the voluntary “no burn” program presently being implemented by the Mesa County Health Department;
- (b) In the City, a mandatory “no burn” requirement prohibiting the use of uncertified solid fuel burning devices on days of high pollution.
- (c) Provisions to require that only certified wood burning devices or gas devices be installed in the future;
- (d) Provisions which “grandfather” existing devices until the transfer of ownership of the property as provided below;
- (e) Programs, either by local governments or others, or combinations, which provide financial incentives to reduce the use of wood stoves and fireplaces.

(Ord. No. 2981, 2-19-97)

Sec. 16-129. Definitions. As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (a) *Approved Non-solid Fuel Burning Device:* any device that operates exclusively with non-solid fuel, *i.e.*, gas or liquid, and is installed in accordance with City ordinances and resolutions and State regulations, including a properly installed fire box, flues, and gas log apparatus. Hereinafter an approved non-solid fuel burning device is referred to as “gas stove”.
- (b) *Approved Solid Fuel Burning Device:* a solid fuel burning device (*e.g.*, wood stove, pellet stove, masonry heater) which meets the standards set forth, or referred to, in Regulation No. 4 (5 CCR 1001-6). Hereinafter an approved solid fuel burning device is referred to as “clean stove”.
- (c) *Building Inspector:* such person as is designated by the City Manager, *e.g.*, the City’s Code Enforcement personnel.

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- (d) *Dwelling Unit*: as defined by the City's Zoning and Development Code (hereinafter referred to as "home"). Work shops, garages, and other accessory areas are not included within the definition of "home" or "dwelling unit" for purposes of this chapter.
- (e) *High pollution day*: for any area within the City, that period of time or days declared by the Mesa County Health Department, or other person or agency designated by the City Council, to be a high pollution day or "no burn" day. The County Health Department, or other designated person or agency, may make such declaration when monitoring indicates violations within the City of air quality standards established by the City, the United States Environmental Protection Agency, or the State Department of Public Health and Environment, or when meteorological conditions warrant.
- (f) *Operate a wood stove or a fireplace*: to burn any solid material, including but not limited to wood, in a wood stove or fireplace.
- (g) *Regulation No. 4*: regulations adopted by the State of Colorado concerning wood stoves and wood burning appliances, or any replacement or amended regulation; presently found at 5 CCR 1001-6.
- (h) *Sole source of heat*: one or more wood stoves which constitute the only source of space heating in a home.
- (i) *Solid Fuel Burning Device*: any stove, masonry heater, pellet stove, firebox or device intended or used for the purpose of burning wood, pulp, paper or other non-liquid or non-gaseous fuel. Hereinafter a solid fuel burning device is referred to as "wood stove". "Solid fuel burning device" and "Wood burning stove" are also defined in Regulation No. 4. gas devices and solid fuel barbecue devices are excluded from definition as are devices used by the City in the provision of City services.
- (j) *Transfer of ownership*: any conveyance of any interest in the property upon or in which a wood stove is installed or used. Conveyance by devise, descent, distribution, succession, gift, foreclosure or operation of law is not included within the term "transfer of ownership." Conveyance, whether by quit claim or by warranty or otherwise, of interests less than the fee such as conveyance of an easement, a lease or a mortgage are not included within the term "transfer of ownership."

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(Ord. No. 2981, 2-19-97)

Sec. 16-130. Regulation of new solid fuel burning devices-clean stoves only.

No wood stove shall be installed within any structure, mobile home, building or home within the City unless it is a clean stove. No fireplace shall be installed within any structure, mobile home, building or home within the City unless it complies with Regulation No. 4. See, 5 CCR 1006 (VIII (A)(1-6).

(Ord. No. 2981, 2-19-97)

Sec. 16-131. Solid fuel burning during high pollution days--prohibited.

It shall be unlawful for any person to operate a wood stove or a fireplace during a high pollution day unless an exemption has been granted pursuant to this provision or unless such wood stove is a clean stove or it meets the requirements of 5 CCR 1006 (VIII)(A)(1 through 6). It shall be the duty of all persons owning or operating a wood stove or a fireplace to be aware of any declaration of a high pollution day by the Mesa County Health Department or other person or agency designated by the City Council. Any such declaration shall constitute constructive notice of the existence of a high pollution day and of the applicability of the prohibition of this section. Each time a high pollution day or period is declared, four hours shall be allowed for the burn down of existing fires in solid fuel burning devices or fireplaces prior to the initiation of enforcement. Prior to prosecution for the first allegation of a violation of this section, a written warning shall be delivered to the person or posted conspicuously on the premises on which such person has, in violation hereof, operated a wood stove or a fireplace. If a written warning has been issued during the preceding 365 days, a prosecution may be initiated if probable cause exists to believe that a second instance of violation of this section has occurred.

(Ord. No. 2981, 2-19-97)

Sec. 16-132. Elimination of nonconforming wood stoves.

For each transfer of ownership of property which occurs after September 1, 1997 on which is installed or used a wood stove which is not a clean stove other than an exempt wood stove, the transferor, grantor or seller shall prior to any transfer of ownership: (a) replace such wood stove with a clean stove; (b) replace such wood stove with a gas stove; or (c) remove such wood stove.

(Ord. No. 2981, 2-19-97)

Sec. 16-133. Entry in order to inspect.

(a) The Building Inspector may enter onto property in order to inspect: if a wood stove is located upon the property or installed in a structure in compliance with this provision or operated in violation of this provision; if a fireplace or wood stove is being operated in violation of this provision. If an owner or occupant refuses to consent to such inspection, the Building Inspector may apply for an appropriate court order from the Municipal Court or other appropriate court.

(b) When the Building Inspector has reasonable grounds based upon his or her investigation or upon complaints sufficiently demonstrating reasonable grounds that a person has violated this provision, the Building Inspector shall issue a Notice and Order setting forth the alleged violations and the corrective action that needs to be taken. The Notice shall be served personally, by certified mail, or by posting in a conspicuous place on the property, or in any other manner provided by law for the service of process and shall allow thirty days for the person to take necessary actions to comply with this provision and any regulations adopted to implement or interpret this ordinance. Compliance with this section (6) is not a prerequisite to the filing, or prosecution, of a violation pursuant to section 11 hereof. Compliance with this subsection (b) is not a condition precedent to the filing of a complaint, or the prosecution of a violation of, concerning burning in violation of the provisions of subsection 4 hereof.

(Ord. No. 2981, 2-19-97)

Sec. 16-134. Appeals.

An appeal of the Building Inspector's order to comply may be filed with the City Clerk in writing no later than ten (10) days from the date of the Building Inspector's Order. This section 7 shall not apply to a violation of section 4 hereof.

Upon receipt of a timely filed Notice of Appeal, the City Clerk shall set a hearing date before the Board of Appeals to review the order of the Building Inspector. The Building Inspector shall present information which he or she believes shows a violation of this provision, or the adopted regulations, and the appellant shall be given the opportunity to respond.

The Board of Appeals may affirm, modify, rescind or delay an Order, if any one or more of the following criteria are established by the applicant by clear and convincing evidence:

- (a) - Owing to exceptional and extraordinary circumstances, literal enforcement of this ordinance or adopted regulations will result in extreme hardship. Such circumstances may include, but are not limited

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to, structural conditions which would impose extraordinary costs in order to comply with the provisions of this ordinance or adopted regulations.

(b) Compliance with the requirements of this ordinance or adopted regulations would create a threat to the health and safety of an owner or occupant.

(c) There is imminent planned termination of operations or replacement of a non-complying wood stove with a gas stove or a clean stove. The Board shall take such steps as are necessary to ensure compliance with such termination or replacement.

The Order of the Board of Appeals shall determine whether the provision was violated and shall state the time for compliance with the Order.

(Ord. No. 2981, 2-19-97)

Sec. 16-135. Exemptions--economic need and sole source of heat.

(a) The Building Inspector shall issue an exemption from the no burn requirement or the requirement to remove or replace a wood stove to the owner of a wood stove if such owner makes application to the Building Inspector and takes an oath or affirms that such owner is a person whose sole source of heat for the home is a wood stove(s).

(b) Each person who has received an exemption under this section shall display a decal issued by the Building Inspector in a manner and place on the property so as to be clearly visible from a place of public access on high pollution days.

(c) An exemption granted pursuant to this section shall be valid only so long as the owner of the exempt wood stove continues to qualify as provided in 8(a), above.

(Ord. No. 2981, 2-19-97)

Sec. 16-136. Severability.

The provisions of sections 16-128 through 16-135 are severable. If any provision within these sections or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect, without the invalid provisions or application.

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(Ord. No. 2981, 2-19-97)

Sec. 16-137. Nuisance; injunction.

Any violation of any provision of this ordinance, or any regulation implementing or interpreting this ordinance, is declared to be a nuisance. In addition to any other relief provided by this ordinance, the City's attorney may apply to a court of competent jurisdiction, including the municipal court, for an injunction to prohibit the continuation of any violation of this provision or any such regulation. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

(Ord. No. 2981, 2-19-97)

Sec. 16-138. Penalty.

(a) Any person, firm or corporation violating any provision of this ordinance shall be fined not more than one thousand dollars (\$1,000) and/or ten (10) days in jail for each offense. A separate offense shall be deemed committed on each day, or portion thereof, during or on which a violation occurs or continues. Notwithstanding the foregoing, a realtor, closer, or inspector involved in a transfer of ownership shall not be deemed to have violated this ordinance in the event that a transfer of ownership occurs in violation of this ordinance, unless such realtor, closer or inspector is the transferor, grantor or seller. For the first conviction of Section 4, a person, firm or corporation the maximum fine shall not exceed \$100.00 and no jail time shall be imposed.

(b) Unless otherwise authorized, the operation of a wood stove or fireplace on a high pollution, "no burn" day is found and declared to be a nuisance against both the public and private individuals. It is the intent and the purpose of the City Council that private individuals aggrieved or injured by the unauthorized operation of a wood stove or fireplace on a high pollution, "no burn" day or days may cite a violation of this ordinance or any regulation implementing this ordinance as evidence of nuisance per se in support of any claim for damages and/or injunctive or other relief before a court of competent jurisdiction, including the municipal court. It is therefore found and declared that any written evidence of a violation of this ordinance or any regulation implementing this ordinance issued by an authorized agent for the City of Grand Junction, and served on any individual as required by law, shall constitute prima facie evidence of the violation of this ordinance and/or any applicable regulation implementing this ordinance, as well as prima facie evidence of a nuisance per se.

(c) This section shall not confer a private right for an action against the City of Grand Junction for the endorsement of this ordinance or for the enforcement of any regulation implementing this ordinance.

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(Ord. No. 2981, 2-19-97)

Sec. 16-139. No duty created.

The provisions of this ordinance shall not be construed to create any duty, other than as explicitly provided, of any realtor, inspector, closer or appraiser to ensure that the provisions of this ordinance are satisfied, unless such realtor, inspector, closer or appraiser is the owner of the affected property.

(Ord. No. 2981, 2-19-97)

Sec. 16-140. Wood stove incentive replacement fund.

A wood stove replacement incentive fund is hereby created, in accordance with the Resolution of the City Council. The criteria for such incentive fund is shown on Exhibit A.

EXHIBIT A

ADMINISTRATIVE REGULATION NO. 97-01

ADMINISTRATION DEPARTMENT

CITY OF GRAND JUNCTION WOOD STOVE REPLACEMENT GRANT PROGRAM

AUGUST, 1997

Program Objective

The City Council of Grand Junction passed Ordinance 2981 on February 20, 1997 “regulating wood stoves and fireplaces, providing exemptions for sole source heating, penalties for violation, authorizing incentives and grants to eliminate existing devices, *creating a wood stove replacement incentive fund*, and restricting burning on certain days.” The City has set aside \$25,000 in 1997 to help pay for removing non-EPA certified stoves and replacing them with certified wood burning or gas burning devices.

Qualifying Criteria for Participating Households

1. To be eligible for grant money under this program:
 - Stoves may only be removed and/or installed by an installer licensed by the City to remove and install stoves.
 - Only wood stoves in owner occupied residences qualify.
 - The residence must be within the City limits.
 - Accessory areas, such as garages and work shops, do not qualify.
 - The household income must be less than or equal to the Income Criteria Table.
 - A removed or replaced wood stove becomes the property of the City, so that the wood stove may be destroyed and disposed of.
 - Grant money will be paid directly to a stove retailer and to approved installers.
2. The maximum grant amount is \$2,000 per residence. As household income increases, the maximum grant amount decreases, as shown on the Table below.
3. The grant moneys will be available on a 'first come, first serve' basis.
4. The day-to-day administration will be provided by the Energy Office.
5. Policy matters, appeals and other disputes will be finally decided by the Grant Program Appeals Committee, appointed by the City Council. Until otherwise provided by the City Council, the Assistant City Manager, the Executive Director of the Energy Office, and Bill Waring will serve as the members of the GPAC. The GPAC may adopt its own operating rules and may adopt implementing regulations. Until then, it will follow the rules adopted by the Grand Junction Planning Commission, as appropriate, except that the only notice of meetings and decisions is posting at City Hall. The City Council may remove or replace any member of the GPAC at any time. Financial information supplied to the GPAC by any applicant will be treated as private and confidential, unless otherwise provided by law.

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Income Criteria (based on the current US Dept. of Housing and Urban Development guidelines for Mesa County)	Grant Request Limit (% of total purchase and installation cost of new stove, maximum \$2,000)
Very Low	90%
Low	80%
Moderate	70%
Economic Hardship ¹	100%

Qualifying expenses up to a maximum of \$2,000

- °Wood stove cost (basic, no frills, sized correctly for home, low bid)
- °Chimney upgrade or replacement to meet the City's building code standards
- °Installation of gas lines needed to supply a replacement gas stove
- °Building permit fees
- °Non-EPA certified old wood stove removal and proof of destruction by an approved installer up to a maximum of \$60.00

Application Procedure

Applications are available from the City Clerk and Assistant City Manager of the City of Grand Junction, The Energy Office, and local wood stove retailers. **Completed applications should be sent to The Energy Office, 128 South 5th Street, Grand Junction, CO 81501, (241-2871).**

Required Inspections

1 Economic Hardship cases should be submitted to:

Assistant City Manager
City of Grand Junction
250 North Fifth Street
Grand Junction, Colorado 81501

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Recipients must have their home inspected twice: After approval of the application, a pre-installation inspection will be conducted by The Energy Office; After installation, a post-installation inspection will be required prior to payment to a dealer or installer.

* **Income Criteria based on HUD Guidelines for Mesa County (effective 1/01/97)
listed below:**

Income Limits By Household Size								
Number in Household	1	2	3	4	5	6	7	8
Very Low Income	13,550	15,500	17,400	19,350	20,900	22,450	24,000	25,550
Low Income	16,260	18,600	20,880	23,220	25,080	26,940	28,800	30,660
Moderate Income	21,650	24,750	27,850	30,950	33,450	35,900	38,400	40,850
Hardship Cases ⁽¹⁾	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit

(Ord. No. 2981, 2-19-97, Exhibit A adopted by the City Council on 8-20-97)

Chapter 17

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Chapter 18 FIRE PREVENTION AND PROTECTION*

*Cross reference(s)--Smoking restricted in certain places, § 16-127.

Article I. In General

Secs. 18-1--18-31. Reserved.

Article II. Fire Department

Sec. 18-32. Fire department transportation charges.

Secs. 18-33--18-55. Reserved.

Article III. Fire Code

Sec. 18-56. Adoption of Uniform Fire Code.

Sec. 18-57. Definitions.

Sec. 18-58. Amendments to the Uniform Fire Code.

Sec. 18-59. New materials, processes or occupancies which may require permits.

Sec. 18-60. Establishment and duties of division of fire prevention.

Sec. 18-61. Zoning in which storage of flammable or combustible liquids in outside aboveground tanks is permitted.

Sec. 18-62. Zones in which storage of liquefied petroleum gases is restricted.

Sec. 18-63. Zones in which storage of explosives and blasting agents is prohibited.

Sec. 18-64. Appeals.

Secs. 18-65--18-85. Reserved.

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Article IV. Emergency Medical Services

Sec. 18-86. Purpose.

Sec. 18-87. Definitions.

Sec. 18-88. Exemptions.

Sec. 18-89. Standard operating procedures manual.

Sec. 18-90. Regulations.

Sec. 18-91. Location of ambulance station; inspection of facilities.

Sec. 18-92. Permits.

Sec. 18-93. Fees.

Sec. 18-94. Personnel and equipment standards.

Sec. 18-95. Vehicle inspections.

Sec. 18-96. Response to calls.

Sec. 18-97. Permit suspension or revocation.

Sec. 18-98. Permit renewal requirements.

Sec. 18-99. Advertisements or offers of service restricted.

Sec. 18-100. Liability insurance required.

Sec. 18-101. Notice of pending legal action, unpaid judgment or liens against service provider.

FIRE PREVENTION AND PROTECTION

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ARTICLE I. IN GENERAL

Secs. 18-1--18-31. Reserved.

ARTICLE II. FIRE DEPARTMENT*

***Charter reference(s)**--Fire chief, head of fire department, § 63.

Cross reference(s)--Officers and employees, § 2-51 et seq.

Sec. 18-32. Fire department transportation charges.

The fire department shall follow established federal and/or state guidelines or profiles for emergency transportation fees, rates and charges. Fees, rates and charges for any emergency transportation performed by the fire department may be adjusted from time to time by the fire chief or his designee, in accordance with established federal and/or state guidelines.

(Code 1965, § 12-11; Ord. No. 2654, 3-17-93)

Secs. 18-33--18-55. Reserved.

ARTICLE III. FIRE CODE

Sec. 18-56. Adoption of Uniform Fire Code.

For the purpose of prescribing regulations governing conditions hazardous to life and property from fire, explosion, and chemical release, certain Codes and standards known as the Uniform Fire Code, Volume I and Volume II (hereinafter "Uniform Code" or "Uniform Fire Code"), promulgated by the Western Fire Chief's Association, Inc. and the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, including appendices chapters I-C, II-A, II-B, II-D, II-E, II-F, II-G, II-H, II-I, III-C, IV-A, V-A, VI-A, VI-B, VI-D, VI-E, VI-F, VI-G, being particularly the 1994 edition thereof and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended by Section 18-58 of this Ordinance are hereby adopted. Not less than one (1) copy of the Uniform Fire Code Volumes I and II have been, and are now, filed in the office of the City Clerk and the same are hereby adopted by this reference and incorporated herein as fully as if set out at length herein, and from the date on which this ordinance shall take effect, the

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provisions thereof shall be controlling within the limits of the City of Grand Junction, Colorado.

(Code 1965, § 12-21; Ord. No. 2738, § 12-21, 4-6-94, Ord. No. 2811, 2-15-95)

Adoption of technical codes, § 8-51 et seq.

Sec. 18-57. Definitions.

(a) Wherever the word "jurisdiction" is used in the Uniform Fire Code, it shall be held to mean the City of Grand Junction, CO.

(b) Wherever the term "corporation counsel" is used in the Uniform Fire Code, it shall be held to mean the city attorney for the City.

(c) Wherever the term "City manager" is used, it shall mean the City Manager or any employee of the City designated by the City Manager, such as but not limited to the Fire Chief, the Fire Marshal or the Finance Director of the City.

(d) Wherever an officer of the City, such as "City Manager" or "Fire Chief", is mentioned or designated herein, such officer may delegate, informally or in writing, the duties and responsibilities to a designee which designee shall have the full power and authority of the named or designated officer.

(Code 1965, § 12-23; Ord. No. 2738, § 12-23, 4-6-94, Ord. No. 2811, 2-15-95)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 18-58. Amendments to the Uniform Fire Code.

The Uniform Fire Code adopted by this article is amended and changed in the following respects:

Section 103.4.5 Unsafe buildings. Section 103.4.5 is amended by replacing the last sentence with the following:

The following procedure shall apply.

Section 103.4 Enforcement. Section 103.4 is amended by the addition of the following:

Section 103.4.5.1. In case of failure of any owner or lessee of such building(s) to remove all accumulations of waste or rubbish and abate said building in a manner approved

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by the Fire Chief, and upon the election by the City to remove said waste or rubbish and/or to secure or remove/install barricading of building(s), the Fire Chief or his designee is authorized to give notice by certified mail addressed to the last known address of the owner of such building, as that address appears in the records of the county assessor, or other address known to the Fire Chief, which notice shall require the removal of such waste or rubbish, or otherwise require the securing of said building(s) or removal of the problem causing the public nuisance, within sixty (60) days of the date of the notice. In the event such work is not done within the sixty (60) days, the City Manager may then proceed to have the work done as soon as practicable. The costs of such work shall be collected by the City in accordance with the provisions of the Uniform Code for the Abatement of Dangerous Buildings. The charge shall be the actual costs for labor, equipment, and materials plus ten (10) percent for administration, supervision and inspection. The Fire Chief or his designee may cause any building to be barricaded or secured immediately after a fire has been extinguished. Any and all barricading or securing shall be at the owners expense. The charge shall be the actual costs for labor, equipment, and materials plus ten (10) percent for administration, supervision and inspection.

103.4.5.2 The City Manager, as soon as may be practicable after such charge is made, shall send by mail, addressed to the owner of such property, at the address of such owner as it appears in the records of the County Assessor, or other address known to the Fire Chief, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner or owners, and the amount of the assessment, together with a brief description of said assessment.

103.4.5.3. It shall be the duty of the owner to pay such assessment within twenty (20) days after the mailing of such notice, and in case of his failure so to do, he shall be liable personally for the amount of the assessment and the same shall be a lien upon the respective lots or parcels of land from the time of such assessment. In case the owner shall fail to pay such assessment within twenty (20) days after notice has been mailed to him, as provided by this article, then it shall be the duty of the City Manager to certify the amount of the assessment to the Mesa County Treasurer or other officer of Mesa County having custody of the tax list, for the current year and to be collected in the same manner as other taxes are collected, with ten (10) percent penalty thereon to defray the cost of collection; and all of the laws of the State of Colorado for the assessment and collection of general taxes, including the laws for the sale of property for taxes and the redemption thereof, shall apply to and have full effect for the collection of all such assessments.

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103.4.5.4. The fact that assessments have been made against property as provided in this article for removal of waste and rubbish, abatement and/or barricading or securing of said building(s) shall not prevent the owner, agent or lessee from being punished by fine or imprisonment under the provisions of Section 1-9 of the Code of Ordinances of the City,

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but such fine or penalty may be imposed on those found guilty of violating any provision hereof in all cases, whether an assessment has or has not been made in accordance with the provisions hereof.

Section 903.4 Fire Hydrant Systems. Section 903.4 is amended by addition of the following:

903.4.2.1. A permittee shall provide a plan that complies with the provisions of sections 903.4.2.1.1 through 903.4.2.1.3.

903.4.2.1.1. Hydrants shall be on a looped (receiving water from more than one direction) water supply line of at least six (6) inches in diameter; and

903.4.2.1.2. The requirements set forth in the 1974 Guide for Determination of Required Fire Flow published by the Insurance Services Office, 160 Water Street, New York, New York shall be met; and

903.4.2.1.3. Based on accepted engineering methodologies, the water provider should be able to supply the amount of water as calculated pursuant to the 1974 Guide for Determination of Required Fire Flow.

EXCEPTIONS: 1. Hydrants located less than 1,000 feet from a looped water line (measured along the water line between the hydrant and the looped supply source) may be placed on dead-end lines, provided the line feeding the hydrant will supply the required fire flow and be not less than six (6) inches in diameter. Required fire flow shall be determined pursuant to the 1974 Guide for Determination of Required Fire Flow.

903.4.2.1.4. The Fire Chief may allow fire hydrants to be fed by less than a looped water line when the permittee can demonstrate to the satisfaction of the Fire Chief that a looped system is not practicable.

Section 1003.2 Required Installations. Section 1003.2 is amended by addition of the following:

Section 1003.2.9. Where access to any building or structure, not otherwise required to be protected by an automatic fire extinguishing system, is unduly difficult for fire apparatus and equipment, the installation of an automatic fire extinguishing system shall be required.

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Section 1003.2.10. Any building four (4) stories or more in height shall have an approved fire protection sprinkler system installed.

Section 1003.2.10.1. "Story" for the purpose of installation of fire protection sprinkler and standpipes is defined as habitable level used or occupied by humans. Definitions of "Story" or "Stories" for purposes of this section, shall not exempt sprinkler requirements required

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by any other section of the Uniform Code, nor shall it exempt sprinkler protection as required for a basement as specified by Section 1003.2.2.

Section 1004.2 Required Installations. Section 1004.2 is amended by the addition of the following:

Or where, in the opinion of the fire chief, access is restricted or an undue hardship would be placed on fire personnel extending a hose line in the building due to the arrangement of stairways, area separation walls, or occupancy walls.

Section 1103.3.6 Outside Storage of Tires. Section 1103.3.6 is amended by replacement with the following sections:

Section 1103.3.6.1. No person shall store more than 500 tires on any parcel, tract or lot of land.

Section 1103.3.6.2. Tires shall be arranged as required in sections 1103.6.2.1 - 1103.6.2.5.

Section 1103.3.6.2.1. Maximum pile or stack height shall not exceed six (6) feet.

Section 1103.3.6.2.2. Pile or stack width and length shall not exceed eight (8) feet.

Section 1103.3.6.2.3. Twenty (20) feet of clearance shall be maintained between piles or stacks.

Section 1103.3.6.2.4. Piles or stacks shall not be placed closer than twenty (20) feet to any structure; and

Section 1103.3.6.2.5. Piles or stacks shall be stored so as to provide ready access by the Fire Department in the event of a fire.

Section 1110 Vacant Buildings. Section 1110 shall be amended by addition of the following:

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Section 1110.4. In case of failure of any owner or lessee of such building(s) to remove all accumulations of hazardous materials and abate said building, and secure the premises, in a manner approved by the Fire Chief, and upon the election by the Fire Chief to remove said waste or rubbish and/or to secure or remove/install barricading of building(s), the Fire Chief is authorized to give notice by certified mail addressed to the last known address of the owner of such building, as that address appears in the records of the County Assessor, or other address known to the Fire Chief, which notice shall require the removal of such waste or rubbish, or otherwise require the securing of said building(s) or removal of the problem causing the public nuisance, within sixty (60) days of the date of the notice. In the event such work is not done within the sixty (60) days, the City Manager may then proceed to have the work done as soon as practicable. The costs of such work shall be collected by the City Manager in accordance with the provisions of the Uniform Code for the Abatement of Dangerous Buildings. The charge shall be the actual costs for labor, equipment, and materials plus ten (10) percent for administration, supervision and inspection. The Fire Chief may cause any building to be barricaded or secured immediately after a fire has been extinguished. Any and all barricading or securing shall be at the owners expense. The charge shall be the actual costs for labor, equipment, and materials plus ten (10) percent for administration, supervision and inspection.

1110.4.1 The City Manager, as soon as may be practicable after such charge is made, shall send by mail, addressed to the owner of such property, at the address of such owner as it appears in the records of the County Assessor, or other address known to the Fire Chief, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner or owners, and the amount of the assessment, together with a brief description of said assessment.

1110.4.2. It shall be the duty of the owner to pay such assessment within twenty (20) days after the mailing of such notice, and in case of his failure so to do, he shall be liable personally for the amount of the assessment and the same shall be a lien upon the respective lots or parcels of land from the time of such assessment. In case the owner shall fail to pay such assessment within twenty (20) days after notice has been mailed to him, as provided by this article, then it shall be the duty of the City Manager to certify the amount of the assessment to the County Treasurer or other officer of the County having custody of the tax list, for the current year and to be collected in the same manner as other taxes are collected, with ten (10) percent penalty thereon to defray the cost of collection; and all of the laws of the State of Colorado for the assessment and collection of general taxes, including the laws for the sale of property for taxes and the redemption thereof, shall apply to and have full effect for the collection of all such assessments.

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1110.4.3. The fact that assessments have been made against property as provided in this article for removal of waste and rubbish, abatement and/or barricading or securing of said building(s) shall not prevent the owner, agent or lessee from being punished by fine or imprisonment under the provisions of Section 1-9 of the Code of Ordinances of the City, but such fine or penalty may be imposed on those found guilty of violating any provision hereof in all cases, whether an assessment has or has not been made in accordance with the provisions hereof.

Section 1007.2 Required Installations. Section 1007.2 is amended by addition of the following:

Section 1007.2.9.3. Smoke detectors shall be installed in lodging houses and hotels, including what are commonly known as 'Bed and Breakfasts'.

Section 1007.2.9.3.1. In lodging houses and hotels, detection and alarm systems shall be installed as required by National Fire Protection Association (N.F.P.A.) 101, 1994 edition, Chapter 20, which Chapter is incorporated herein by this reference and is also adopted.

Section 1007.3.3.6 Monitoring. Section 1007.3.3.6 is amended by addition of the following:

Section 1007.3.3.8. **False alarms.** Whenever the activation of any fire alarm is due to a malfunction of the alarm or alarm system and that alarm or alarm system has had a malfunction within the same calendar year quarter, or more than six times during any calendar year, the owner and/or operator of the alarm or alarm system shall pay a false alarm fee to offset some of the costs involved in the dispatching and responding of fire equipment to the location of the alarm.

Section 1007.3.3.8.1. It is the responsibility of the owner or operator of an alarm system to prevent the improper use of the system, such as the intentional activating of a false alarm or the intentional activation of a smoke or heat detector to produce a false alarm. After three such activations within the same quarter of a calendar year, or more than six during any calendar year, from the same alarm system the fee schedule for false alarms shall become effective.

Section 1007.3.3.8.2. Whenever the Fire Chief cannot determine how a false alarm was activated and three such unexplained alarms occur within a calendar year quarter, the fee schedule for false alarms shall become effective with the fourth and subsequent alarm(s), or alarm(s) exceeding six during any calendar year, the fee schedule for false alarms shall become effective with the seventh and subsequent alarm(s).

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Section 1007.3.3.8.3. A fee, in accordance with the fee schedule established by resolution of the City Council and on file with the City Clerk, shall be charged for false alarms.

Section 1007.3.3.8.3.1. A new alarm system shall be allowed thirty (30) days to become stabilized before charges will accrue for false alarms.

Section 7802.3 Prohibition. Section 7802 is amended by addition of the following Exception:

3. It shall be lawful to possess, store, offer for sale, expose for sale, sell at retail or use or explode those fireworks that are deemed lawful by sections 12-28-101, *et seq.*, C.R.S. if such fireworks have been submitted by the seller to, _____ and received the approval of, the Fire Chief.

Appendix VII, Rates and fees. Appendix VII is added to read as follows:

The rates and fees as established by resolution of the city council and on file in the city clerk's office shall apply for permits issued by the city.

(Code 1965, § 12-29; Ord. No. 2738, § 12-29, 4-6-94, Ord. No. 2811, 2-15-95)

Cross reference(s)--New materials, processes or occupancies which may require permits, § 18-59; zones in which storage of flammable or combustible material in outside aboveground tanks is permitted, § 18-61; zones in which storage of liquefied petroleum gas is restricted, § 18-62; zones in which storage of explosives and blasting agents is prohibited, § 18-63; appeals from decisions regarding the fire regulations in the city, § 18-64.

Sec. 18-59. New materials, processes or occupancies which may require permits.

The fire chief and the fire marshal shall determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies for which permits are required in addition to those now enumerated in the Uniform Fire Code. The fire marshal shall post such list in a conspicuous place in his office, and distribute copies thereof to interested persons.

(Code 1965, § 12-28; Ord. No. 2738, § 12-28, 4-6-94)

Cross reference(s)--Amendments to the Uniform Fire Code, § 18-58.

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Sec. 18-60. Establishment and duties of division of fire prevention.

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(a) The Uniform Fire Code shall be enforced by the division of fire prevention in the fire department of the city, which has been previously established and which shall be operated under the supervision of the fire chief or his designee.

(b) The fire marshal in charge of the division of fire prevention in the fire department of the city shall be appointed by the fire chief on the basis of his/her qualifications.

(c) The fire chief may detail such members of the fire department as inspectors as he shall from time to time deem necessary. The fire chief shall recommend to the city manager the employment of technical inspectors, who, when such authorization is made, shall be appointed on the basis of their qualifications.

(Code 1965, § 12-22; Ord. No. 2738, § 12-22, 4-6-94)

Cross reference(s)--Officers and employees, § 2-51 et seq.

Sec. 18-61. Zones in which storage of flammable or combustible liquids in outside aboveground tanks is permitted.

(a) Section 79.501 of the Uniform Fire Code limits the storage of flammable or combustible liquids in outside aboveground tanks. Storage of flammable or combustible liquids is permitted as follows:

On lands within the city that are zoned in the categories of C-2 (heavy commercial), I-1 (light industrial) and I-2 (heavy industrial). The fire chief may permit storage of flammable or combustible liquids in aboveground tanks on lands within the jurisdiction which are zoned C-1 (light commercial) when it can be demonstrated to the fire chief or his designee that such use may be safely undertaken in the particular location.

(b) Section 79.1401 of the Uniform Fire Code limits the siting of bulk plants for flammable or combustible liquids. New bulk plants or terminals for flammable or combustible liquids are permitted as follows:

On lands within the city that are zoned in the categories of C-2 (heavy commercial), I-1 (light industrial) and I-2 (heavy industrial). The fire chief may permit such use in C-1 (light commercial) when it can be demonstrated to the satisfaction of the fire chief or his designee that such use may be safely undertaken in the particular location.

(Code 1965, § 12-24; Ord. No. 2738, § 12-24, 4-6-94)

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Cross reference(s) - Amendments to the Uniform Fire Code, § 18-58.

Sec. 18-62. Zones in which storage of liquefied petroleum gases is restricted.

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Section 82.013(a) of the Uniform Fire Code restricts the storage of liquefied petroleum gas. Liquefied petroleum gas may be stored as follows:

On lands within the city that are zoned in the categories C-2 (heavy commercial), I-1 (light industrial) and I-2 (heavy industrial). The fire chief may permit such use in C-1 (light commercial) when it can be demonstrated to the satisfaction of the fire chief or his designee that such use may be safely undertaken in the particular location.

(Code 1965, § 12-25; Ord. No. 2738, § 12-25, 4-6-94)

Cross reference(s) - Amendments to the Uniform Fire Code, § 18-58.

Sec. 18-63. Zones in which storage of explosives and blasting agents is prohibited.

Storage of explosives and blasting agents, within the limits of the city, is prohibited. This restriction shall not prohibit such use where the storage is made by an individual or company under proper safeguards as may be prescribed by the fire chief or his designee.

(Code 1965, § 12-26; Ord. No. 2738, § 12-26, 4-6-94)

Cross reference(s)--Amendments to the Uniform Fire Code, § 18-58.

Sec. 18-64. Appeals.

Whenever the fire chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the Uniform Fire Code do not apply or that the true intent and meaning of the Uniform Fire Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the board of appeals created by section 203 of the Uniform Building Code, by filing with the fire chief a written appeal along with a fee as established by resolution of the city council and on file in the city clerk's office, within 30 days from the date of the decision appealed.

(Code 1965, § 12-27; Ord. No. 2738, § 12-27, 4-6-94)

Cross reference(s)--Amendments to the Uniform Fire Code, § 18-58.

Secs. 18-65--18-85. Reserved.

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ARTICLE IV. EMERGENCY MEDICAL SERVICES*

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***Cross reference(s)**--Drivers of city-owned vehicles or emergency vehicles liability, § 2-72; businesses, ch. 10.

State law reference(s)--Emergency medical services, C.R.S. § 25-3.5-101 et seq.

Sec. 18-86. Purpose.

The purposes of this article are to:

- (1) Enact formal policies and regulations for licensing and regulating the operation of ambulances;
- (2) Protect the public by assuring that ambulances operate safely;
- (3) Protect the public from unsafe and insanitary operation of ambulances;
- (4) Allow for adequate emergency ambulance service and nonemergency ambulance services in all areas of the city; and
- (5) Allow for the orderly and lawful operation of a local emergency medical services system.

(Ord. No. 2575, § 12-12(1), 5-20-92)

Sec. 18-87. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advanced life support (ALS) means pre-hospital medical intervention delivered by paramedics utilizing invasive medical procedures, under protocol and physician direction, for field stabilization of ill or injured patients.

Ambulance means a vehicle specially constructed, modified or equipped and used for the purpose of transporting sick, injured, convalescent, infirm or otherwise incapacitated persons. Such term does not include the nonemergency transportation of persons confined to wheelchairs.

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Ambulance service means the furnishing, operation, conduct as, maintaining, advertising or otherwise engaging in or professing to be engaged in the transportation of patients by ambulance; also including, but not limited to, the person so engaged or professing to be so engaged.

Ambulance service permit means written authorization by the city to an ambulance service to provide ambulance service within the city.

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Ambulance station means the premises (including living quarters) located within the city from which the ambulance service provides service.

Base hospital means the source of direct medical communications with and responsible for the supervision of the field emergency care performance by emergency medical technicians, emergency medical technician intermediates, and/or paramedics.

Basic life support (BLS) means pre-hospital medical intervention delivered by emergency medical technicians, and field patient care providing basic treatment and stabilization of ill or injured patients.

Designated dispatch center means the regional communication center of the city, which is responsible for 911 emergency services telecommunications, and which dispatches emergency personnel and equipment.

Emergency call (also referred to as an emergent call) means a request for an ambulance to transport or assist persons in apparent sudden need of medical attention or in medical emergency, or to transport blood or any therapeutic device, accessory to such device, tissue or organ.

Emergency medical services (EMS) means any actual or self-perceived event which threatens life, limb or well-being of an individual in such a manner that a need for immediate medical care is created. "Medical services provider" means any agency that provides a medical service or medical treatment, at either BLS level or ALS level, and/or provides transportation of patients. "Emergency medical services" also includes the transportation of a patient, regardless of the presumption of death, or transportation of a body for the purpose of making an anatomical gift.

Emergency medical technician intermediate means a certified technician between the level of paramedic and EMT-B. This classification is not to be equated to that of paramedic, nor is it comparable to an EMT-B.

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Emergency response list means the official list maintained by the designated dispatch center of permittees who possess an emergency ambulance service permit.

License means an authorization issued by the board of county commissioners to operate an ambulance service, publicly or privately, within the county.

Nonemergency call (also referred to as nonemergent call) means calls which require routine medical services in conjunction with transportation, e.g., patient transfer from hospital to nursing home.

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Physician advisor means a physician (M.D. or D.O.), currently licensed by the state, who establishes protocols for medical acts performed by emergency medical services personnel and who is specifically designated and responsible to assure the competency of the performance of those acts by EMS personnel, in accordance with applicable rules of the state board of medical examiners.

Private call means any call received by the ambulance service directly from a private party requesting services.

(Ord. No. 2575, § 12-13, 5-20-92)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 18-88. Exemptions.

(a) This article shall not apply to vehicles operated as ambulances and to persons engaged in ambulance service where ambulance services are rendered at the request of any law enforcement or fire protection agency during any state of war emergency, state emergency or disaster, local emergency or disaster or during any period when the city determines that adequate emergency ambulance service is not available from existing permittees.

(b) This article shall not prevent any peace officer, firefighter or physician licensed to practice medicine in this state from arranging for the transportation of an individual in need of emergency medical care when no ambulance with an appropriate ambulance service permit is available and such transportation is required immediately for the preservation of life or to avoid substantial impairment of the patient's physical or mental condition.

(Ord. No. 2575, § 12-12(2), 5-20-92)

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Sec. 18-89. Standard operating procedures manual.

The city council shall adopt, by resolution, a standard operating procedures manual. The fire chief may amend or add to these procedures as may be necessary from time to time to carry out the intent of such standard operating procedures. One certified copy of such manual, with the most recent amendments, shall be filed with the city clerk. Additional copies shall be kept in the office of the fire chief for review by the general public. Ambulance permittees shall receive one copy of the standard operating procedures manual. The standard operating procedures manual shall have the force and effect of law with respect to all ambulance operators, drivers and attendants.

(Ord. No. 2575, § 12-12(3), 5-20-92)

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Sec. 18-90. Regulations.

(1) The fire chief or his designee shall make necessary and reasonable rules and regulations covering ambulance service, ambulance equipment, ambulance personnel and dispatch standards for the effective and reasonable administration of this article. Prior to adoption, such regulations shall be submitted to the physician advisor for his comments and concurrence.

(2) The fire chief may enter into an agreement with a private ambulance service provider, to provide both emergent and non-emergent services for the City of Grand Junction for a term of five (5) years. This agreement may be renewed upon approval by the City Council.

(Ord. No. 2575, § 12-20(1), 5-20-92; Ord. No. 2792, 1-4-95)

Sec. 18-91. Location of ambulance station; inspection of facilities.

(a) Each ambulance service provider shall establish an ambulance station which is so located as to provide the minimum response time, considering traffic, street patterns and other ambulance station locations. All locations shall be approved by the fire chief or his designee prior to commencing operations and shall comply with all applicable zoning and building regulations and shall be maintained in a safe and sanitary condition.

(b) Each ambulance station shall be equipped with all communication equipment as required by the standard operating procedures manual, adopted pursuant to section 18-89.

(c) The fire chief or his designee shall inspect the facilities, equipment and methods of operation of each ambulance service permittee.

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(Ord. No. 2575, §§ 12-12(4), 12-18(5), 5-20-92)

Sec. 18-92. Permits.

(a) *Required.* No person (either as owner, agent or otherwise) shall furnish, operate, conduct, maintain or otherwise engage in or advertise, offer or profess to engage in ambulance service unless the person holds (and is entitled to hold) a currently valid ambulance service permit. No permit is required for ambulance services that are transporting patients to or through the city which do not have their principal service area in the county.

(b) *Application form.* An application for an ambulance service permit shall be made on the form required by the fire chief or his designee.

(c) *Application information.*

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- (1) Each applicant who desires an ambulance service permit shall submit the following information:
- a. The name(s) and address(es) of the applicant(s), registered owner(s), partner(s), officer(s), director(s) and controlling shareholder(s), if a corporation, sole proprietorship or partnership.
 - b. The name under which the applicant does or proposes to do business.
 - c. A description of each ambulance including the make, model, year of manufacture, vehicle identification number and color scheme, insignia and other distinguishing characteristics of the vehicle.
 - d. A statement that the applicant owns or has under his control, in good operating condition, required equipment to consistently provide ambulance service and that the applicant owns or has access to suitable facilities for maintaining his equipment in a clean and sanitary condition.
 - e. A description of the company's program for maintenance of its vehicles.
 - f. A description of the number and type, frequency and line codes of the vehicles' radios.
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- g. A description of the location(s) from which ambulance services will be provided.
 - h. A list, amended as required during the year for any personnel changes, giving the name and a description of the training for each ambulance attendant and driver, and a copy of each certificate or license held establishing the qualifications of the ambulance personnel.
 - i. A description of the company's training and orientation programs for all attendants, dispatchers, drivers and the provisions for continuing education of the advanced life support personnel.
 - j. All service charges and rate structures of the company.
 - k. The number of advanced life support units deployed on each shift.
 - l. Evidence of insurance coverage as required by the state and this article.

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(2) The applicant may be required to submit such other information as the fire chief or his designee deems necessary for compliance with this section.

(d) *Application investigation.* Upon receipt of a completed application and the required fee, the fire chief or his designee shall make or cause to be made an investigation to determine if:

- (1) The applicant meets the requirements of this article and other applicable laws and regulations; and
- (2) That the radio equipment listed by the applicant is in good working order and is integrated with the existing communications system.

(e) *Issuance.* Within 90 days of receipt of an application for an ambulance service permit, the fire chief or his designee shall make a determination as to whether the applicant meets all requirements of this article and whether the public health, safety and welfare require the granting of the permit. In making such determination, the fire chief or his designee shall consider, among other things, the demand and necessity for ambulance service, whether the applicant is able to provide service, whether the applicant has knowingly made false statements of fact in his application, and whether under this article the applicant was previously a holder of a permit issued under this article which has been revoked or not renewed based on violations of the law, this article or otherwise.

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(f) *Denial.* If it is determined that the applicant for an ambulance service permit does not meet all requirements of this article, then the fire chief or his designee shall deny the application and notify the applicant in writing within 90 days of receipt of the application.

(g) *Appeal from denial of issuance.* Whenever the fire chief or his designee denies an application for an ambulance service permit, the applicant may request a hearing before the city council at which the applicant will have the opportunity to appeal the decision of denial. The appeal hearing shall be scheduled within 30 days of the applicant's written request for such hearing.

(h) *Finality of decision.* The decision of the fire chief or his designee rendered pursuant to the application process under this article shall be final unless appealed to the city council within 30 days after a decision is rendered in writing and notice is given to an applicant by certified mail.

(i) *Term.* Permits under this article shall be continued upon payment of the annual renewal fee unless earlier suspended, revoked or terminated.

(j) *Existing ambulance service application.* Within 60 days of the effective date of this article, the ambulance companies that have been continuously operating for a minimum of 180 days prior to the effective date of this article may apply for and obtain an ambulance service permit. The

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fire chief or his designee shall issue or deny a permit to each existing company within 60 days of receipt of an application for such permit based upon their ability to meet the requirements as set forth in this article. The fee for the initial permit for existing companies shall be the fee set for new applicants.

(k) *Change of information.* The applicant and/or permittee under this article shall report to the fire chief or his designee any change in the information required in subsection (c) of this section within ten days of the effective date of the change.

(l) *Transfer of permit.* No ambulance service permit shall be transferred to another person except upon prior approval of the fire chief or his designee. Application for transfer of any such permit shall be subject to the same terms, conditions and requirements as if the application were for a new permit.

(m) *Renewal of permit.* Permittees under this article shall annually file an application for permit renewal on a form furnished by the fire chief or his designee, which form shall include the information required by subsection (c) of this section. The renewal application shall be accompanied by a renewal fee.

(Ord. No. 2575, § 12-13, 5-20-92)

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Sec. 18-93. Fees.

The city council shall set all ambulance service fees by resolution. The fees shall not exceed the reasonable cost of administering this article and providing for the orderly provision of emergency medical services.

(Ord. No. 2575, § 12-14, 5-20-92)

Sec. 18-94. Personnel and equipment standards.

(a) Any ambulance driver utilized by a permittee shall be at least 18 years of age, shall be trained and competent in the proper use of all emergency ambulance equipment, shall hold current certification as an emergency medical technician B, and shall demonstrate compliance with all applicable laws and regulations.

(b) The permittee shall provide a minimum of one (1) paramedic, trained and competent in current ALS paramedic techniques for each ALS equipped and staffed ambulance. Each permittee shall provide a minimum of two (2) ALS staffed and equipped ambulances twenty four hours per day, one (1) ALS equipped and staffed ambulance, and one (1) BLS equipped and staffed ambulance, twelve (12) hours per day. Each permittee shall provide and operate a minimum of one (1) backup ambulance. The backup ambulance shall be ALS equipped and shall respond in

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the event of mechanical failure of a primary ALS unit. The City may provide services as specified in 18-90 of this ordinance.

(c) Every ambulance driver, attendant, EMT or paramedic utilized by a permittee shall hold a certificate from the state or an otherwise accredited training program indicating successful completion of their respective training.

(d) Each person providing ambulance service subject to permit under this article shall staff each ambulance with required minimum personnel who shall wear clean uniforms, be neat and comply with the standard operating procedure requirements of this article.

(e) Each permittee providing ambulance service under this article shall provide and maintain, at its own expense, a communication system meeting the requirements of the fire chief or his designee, and the standard operating procedures manual promulgated under this article.

(f) Each permittee providing ambulance service under this article shall assign at least one person to be responsible for receiving calls and dispatching ambulances for nonemergency calls. Permittees shall provide such services on a 24-hour basis.

(Ord. No. 2575, § 12-15, 5-20-92; Ord. No. 2792, 1-4-95)

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Sec. 18-95. Vehicle inspections.

(a) Every ambulance shall be authorized and inspected by the fire chief or his designee and shall meet the requirements of this article and all other applicable city, county and state laws, rules and regulations.

(b) The ambulance service permittee shall allow the fire chief or his designee to inspect, on a preannounced or unannounced basis, all ambulances used to provide ambulance service. The inspections should be held, whenever possible, during normal business hours. The purpose of such inspections may include, but shall not be limited to, determining if:

- (1) The ambulances are properly maintained and equipped for the provision of ambulance service pursuant to standard operating procedures;
- (2) The description of the ambulances required by section 18-92 is accurate;
- (3) The ambulances contain radios that are in good working order, and that the radios are of correct and compatible frequencies with the emergency medical communications system in accordance with the standard operating procedures manual.

(Ord. No. 2575, § 12-16, 5-20-92)

FIRE PREVENTION AND PROTECTION

Sec. 18-96. Response to calls.

(a) No ambulance service permittee under this article shall cause or allow its ambulances to respond to a location without first receiving a specific request for such service at that location. Ambulance service permittees shall cooperate with the fire chief or his designee in any investigations of possible violations of this section, and shall make all logs and records available for inspection and copying at reasonable times at the permittee's place of business.

(b) When responding to a dispatched emergency call, the ambulance service provider shall comply with the request of the patient for a desired hospital, or the request of the on-scene paramedic if trauma protocols apply, regarding transportation of the injured or ill party.

(c) The ambulance service provider's response to private calls must be consistent with the medical condition or injury of the patient.

(d) The ambulance service providers should be aware that not all EMS scenes are without danger of some type. The provider shall use prudent judgment in determining the safety of the scene if it is the first responding unit. The provider is under no obligation, and no obligation is created by the terms of this article or the operating procedures promulgated under 18-96

this article, to enter a scene that is determined to be unreasonably dangerous. The provider agrees to stand by, at a safe distance, until such scene has been secured by another agency.

(Ord. No. 2575, § 12-19, 5-20-92)

Sec. 18-97. Permit suspension or revocation.

(a) The fire chief or his designee may suspend or revoke an ambulance service permit for failure to comply and maintain compliance with, or for violation of, any applicable provisions, standards or requirements of state law or this article or of any regulations promulgated under this article. The fire chief or his designee may suspend or revoke a permit if the permittee fails to make and retain records showing its nonemergent/private call dispatches, or if the permittee accepts an emergency call when it is either unable or unwilling to provide the requested service or fails to inform the person requesting service of any delay and fails to obtain the consent of such person before causing an ambulance to respond from a location more distant than the one to which the request for service was directed. Suspension is not a condition precedent to revocation.

(b) Before suspension or revocation of an ambulance service permit, the fire chief or his designee shall give written notice by United States mail, postage prepaid, return receipt requested, to the permittee specifying why such action is contemplated and giving the permittee a reasonable time, not less than seven days or more than 30 days, to comply with the provisions in question or to show cause against suspension or revocation and setting a hearing thereon.

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(c) At the hearing conducted pursuant to this article, the fire chief or his designee has the burden of proof and may present evidence as to why action should be taken and to answer the evidence presented by the permittee.

(d) The fire chief may reduce the period of time for compliance under a suspension or revocation notice to no less than 24 hours and set the matter for hearing immediately upon expiration of such 24 hours when the fire chief or his designee makes written preliminary findings that such action is necessary to protect the public health, safety and welfare. When as a result of such an emergency proceeding a permit is suspended or revoked, the permittee will have the burden of establishing renewed compliance justifying reinstatement of the permit. Such additional hearing will be commenced within five days of the permittee's request. The request for, or the scheduling of, an additional hearing shall not stay the operation of the suspension or revocation order.

(e) In hearings conducted pursuant to this article, evidence must be relevant, noncumulative and of such nature as to be reliable. As far as practicable, the hearing shall be controlled by the Colorado Rules of Evidence and the Colorado Rules of Civil Procedure.

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(f) Hearings conducted pursuant to this article shall be conducted before a hearing officer designated by the city manager. The hearing officer may issue subpoenas for the production of documents or the attendance of witnesses. The hearing officer shall keep a record of the proceedings either by electronic or stenographic means. At the conclusion of the hearing, the hearing officer shall promptly prepare a written summary of the evidence and findings and conclusions for consideration by the fire chief or his designee. The parties shall equally bear the expenses of the hearing officer and the cost of the hearing. Each party shall bear its own expenses and costs.

(g) The hearing officer shall issue a written decision within 30 days of the conclusion of the hearing conducted under this article.

(Ord. No. 2575, § 12-17, 5-20-92)

Sec. 18-98. Permit renewal requirements.

Renewal of an ambulance service permit shall require conformance with all requirements of this article as upon issuance of an initial permit. Nothing in this section or otherwise contained in this article shall be construed as requiring the granting of a permit upon expiration of a previous permit, and the burden of proof respecting compliance with all the requirements of entitlement to a permit shall remain at all times with the applicant for renewal.

(Ord. No. 2575, § 12-18(1), 5-20-92)

Sec. 18-99. Advertisements or offers of service restricted.

FIRE PREVENTION AND PROTECTION

No ambulance service permittee under this article shall announce, advertise, offer or in any way claim that it provides emergency ambulance service unless it possesses a current and valid ambulance service permit and is staffed and provides paramedic service level care for emergency response calls.

(Ord. No. 2575, § 12-18(2), 5-20-92)

Sec. 18-100. Liability insurance required.

The ambulance service permittee shall obtain, and keep in force during the term of such ambulance service permit, comprehensive automobile liability insurance and professional liability insurance issued by a company licensed to do business in the state, insuring the owner against loss by reason of injury or damage that may result to persons or property from negligent operation or defective construction of such ambulance, or damage that may result to persons or property from violation of this article or any other law of the state or of the United States. The comprehensive liability policy shall be in the sum of not less than \$1,000,000.00

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for combined single limit bodily injury and property damage. Worker's compensation insurance shall be carried covering all employees of the permit holder. Before a permit is issued, copies of policies or certificates evidencing such policies shall be filed with the fire chief or his designee. All policies shall contain a provision requiring 30-day notice to be given to the fire chief or his designee prior to cancellation, modification or reduction in the limits of coverage. Required policies of insurance shall contain an endorsement naming the city as an additional insured. The required policy of insurance shall provide that the city is indemnified, defended and held harmless from and against all costs, expenses and liability arising out of, or based upon, any and all property damage or damages for personal injury, including death, which results or is claimed to have resulted from any act or omission on the part of the ambulance service provider or the ambulance service provider's agents or employees.

(Ord. No. 2575, § 12-18(3), 5-20-92)

Sec. 18-101. Notice of pending legal action, unpaid judgment or liens against service provider.

An ambulance service provider shall provide the fire chief or his designee with any information in reference to any pending legal action or judgment, unpaid judgment or liens against the ambulance service provider and notice of the transactions or acts giving rise to such legal action, judgment or liens. The ambulance service provider shall notify the fire chief or his designee, in writing, of such legal action, judgment or liens within one week of the date served or notified. The information will be reviewed by the fire chief or his designee, who will make a determination regarding the effect, if any, on the ambulance service provider's ability to provide service in accordance with the requirements of this article.

(Ord. No. 2575, § 12-18(4), 5-20-92)

Chapter 19

RESERVED

Chapter 20 LAW ENFORCEMENT*

***Cross reference(s)**--Officers and employees, § 2-51 et seq.; drivers of city-owned vehicles or emergency vehicles liability, § 2-72; alcoholic beverages, ch. 4; injuring or meddling with police dogs prohibited, § 6-5; offenses, ch. 24.

Article I. In General

Secs. 20-1--20-25. Reserved.

Article II. Lost, Stolen, Confiscated or Abandoned Property

Sec. 20-26. Rights of finder.

Sec. 20-27. Custodian.

Sec. 20-28. Records required.

Sec. 20-29. Disposition of certain property exclusive of article provisions.

Sec. 20-30. Reclaiming property.

Sec. 20-31. Failure to claim property.

Sec. 20-32. Disposition generally.

Sec. 20-33. Sale of unclaimed property.

Secs. 20-34--20-55. Reserved.

Article III. Burglar Alarm Systems

Sec. 20-56. False alarms.

Sec. 20-57. Monitoring fees.

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LAW ENFORCEMENT

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ARTICLE I. IN GENERAL

Secs. 20-1--20-25. Reserved.

ARTICLE II. LOST, STOLEN, CONFISCATED OR ABANDONED PROPERTY*

***Cross reference(s)**--Nuisances, § 16-56 et seq.

State law reference(s)—General limitations of actions, C.R.S. § 13-80-101

Sec. 20-26. Rights of finder.

Notwithstanding any other provision of this article, whenever any item of lost or abandoned property has been found and delivered to the chief of police or one of his subordinates for care, control and custody, such item shall be released to the original finder whenever a claim has been made by the finder and the following conditions have been met:

- (1) The claimant is the person who originally found the lost or abandoned property and he is not a police officer.
- (2) The claimant, after surrendering the property, has filed a written notice with the chief of police of his intentions to make a claim on the property within 60 days of the surrender of the item.
- (3) The lost or abandoned property has remained unclaimed by the owner or person having a right to such property for 60 days after the surrender of the property to the chief of police.
- (4) The lost or abandoned property is not stolen or confiscated property, nor is it property held under the exceptions outlined in section 20-29, nor property held as evidence pursuant to subsection 20-32(2).
- (5) The claimant must appear at the police department no less than 60 days after surrendering any lost or abandoned property and prior to the expiration of 90 days to request the release of such property. Failure to appear within the above time frame shall forever bar any finder's claim to such property.
- (6) The lost or abandoned property is not personal effects such as keys,

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checkbooks, wallets, credit cards or other such items as determined by the custodian.

- (7) The lost or abandoned property is not a firearm.

(Code 1965, § 22-6(f))

Sec. 20-27. Custodian.

The chief of police is designated as the official custodian of each and every lost, stolen, confiscated or abandoned article or object of personal property not in the lawful custody of the court or any other person, which has been acquired or delivered to the police department, or any of its members, for care, control and custody.

(Code 1965, § 22-6(a))

Sec. 20-28. Records required.

It shall be the duty of the chief of police or his designee to keep a record of all such property coming into the care, control and custody of the police department, showing:

- (1) The date and description of the property received;
- (2) Which property has been reclaimed by its owner, including the date and to whom delivered;
- (3) The date and name of any person who has made a finder's claim and date of release to such person; and
- (4) The date and description of how any remaining property was disposed of.

(Code 1965, § 22-6(b))

Sec. 20-29. Disposition of certain property exclusive of article provisions.

Notwithstanding any other provisions of this article, certain objects and articles of property as described in this article may be kept, held or disposed of as follows:

- (1) Nothing in this article shall be construed as amending any existing ordinances concerning the impoundment and disposition of livestock, dogs, poultry or other animals.
- (2) Unless ordered to the contrary by a court or otherwise required by state or

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national law, firearms or other weapons which may not lawfully be kept, possessed or retained by the owner or person otherwise entitled to the possession thereof, or which may not otherwise lawfully be released to the owner thereof, or which are unclaimed after notice to the owner, or the owner of which is not known, may be kept and used by the police department in its training program or otherwise, or may be donated to museums or historical societies as the chief of police may order for purposes of historical preservation. If the firearms or weapons are declared surplus by the chief of police, disposition of such firearms or weapons may be made as otherwise provided in this section.

- (3) If the property consists of burglar tools of any description; firearms, cartridges, explosives, armored or bulletproof clothing, or other dangerous weapons; gambling apparatus or instruments; articles or medicines for the purpose of inducing an abortion; beer, wine, spirituous liquor or fermented malt beverages; soiled bloody or insanitary clothing; solids or liquids of unknown or uncertain composition; drugs, narcotics, hallucinogenic substances, hypodermic syringes and needles, or other drug paraphernalia; any poisonous, noxious or deleterious solids or liquids; or any other property which reasonably might result in injury to the health and safety of the public or be subject to unlawful use, the chief of police or his designee may destroy any such article.

(Code 1965, § 22-6(e))

Sec. 20-30. Reclaiming property.

Unless otherwise provided in this article, any lost, stolen, confiscated or abandoned property may be reclaimed by the lawful owner upon proof of ownership and identity satisfactory to the chief of police, or his designee, and he is hereby authorized to release the property to such owner when the owner gives a proper receipt therefor, if claimed before such property is disposed of as provided in section 20-29 or 20-32.

(Code 1965, § 22-6(c))

Sec. 20-31. Failure to claim property.

Failure to make a claim of ownership within the time limits prescribed in section 20-26 and before the sale or other disposition provided in section 20-29 or 20-32 of any article shall forever bar the owner or any person claiming ownership by, through or under the owner from making any subsequent claims of ownership.

(Code 1965, § 22-6(d))

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Sec. 20-32. Disposition generally.

All lost, stolen, confiscated or abandoned property, with exceptions as provided in section 20-29, which has not been claimed by the rightful owner thereof within 60 days after such property is no longer required to be held as evidence or within 60 days after such property came into the custody of the chief of police or within 30 days after the mailing of a letter of notice, whichever is the longer time, shall be disposed of by releasing such property to the original finder if a claim has been filed; retaining and using such property in the city's training programs; destroying such property; or as ordered to the contrary by any court under the provisions of a more appropriate ordinance or state statute; or, at such time as the city manager or his designee shall determine, selling such property at public auction. Provided, however, that:

- (1) The chief of police, or his designee, shall examine all property in his custody, and if the identity of the owner appears from such examination or if the identity of the owner is readily available from public records available to him or otherwise known to him, the chief of police shall notify the apparent owner by letter, mailed by first class United States mail, postage prepaid, to the last known address of such apparent owner, describing the property and stating that such property is held by the chief of police and may be sold or otherwise disposed of unless claimed within 30 days of mailing such notice.
- (2) The chief of police, or his designee, shall keep in his control all articles of personal property seized or held as evidence, which has been delivered to the chief of police or one of his subordinates for use in any pending or prospective trial; unless otherwise ordered by the court having jurisdiction or upon proper authorization of the prosecuting attorney, until final disposition of any pending charges, including appeals or the lapse of time for filing an appeal.
- (3) Before any such property may be sold at public auction, the chief of police, or his designee, shall cause to be published in a newspaper of general circulation in the city, not less than ten days before such sale, a notice setting forth a description of each article to be sold, the time and date and place of sale, and a statement that any person who claims to be the owner of or claims any interest in any article so described may appear at the police department before the time and date set for sale to reclaim such article upon presentation of satisfactory proof of identity and ownership of such article.
- (4) Whenever any property is retained by the city as provided for in this article, it shall be added to the city's capital assets inventory, which shall also indicate the location of the assigned property and the designated use thereof.

(Code 1965, § 22-6(g))

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Sec. 20-33. Sale of unclaimed property.

At the time and place mentioned in the notice for the sale of unclaimed property, the city manager or his designee shall sell all such property at public auction for the highest and best price such property will bring in cash. The proceeds of such sale, after deduction of the expenses of the sale, shall be paid to the city manager, who shall deposit such proceeds in the general fund of the city.

(Code 1965, § 22-6(h), (i))

Secs. 20-34--20-55. Reserved.

ARTICLE III. BURGLAR ALARM SYSTEMS*

***Cross reference(s)**--Alarm system installers, § 10-51 et seq.

Sec. 20-56. False alarms.

(a) *Definition of alarm.* As used in this section, an “alarm” means a signal from a system requiring the dispatch of a police officer.

(b) *User fee for alarms.* Any person using an alarm system shall pay to the city a fee as established by resolution of the city council and on file in the city clerk's office for response to a place of business or home by members of its police department occasioned by an alarm from the system where such alarm exceeds the following:

- (1) One alarm in any 30-day period;
- (2) Two alarms in any 90-day period;
- (3) Three alarms in any 180-day period; or
- (4) Four alarms in any 360-day period;

provided, however, that any alarm caused by criminal activity shall not be considered an alarm under this section, and provided further that any alarm occurring within 15 days after the installation of the system shall not be considered.

(c) *Collection method.* The recovery of any sums owing, including court costs, attorney fees and expert fees, may be made through an action at law in addition to other remedies which

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may be available to the city.

(Code 1965, §§ 22-60–22-62)

Sec. 20-57. Monitoring fees.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alarm company means any individual, partnership, corporation or company engaged in the business of selling, installing or maintaining alarm systems.

Installed alarm means any fire, intrusion or holdup alarm signal that terminates in the Grand Junction Regional Communications Center and is monitored by dispatch personnel.

Installed alarm month means any month in which an alarm is installed on or between the first day and the 15th day of the month, and the signal is monitored by dispatch personnel, which will be considered a full month.

(b) *Fees.* Each alarm company will pay such sum as may be from time to time established by the city council, by resolution, per installed alarm per month, to the Grand Junction Regional Communications Center for each alarm monitored by dispatch personnel.

(c) *Billing.* Each alarm company will be billed on the first day of each calendar quarter, i.e., January 1, April 1, July 1 and October 1. Each alarm company will pay the amount owed by the 15th day of the second month of each quarter, i.e., February 15, May 15, August 15 and November 15. Any adjustments for nonpayments by, bad debts and disconnections of a company will be made on an individual basis by the board of directors of the Grand Junction Regional Communications Center.

(Code 1965, §§ 22-70, 22-71)

Chapter 21

RESERVED

Chapter 22 MUNICIPAL COURT*

***Charter reference(s)**--Municipal judge, §§ 56, 70.

Cross reference(s)--Officers and employees, § 2-51 et seq.; enforcement of the animal control regulations in municipal court, § 6-65.

State law reference(s)--Municipal court, C.R.S. § 13-10-101 et seq.

Sec. 22-1. Created.

Sec. 22-2. Jurisdiction, powers and procedures.

Sec. 22-3. Issuance of warrants.

Sec. 22-4. Rules of conduct.

MUNICIPAL COURT

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Sec. 22-1. Created.

A municipal court in and for the city is hereby created and established, pursuant to and governed by the provisions of C.R.S. § 13-10-101 et seq.

(Code 1965, § 18.5-1)

Sec. 22-2. Jurisdiction, powers and procedures.

(a) The municipal court shall have original jurisdiction of all cases arising under the Charter, the Code of Ordinances, resolutions, rules and regulations of the city, with full power to assess and collect penalties, punish violators, abate nuisances, enforce orders of the court by remedial or punitive contempt, and to otherwise effect the responsibilities prescribed by ordinance, Charter, resolution, regulation or court rule.

(b) The municipal court has jurisdiction and powers of an administrative hearing officer where so provided by the ordinances or resolutions of the city.

(c) For purposes of hearing cases involving persons accused of violating provisions of the Charter, the Code or any other ordinance, regulation or resolution of the city, other than those arising under chapter 36, the municipal court is a qualified court of record and shall comply with requirements of state law for courts of record. The municipal court shall furnish the record of proceedings to any party wishing to appeal from a judgment of the court, acting as a court of record, for transcription at such party's sole expense.

(Code 1965, § 18.5-2)

Sec. 22-3. Issuance of warrants.

The municipal judge and any associate judges are authorized to issue search warrants or inspection warrants for premises or property by municipal officials or inspectors in accordance with state municipal court rules. The judge may also issue warrants for the inspection and examination of any structure or property if it satisfactorily appears that the applicant for the warrant is required or authorized to make the inspection by any provision of this Code or other ordinance, resolution or regulation of the city or routine policy of inspection and enforcement and that, for the purpose of making a complete inspection, the applicant is required to go onto private property or enter into private premises. Nothing in this section shall be deemed to require the issuance of a warrant for emergency inspections or any other case where warrants are not required by law.

(Code 1965, § 18.5-4)

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Sec. 22-4. Rules of conduct.

Except as provided in this Code, the municipal court shall be conducted under the procedures prescribed by the state municipal court rules and applicable provisions of the Colorado Revised Statutes, as amended.

Chapter 23

RESERVED

Chapter 24 OFFENSES*

*Cross reference(s)--Law enforcement, ch. 20.

Sec. 24-1. Unlawful to discard or abandon iceboxes, furniture or motor vehicles.

Sec. 24-2. Aiding and abetting.

Sec. 24-3. Disturbing the peace.

Sec. 24-4. Disorderly conduct.

Sec. 24-5. Discharging firearms, BB guns.

Sec. 24-6. Throwing stones, other missiles.

Sec. 24-7. Theft.

Sec. 24-8. Trespass.

Sec. 24-9. Invitation required to enter posted premises.

Sec. 24-10. Injuring trees, plants or structures.

Sec. 24-11. Malicious injury to property; removal of survey monuments.

Sec. 24-12. Keeping disorderly house.

Sec. 24-13. Impersonating an officer.

Sec. 24-14. Interfering with officers.

Sec. 24-15. Resisting arrest.

Sec. 24-16. Public meetings and parades.

Sec. 24-17. Prostitution, soliciting.

Sec. 24-18. Indecent exposure.

Sec. 24-19. Use of explosives, permit required.

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Sec. 24-20. Skate devices, wheeled devices; regulations

OFFENSES

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Sec. 24-1. Unlawful to discard or abandon iceboxes, furniture or motor vehicles.

It is unlawful for any person to abandon or discard, in any public or private place accessible to children, any chest, closet, piece of furniture, refrigerator, icebox, motor vehicle, or other article having a compartment of a capacity of 1 1/2 cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside, or for anyone, being the owner, lessee or manager of such place, knowingly to permit such abandoned or discarded article to remain in such condition.

(Code 1965, § 19-1)

State law reference(s)—Similar provisions, C.R.S. § 18-13-106.

Sec. 24-2. Aiding and abetting.

It shall be unlawful for any person to aid or abet another person to violate or fail to comply with any of the provisions of this chapter or any other provision of the Code of Ordinances and the Charter of the city.

(Code 1965, § 19-80)

Sec. 24-3. Disturbing the peace.

It shall be unlawful for any person within this city to disturb the peace of others. A person disturbs the peace of another when he:

- (1) Causes to be produced or permits unreasonably loud or unusual noises which seriously inconvenience other persons in the area, including, but not limited to, the use of televisions, radios, phonographs and amplifiers.
- (2) Molests pedestrians upon the streets, or in other public places, by following them on foot or in a vehicle or by soliciting them to take rides in automobiles.
- (3) Permits another to commit an act of disturbing the peace as described in this section in or upon any premises owned, possessed or under his management or control when it is in his power to prevent such an act.

(Code 1965, § 19-7)

Sec. 24-4. Disorderly conduct.

It shall be unlawful to engage in disorderly conduct in this city. A person commits disorderly conduct if he knowingly:

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- (1) Addresses abusive language or threats to any person present which creates a clear and present danger of violence.
- (2) Fights with another in a public place.
- (3) Without authorization, alters or befouls public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.
- (4) Causes likelihood of harm or serious inconvenience by failing to obey any lawful order or command for dispersal by a police officer or firefighter where either three or more persons are committing disorderly conduct, or in the immediate vicinity of firefighter operations being conducted.

(Code 1965, § 19-8)

State law reference(s)—Similar provisions, C.R.S. § 18-9-106.

Sec. 24-5. Discharging firearms, BB guns.

(a) It shall be unlawful for any person to fire, shoot or discharge any cannon, gun, pistol or other firearm of any description, or BB gun or pellet gun whatsoever, whether powered with gunpowder, compressed air, gas cartridges or spring, within the city limits; however:

- (1) The discharge of firearms or weapons by any member of any law enforcement office, federal, state, county or city, in the course of official duty shall not be deemed a violation of this section.
- (2) The discharge of firearms or weapons by authorized classes of a law enforcement agency, parks and recreation department program, schools or universities at all times under proper instruction and supervision of shooting ranges as may be authorized or permitted by law shall not be deemed a violation of this section.
- (3) Permission to discharge a firearm or weapon, subject to being revoked by the city council at any time, may be granted in writing by the chief of police. Such permission shall limit the time and place of such firing and specifically set forth the purpose and limitations for which such permission to discharge a firearm or weapon has been granted. When the firing of a firearm or weapon is within the authorized limits, it shall not be deemed a violation of this section.

(b) Any weapon, firearm, BB gun or pellet gun discharged in violation of this section shall be confiscated and disposed of by order of the municipal court of the city.

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(Code 1965, § 19-54)

Sec. 24-6. Throwing stones, other missiles.

It shall be unlawful for any person to throw any stone or other missile upon or at any building, whether occupied or unoccupied, or at any motor vehicle, awning or other public or private property in a manner to injure such property, or upon or at any person whomsoever.

(Code 1965, § 19-24)

Sec. 24-7. Theft.

(a) It shall be unlawful to commit theft in the city. A person commits a theft when he knowingly obtains or exercises control over any thing of value of another without authorization or by threat or deception with intent to permanently deprive the person having lawful dominion, possession or control of the thing of value of its use or benefit. The municipal court shall have jurisdiction where the value of the thing involved is less than \$300.00. For purposes of this section, the test of value is the reasonable market value of the stolen article at the time of the commission of the alleged offense. If any person willfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his own person or otherwise and whether on or off the premises of such store or mercantile establishment, such concealment shall constitute a presumption that the person intended to commit the crime of theft.

(b) It shall be unlawful to knowingly transfer a label or other designation of price from one item to another or alter such label or designation of price with intent to purchase such item at a lesser cost.

(Code 1965, § 19-22)

Sec. 24-8. Trespass.

It shall be unlawful to commit trespass in the city. "Private property" within this section shall include private property where the public is a business invitee. A person commits trespass if he:

- (1) Enters upon or refuses to leave any private property of another, where such property has been posted with no trespass signs which are visible to persons entering upon the private property or which have been posted at reasonable intervals along the property boundary.
- (2) Enters upon or refuses to leave any private property of another having been given notice by the owner or person responsible for the property that such entry

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or continued presence is prohibited.

- (3) Enters upon or refuses to leave any public or private parking lot during the hours it is closed to business invitees when such property has been posted with no parking or no trespassing signs and the hours such property is closed which are visible to persons entering upon the property or have been posted at reasonable intervals along the property boundary.
- (4) Enters upon or refuses to leave any public place after being ordered to do so by any police officer or firefighter acting in the course of his employment and duties.
- (5) Refuses to leave the property of any parochial school, private school or public school, including a college, where such property is used for the education of persons, when asked to do so by the principal, teacher, staff member, or by any person entrusted with the authority to maintain and supervise the property.
- (6) Enters upon or remains in any of the public cemeteries of the city between the hours of 10:00 p.m. and 6:00 a.m., unless the person is an employee of the city acting in the course of his employment.

(Code 1965, § 19-25; Ord. No. 2572, 5-6-92)

State law reference(s)--Similar provisions, C.R.S. § 18-4-501 et seq.

Sec. 24-9. Invitation required to enter posted premises.

It shall be unlawful for any solicitor or peddler to go upon any premises within the city, unless invited to do so, for the purpose of soliciting or peddling where the owner or occupant of such premises has indicated his desire not to be contacted for such purposes by the placing of a no solicitors sign on the premises.

(Code 1965, § 17-85)

Sec. 24-10. Injuring trees, plants or structures.

It is unlawful to prune, plant, cut, break, dig or pull up, destroy or in any manner injure any tree, shrub, bush, vine, flower, grass or plant or to injure any of the buildings, structures, signs, fences, seats, benches, fountains or ornaments of any kind within any public place, including, but not limited to, public ways, public parks, etc.

(Code 1965, §§ 20-16, 20-81(a))

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Sec. 24-11. Malicious injury to property; removal of survey monuments.

It shall be unlawful for any person to willfully, maliciously or wantonly injure, deface or destroy real property or improvements thereto; or uncover, remove, displace or mutilate survey monuments or range stones imbedded in the streets of the city, unless duly authorized by the city manager; provided, that where it shall become necessary for the purpose of grading, paving or other construction activity to remove or displace such monuments, such displacement or removal shall be done under the supervision of the city manager and such monuments shall be adequately referenced by the city or a registered land surveyor prior to removal. All survey monuments removed or displaced shall be replaced at the expense of the contractor or entity responsible for their removal.

(Code 1965, § 19-5)

State law reference(s)—Similar provisions, C.R.S. §§ 18-4-505, 18-4-506.

Sec. 24-12. Keeping disorderly house.

It shall be unlawful for any person to knowingly, intentionally or recklessly keep any disorderly house, which term is defined as any structure and/or adjoining property or both which is used, owned, kept or controlled by such person within this city upon or within which any drunkenness, quarrelling, fighting or riotous or disorderly conduct is permitted, allowed, occasioned, encouraged or suffered.

(Code 1965, § 19-6)

Sec. 24-13. Impersonating an officer.

It shall be unlawful for any person other than an official police officer of the city to wear the uniform apparel and any other insignia of office like or similar to, or a colorable imitation of, that adopted and worn by the police officers of the city, or any other law enforcement agency within the county or of the state, or to impersonate a police officer or any other officer of the city in any other manner.

(Code 1965, § 19-14)

Sec. 24-14. Interfering with officers.

It shall be unlawful for any person to interfere by use of physical force with any person duly empowered with police authority, while such officer, member or person duly empowered with police authority is discharging or apparently discharging his duties; such interference shall include physical actions intended to aid a person who is resisting an arrest or is being arrested.

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(Code 1965, § 19-16)

State law reference(s)—Similar provisions, C.R.S. §§ 18-8-104, 18-8-105, 18-8-116.

Sec. 24-15. Resisting arrest.

It shall be unlawful to intentionally prevent or attempt to prevent a police officer, any member of the police department, or any person duly empowered with police authority acting under color of his official authority from effecting an arrest of the actor by either using physical force or violence against a peace officer, or using any other means which creates a substantial risk of causing physical injury to the police officer. It is no defense to a prosecution under this section that the police officer was attempting to make an arrest which in fact was unlawful, if he was acting under color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A police officer acts “under color of his official authority” when, in the regular course of assigned duties, he 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 by him.

(Code 1965, § 19-21)

State law reference(s)—Similar provisions, C.R.S. § 18-8-103.

Sec. 24-16. Public meetings and parades.

It shall be unlawful to hold any outdoor meeting on public property to which the general public is invited or permitted to attend, addressed by one or more speakers, or conduct a processional parade, unless a permit for such event has been issued by the city. Applications for such permit shall be made to the city manager or his designated agent at least 21 days prior to the event, with a copy sent to the fire department, police department, parks and recreation department and public works department, and shall contain the following information:

- (1) A description of the event.
- (2) The day and hour of the event.
- (3) The location of the event. Should the event be a parade, the preferred route for a parade in the city shall be from or to Second and Main Streets to Lincoln Park via Main Street and 12th Street, or any portion thereof, as this provides the route most easily police controlled. Variations from this route may be permitted by the city manager for good cause shown.
- (4) A reasonable and good faith approximation of the number of persons expected to attend the event.

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- (5) A reasonable and good faith approximation of the number and types of units expected to participate in the parade.
- (6) The names and addresses of the persons sponsoring the event.

Upon compliance with this section, a permit shall be issued by the city manager or his agent.

(Code 1965, § 19-27)

Sec. 24-17. Prostitution, soliciting.

It shall be unlawful to commit prostitution in the city. Any person who performs, offers or agrees to perform or solicits another person to perform any act of sexual intercourse, oral contact with the genitals, or stimulation of the genitals with any person not his spouse, in exchange for money or other things of value, commits prostitution in the city.

(Code 1965, § 19-18)

State law reference(s)—Similar provisions, C.R.S. § 18-7-201 et seq.

Sec. 24-18. Indecent exposure.

It shall be unlawful to commit a lewd or indecent act in the city. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public violates this section:

- (1) An act of sexual intercourse;
- (2) An act of carnal copulation either per anus or per os;
- (3) A lewd exposure of the body, done with the intent to arouse or to satisfy the sexual desire of any person;
- (4) A lewd fondling or caress of the body of another person;
- (5) Intentional exposure of genitals to the view of any person;
- (6) Urinating in public; or
- (7) Aiding, suffering or permitting in the doing of any of the offenses described in this section.

(Code 1965, § 19-15)

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State law reference(s)--Similar provisions, C.R.S. §§ 18-7-301, 18-7-302.

Sec. 24-19. Use of explosives, permit required.

It shall be unlawful for any person within this city to explode or set off any explosive material without a permit.

(Code 1965, § 19-10)

Sec. 24-20. Skate devices, wheeled devices; regulations.

- (1) No person shall operate a skate device in any place where there are one or more signs posted prohibiting such activity. No person shall operate a skate device in any place in a manner which causes injury to any person or damage to public or private property.
- (2) A person using a skate device upon any sidewalk, public path, trail or right-of-way within the City shall use the same in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of pedestrian traffic, grade and width of sidewalk, path, trail or right-of-way and condition of the surface thereof, and shall obey all traffic control devices. Every person using a skate device upon a sidewalk, public path, trail or other right-of-way shall yield the right-of-way to any pedestrian thereon.
- (3) Skate device(s) shall include and mean any skateboard(s), conventional or in-line roller skates or other similar device or apparatus all which may be collectively referred to as skate device or skate devices.

(Ord. No. 2861, 8-16-95)

Chapter 25

RESERVED

Chapter 26 PARKS AND RECREATION*

***Cross reference(s)**--Dogs running at large prohibited, § 6-59; pollution of waters declared a nuisance, § 16-61; smoking restricted in certain places, § 16-127; streets, sidewalks and other public places, ch. 32; drinking of alcoholic beverages in public parks restricted, use of glass containers prohibited, § 32-10.

Article I. In General

Secs. 26-1--26-25. Reserved.

Article II. Parks and Recreation Board

Sec. 26-26. Appointment of members; purpose and duties.

Sec. 26-27. Terms of members; ex officio members.

Sec. 26-28. Filling of vacancies.

Sec. 26-29. Compensation; removal of members.

Secs. 26-30--26-50. Reserved.

Article III. Parks

Sec. 26-51. Hours.

Sec. 26-52. Use for business.

Sec. 26-53. Building fires; posting bills; defacing property.

Sec. 26-54. Use permits.

Secs. 26-55--26-75. Reserved.

Article IV. Recreation

Sec. 26-76. Definition; incorporation of riverfront map.

Sec. 26-77. Purpose.

Sec. 26-78. Duties not created.

Sec. 26-79. Exemptions.

Sec. 26-80. Regulations.

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ARTICLE I. IN GENERAL

Secs. 26-1--26-25. Reserved.

ARTICLE II. PARKS AND RECREATION BOARD*

***Cross reference(s)--**Administration, ch. 2; officers and employees, § 2-51 et seq.

Sec. 26-26. Appointment of members; purpose and duties.

The president of the city council, with the concurrence of the council, shall appoint a parks and recreation board, which shall act in an advisory capacity to the city council and the director of the department, including assisting in planning of recreation activities and in helping to promote a long-range program for the development of the city's parks system.

(Code 1965, § 20-1)

Sec. 26-27. Terms of members; ex officio members.

The president of the council shall select with concurrence of the council seven persons to the parks and recreation board who are citizens of the city. The members shall serve three-year staggered terms. Two new members shall be appointed annually for three-year terms. The city manager, or his designee, and the parks and recreation director shall be ex officio, nonvoting members of the board.

(Code 1965, § 20-1(a))

Sec. 26-28. Filling of vacancies.

Appointments to fill vacancies on the parks and recreation board shall be for the unexpired term and shall be made in the same manner as original appointments.

(Code 1965, § 20-1(c))

Sec. 26-29. Compensation; removal of members.

(a) No member of the parks and recreation board shall receive any compensation for such membership.

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(b) Members of the parks and recreation board may be removed by action of the city council for malfeasance or nonfeasance or for unexcused failure to attend three consecutive meetings of the board. The board may recommend such action to the council.

(Code 1965, § 20-1(d), (e))

Secs. 26-30--26-50. Reserved.

ARTICLE III. PARKS

Sec. 26-51. Hours.

It shall be unlawful for any person to be or remain in any of the public parks of the city during prohibited hours, except employees of the city on official duty, those persons who are participating in or attending those functions permitted by other sections or chapters of this Code, to the extent of such participation or attendance and the reasonable time necessary to leave such functions, and those persons who have obtained a permit from the city manager for being or remaining in the public parks during otherwise prohibited hours. Prohibited hours for public parks of the city shall be as set forth by resolution of the city council.

(Code 1965, §§ 19-76, 20-11)

Sec. 26-52. Use for business.

No person shall use any public park for business purposes, including but not limited to food and other concessions, and no business of any kind shall be carried on except by a permit from the city manager.

(Code 1965, § 20-13)

Sec. 26-53. Building fires; posting bills; defacing property.

The building of fires, the posting of any bills or advertisements, or painting or making any advertisements, names, pictures, characters or signs of any description on any object or thing whatsoever within or connected with any city park is hereby prohibited, except that the city manager may permit posting or painting of advertisements under such terms and conditions as the city manager shall prescribe.

(Code 1965, § 20-17)

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Sec. 26-54. Use permits.

(a) The city manager may grant a permit to any responsible person for permission to use the parks and the facilities therein for public entertainment, the sale of food or other refreshments, ball games or any other athletic games or sports and public exhibitions; provided, that the permittee shall agree to obey and conform to all rules and regulations made by the city manager in reference to the care, management and government of city parks.

(b) Charges for the use of all public property belonging to the city, including but not limited to parks and recreation facilities, shall be established from time to time by the city council by resolution.

(c) Permission may be granted by the city manager to erect any temporary buildings or tents for exhibition or other purposes in the parks, and any buildings or tents so erected shall be removed from the park by the owner of such buildings or tents within five days after the close of such exhibition, fair or entertainment. Upon the failure of such owner to remove such buildings or tents within such five-day period, every such building or tent shall be and remain the property of the city.

(Code 1965, §§ 20-27–20-29)

Secs. 26-55–26-75. Reserved.

ARTICLE IV. RECREATION

Sec. 26-76. Definition; incorporation of riverfront map.

Riverfront, riverfront trails or trails means those areas, facilities, lands and waters as identified on the map entitled "Riverfront Map," which map is incorporated in this article by this reference. The city manager or his designee shall provide to the parks and recreation advisory board updated and revised maps of the riverfront as additional trails, lands, lakes or facilities are acquired, placed or constructed. The most current map shall be on file in the office of the City Clerk and incorporated by reference into this article and shall constitute the riverfront map. The substitution of maps and incorporation thereof by reference shall not necessitate readoption of this article.

(Ord. No. 2606, 10-21-92)

Cross reference(s)--Definitions generally, § 1-2.

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Sec. 26-77. Purpose.

The purposes of this article are to:

- (1) Establish formal policies and regulations for the use and conduct of the users of the riverfront trails;
- (2) Protect the public by assuring that regulations are in place for the safety of trail users;
- (3) Protect the public from unsafe and insanitary activities occurring on the trails; and
- (4) Allow for the orderly and lawful operation of the trail system.

(Ord. No. 2606, § 20-21, 10-21-92)

Sec. 26-78. Duties not created.

No duty or duties not otherwise created or implied by law are or shall be created by the adoption of this article or the regulations authorized hereunder or the adoption or enforcement thereof.

(Ord. No. 2606, § 20-24, 10-21-92)

Sec. 26-79. Exemptions.

This article shall not apply to:

- (1) Maintenance vehicles and maintenance activities which are approved by the city manager or his designee and are conducted on the trails or in the vicinity of the trails; or
- (2) Emergency vehicles, activities and/or equipment authorized by the city, used on or near the trails.

(Ord. No. 2606, § 20-22, 10-21-92)

Sec. 26-80. Regulations.

(a) The parks and recreation advisory board shall propose riverfront regulations for adoption by the city council. The city council may amend or add to those regulations as may be necessary from time to time to carry out the intent of the parks board and/or the intent of

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the council.

(b) The city manager shall cause one certified copy of the regulations adopted under this section, together with the most recent amendments thereto, to be filed with the city clerk. The city manager shall make available additional copies at the office of parks and recreation for review by the general public.

(c) The adopted regulations shall have the force and effect of law with respect to all persons who use or visit any of the riverfront trails.

(d) The parks and recreation advisory board shall propose necessary and reasonable rules and regulations applicable to the use of the riverfront trails, those areas adjacent to the trails and the bodies of water which are owned or controlled by the city and/or the riverfront commission, which may be accessed from or are near to the trails.

(e) The riverfront regulations promulgated hereunder shall include, but not necessarily be limited to, prohibiting motorized vehicles, except wheelchairs, maintenance and emergency vehicles, on the trails; prohibiting boats, vessels or craft in the waterways; closing the trails at set times; prohibiting glass containers; prohibiting the possession, consumption or use of malt beverages containing more than 3.2 percent alcohol by weight, spirituous or vinous liquor; requiring animals to be leashed; prohibiting animals or animals of certain species; and allowing camping, vending or commercial activities by permit only.

(f) After review by the parks and recreation advisory board, but prior to recommendation of adoption by the board, any and all regulations shall be submitted to the city council for its comments, consideration and concurrence, if any.

(Ord. No. 2606, § 20-23, 10-21-92)

The regulations recommended by the parks and recreation board and adopted by the council are printed in appendix C of this Code.

Chapter 27

RESERVED

Chapter 28 PUBLIC IMPROVEMENTS*

***Editor's note**--People's Ordinance Number 33 adopted by referendum states in part that the city shall not order construction of any improvement where assessments are levied against property owners except after approval of the property owners in the district to be assessed.

Article I. In General

Sec. 28-1. Definitions and rules of construction.

Sec. 28-2. Authority to make improvements, assess costs.

Sec. 28-3. Construction specifications.

Sec. 28-4. Statutory procedures for forming districts.

Sec. 28-5. Findings; limitation of actions.

Sec. 28-6. Ratification of actions.

Secs. 28-7--28-25. Reserved.

Article II. Districts Created by City Council

Sec. 28-26. Types of improvements authorized.

Sec. 28-27. Prerequisites to establishment of districts.

Sec. 28-28. Assessment of costs.

Sec. 28-29. Adjustment of assessment for irregularly shaped property.

Sec. 28-30. Sidewalk construction; reconstruction.

Sec. 28-31. Acquisition of property by eminent domain.

Sec. 28-32. Construction of bridges, viaducts, tunnels by railroads.

Sec. 28-33. Certificate of completion and cost.

Sec. 28-34. Notice of completion and cost; hearing.

Sec. 28-35. Lien for assessments; new assessments.

Sec. 28-36. Preparation, form of assessment roll.

Sec. 28-37. Payment, collection of assessments.

Sec. 28-38. Payment of delinquent assessments; sale of real estate or purchase by city; report of collections; actions by council.

Secs. 28-39–28-60. Reserved.

Article III. Districts Created by Petition

Sec. 28-61. Authorized.

Sec. 28-62. Form of petition; filing.

Sec. 28-63. List of landowners in proposed district; notice.

Sec. 28-64. Hearing on petition; challenges; rulings.

Sec. 28-65. Establishment of district.

Secs. 28-66–28-85. Reserved.

Article IV. Improvements

Sec. 28-86. Procedures generally.

Sec. 28-87. Special assessments.

Sec. 28-88. Reapportionment of assessments.

Sec. 28-89. Collection of assessments.

Sec. 28-90. Special assessment bonds.

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ARTICLE I. IN GENERAL

Sec. 28-1. Definitions and rules of construction.

(a) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City manager means the city manager of the city, his designee or the city finance director.

Costs of an improvement or any similar term means all capital costs incurred in connection with any improvement authorized, including, but not limited to, land acquisition costs, architectural, engineering and inspection fees, soil testing expenses and consulting charges, acquisition, construction or installation costs pertaining to any improvement, allowances for contingencies, legal and other professional fees, the costs of issuing any bonds to finance any improvement, bond printing discount or reserve costs, interest costs, and any related costs necessary to or relating to the levy of special assessments to pay for any of the foregoing.

District means a public improvement district.

Interested party means a landowner or interested person as further defined in this chapter.

Landowner means any person who is the owner in fee of any undivided interest in real property or any improvements permanently affixed thereto. As used in this definition, "owner in fee" includes a contract purchaser of real property obligated to pay general taxes, an heir of a deceased owner, or a devisee of a deceased owner under a will admitted to probate, but does not include a contract seller of property with respect to which the contract purchaser is deemed to be the owner.

Mailed notice means notice by certified or registered first class postage prepaid United States mail within the time required for notice.

Net effective interest rate means the net interest cost of securities divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, net effective interest rate shall be computed with regard to the approved schedule of maturities or estimated mandatory redemptions.

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Net interest cost means the total amount of interest to accrue from the date of securities to the date of maturity, less the amount of any premium or plus the amount of any discount at which such bonds or securities are being or have been sold. In all cases, net interest cost shall be computed with regard to the approved schedule of maturities or redemptions.

Posted notice means notice by continuous posting for three days at city hall prior to the event to which the notice relates.

Published notice means notice by publication in a newspaper of general circulation within the city one time by one publication not more than 30 days nor less than ten days prior to the event to which the notice relates.

Special benefit means a benefit to a particular property within a district separate and apart from general benefits to the city as a whole, which may include, but is not limited to, the following:

- (1) Any increase in the market value of the property;
- (2) Any adaptability of the property to a superior or more profitable use;
- (3) Any increase in convenience or reduction in inconvenience accruing to a particular property owner, including the facilitation of access to a residence or a commercial establishment; or
- (4) Any increase in patronage of a commercial establishment due to the availability of additional, better located, or less expensive access/parking.

Special improvement fund means a special fund authorized by this chapter.

Special operation and maintenance fund means a fund authorized by this chapter.

Special surplus and deficiency fund means a fund authorized by this chapter.

Street means and includes avenues, boulevards and other highways.

(b) *Rules of construction.* The term "real estate or property" shall include all land within the limits of the city either platted or unplatted, regardless of lot or land line and the franchises of any railroad within any street improved under this chapter. Lots, plats, blocks and other subdivisions may be designated in accordance with any recorded plat thereof, unplatted lands by any definite description thereof and franchises by the name of the corporation owning such franchise.

Cross reference(s)--Definitions generally, § 1-2.

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Sec. 28-2. Authority to make improvements, assess costs.

The city shall have the power to make local improvements and to assess the cost thereof wholly or in part upon the property benefitted as provided in this chapter.

(Code 1965, § 18-1)

Sec. 28-3. Construction specifications.

All public improvements shall be constructed in accordance with the Charter, ordinances and specifications prescribed and authorized by the city council and the city manager or his designee.

(Code 1965, § 18-2)

Sec. 28-4. Statutory procedures for forming districts.

In addition to the method and procedures for the formation of improvement districts as set out in this chapter, the city council may follow those methods and procedures for the formation of districts as established in the state statutes. In the absence of a provision in this chapter, an applicable provision of the state statutes shall govern.

(Code 1965, § 18-3)

Sec. 28-5. Findings; limitation of actions.

All findings and determinations of the city council with respect to the matters required by this chapter to be considered shall be final and conclusive upon all parties in interest. No ordinance or resolution or action of the city council relating to the organization of any district, the authorization of any improvements, the approval of any method of apportioning assessments, the issuance of any bonds, or the levy of any special assessments shall be challenged after the expiration of 30 days from the effective date of any such ordinance, resolution or action.

(Code 1965, § 18-72)

Sec. 28-6. Ratification of actions.

All actions not inconsistent with the provisions of this chapter heretofore taken by the officers of the city, elected or appointed, directed toward the establishment of improvement districts are hereby ratified, approved and confirmed.

(Code 1965, § 18-73)

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Secs. 28-7--28-25. Reserved.

ARTICLE II. DISTRICTS CREATED BY CITY COUNCIL

Sec. 28-26. Types of improvements authorized.

The council may, in districts to be prescribed, order the construction, reconstruction, replacement, renewal or extension of:

- (1) Paving, grading, curbing, guttering or otherwise improving the whole or any parts of any streets, alleys or other rights-of-way in the city or any combination of improvements;
- (2) Grades, crosswalks, culverts, drains, manholes, catchbasins;
- (3) Sewers and sewer facilities, water main facilities and other lines, street lighting and others;
- (4) Any local improvement and renewals or extensions thereof which benefit the land abutting such improvements, such as sidewalks, water mains;
- (5) The necessary construction and the installation of lighting;
- (6) Sewage disposal works and renewals or extensions thereof;
- (7) Other public works as may be considered necessary and authorized by the city council;
- (8) Providing of landscaping and beautification of an area or areas within the district or for the providing of other aesthetic improvements.

The council may also create local improvement districts for the purpose of developing an improvement plan for a district with subsequent formation of smaller districts.

Sec. 28-27. Prerequisites to establishment of districts.

(a) In establishing any improvement district, the city council shall observe the following:

- (1) Before ordering any improvement, the council shall adopt details and specifications for the improvement; determine the number of installments and the time in which the cost shall be payable; determine the rate of interest on the unpaid installment; and determine the lands to be assessed for the

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improvements. The city manager shall provide an estimate of the total cost of such improvements and a map of the lands to be assessed, exclusive of the cost of collection and other incidental costs.

- (2) The council shall, by advertisement for one issue in a newspaper of general circulation, give notice to the owners of the real estate in the district and to all persons generally interested, without naming such owners or persons, of:
 - a. The kinds of improvements proposed;
 - b. The number of installments and the time in which the cost of the improvements will be payable;
 - c. The rate of interest on unpaid installments;
 - d. The extent of the district to be assessed, by boundaries or other brief description;
 - e. The probable cost as shown by the total estimate of the city's engineer(s);
 - f. The maximum total estimate per front foot where the assessment is made per front foot, or per square foot of lot where the assessment is made according to the area that will be assessed upon any lot or lands in the district and, in case the assessment shall be made otherwise than per front foot or square foot, the maximum share to be assessed upon any lot or lands in the district or to any persons shall be stated according to the method of assessment adopted;
 - g. The time, not less than 30 days after advertisement, when the council will consider the proposed improvements and hear all complaints and objections that may be made by the owner of any real estate to be assessed or any interested persons; and
 - h. The fact that the map and estimates and all proceedings of the council are on file and can be examined at the office of the city clerk during business hours at any time within the 30 days, by any interested person.

(b) Except as provided in this section, all improvements made under the provisions of this article shall be constructed by independent contractors and all contracts shall be procured and let by the city manager with the approval of the city council. The city may, under the provisions of this article, provide for the doing of the work by hiring labor and may arrange for the purchase of the necessary material under the supervision of the city manager.

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(c) Districts may be formed by the city council pursuant to petition(s) of the owners for any improvement provided in this article. The petition must be subscribed and acknowledged in the manner provided by law for acknowledgements of deeds of conveyances of real estate, by the owners or their agents duly authorized by power of attorney. No petitioner, heir, successor or assign shall be permitted to withdraw his name from the petition after such petition has been filed with the council unless the council fails to order such improvements upon petition within the time specified in the petition filed. On all projects the council shall have discretionary power to elect the type and specifications of the project and materials.

(d) All proceedings by the council may be modified, confirmed or rescinded at any time prior to the adoption of the resolution authorizing the improvements, provided that no substantial change in the district, map details, specifications or estimate shall be made by the city council without further notification equivalent to that made in the first publication of the notice to the property owners.

(e) If at the time of the adoption of the resolution authorizing the improvements, any real estate in the district has the whole or any part of the proposed improvements, conforming or approximately conforming to the general plan, the council may adopt the same in whole or in part, or make the necessary changes to make the same conform to the general plan. The owner of such real estate shall, when the assessment is made, be credited with the amount which is saved by reason of adopting such existing improvements.

(f) The findings of the city council by resolution that any improvements provided for in this article are duly ordered after notice was duly given, or that petition or remonstrance was or was not filed, or was or was not duly subscribed and acknowledged by the required number of owners, as in this article provided, shall be conclusive in every court.

(Code 1965, § 18-4(a)–(d), (g)–(i))

Sec. 28-28. Assessment of costs.

(a) In case of any improvement made pursuant to this article, the cost of such improvements, or such part thereof as may be assessed against the property specially benefitted, may be assessed without regard to lot or land lines, on a frontage, zone or other equitable basis in accordance with benefits as the same may be determined by the city council.

(b) When the city council determines that any improvement authorized by this article results in special benefits to both the city and the abutting property owner, that portion of the cost of the improvement which results in special benefit to the city may be assessed against the city and be payable in installments, as provided in this article. The determination by the city council as to the property to be assessed and the amount of special benefit shall be conclusive.

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(Code 1965, §§ 18-5, 18-6)

Sec. 28-29. Adjustment of assessment for irregularly shaped property.

When any real estate is V-shaped or of any irregular form, the council may make adjustment or change in the assessment thereon as equitable and just, or may refuse to make any adjustment or change.

(Code 1965, § 18-9)

Sec. 28-30. Sidewalk construction; reconstruction.

The city council may order the construction or reconstruction of sidewalks other than in improvement districts, whenever in the opinion of the council that shall be proper, because sufficient sidewalks have been laid in the vicinity to make it reasonable that intervening sidewalks should be provided, or existing sidewalks should be reconstructed. In all such cases the city council shall notify the owner to construct or reconstruct such sidewalks within 30 days, or other period of time established by the council, from the date of service of notice. The notice shall be in writing and served in person upon the owner, if within the city, and if not, it may be served by certified mail or by publication for ten days. The owner shall have the right to construct or reconstruct sidewalks with plans and specifications of the city. If the owner fails to timely complete the improvements or otherwise be in default, the council may have the required work done, either by the city acting through its officers, agents or employees or by others and when done, issue to the person, city or other corporation doing the work its certificate therefor stating the just amount due. The certificate shall draw interest at the rate established by the council until paid, and when recorded in the office of the county clerk and recorder shall be a lien upon the benefitted property, and such amount may be recovered by the holder of the certificate against the owner in any court of law. Such lien may be foreclosed by the holder of such certificate if not paid within 30 days of its date. The city council may, by resolution, provide further means of construction or reconstruction of sidewalks upon failure of the owner to do so within the limits specified by notification, such as by the inclusion of the area in the improvement district. Upon passage of a resolution creating an improvement district, the owner may not thereafter do or have done the construction or reconstruction of sidewalks, but such construction or reconstruction may be done only under the improvement district.

(Code 1965, §§ 18-12--18-14)

Sec. 28-31. Acquisition of property by eminent domain.

As deemed necessary by the city council to facilitate any improvement authorized by this article, rights-of-way and other real estate or property may, upon the order of the council, be purchased or acquired by eminent domain on behalf of the city and the whole cost thereof shall be included as a cost of an improvement district, as may be determined by the city

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council.

Sec. 28-32. Construction of bridges, viaducts, tunnels by railroads.

The council may, by resolution, require railroad companies to construct, at their own expense, bridges and their approaches, tunnels or other conveniences at public crossings and viaducts and approaches over railroad tracks where the same cross or extend along public highways or streets. Whenever the council shall deem any such improvement necessary, it may by resolution require the construction of such improvement, the character and location of such proposed improvement to be therein described of sufficient certainty and an estimated cost to be stated. Where a viaduct or tunnel crosses or passes under the tracks of several railroad companies, the council may apportion the cost thereof equitably among the different companies owning the tracks.

(Code 1965, § 18-26)

Sec. 28-33. Certificate of completion and cost.

Upon completion of any improvement authorized by this article, the city manager shall prepare a statement showing the whole cost of the improvement, or such parts thereof as completed, including costs of collection, real estate or property acquisition (including the costs, fees and charges associated with any condemnation), and incidental costs, including interest, and apportioning the same upon each lot or tract of land to be assessed. The statement shall be certified by and filed in the office of the city manager.

(Code 1965, § 18-27)

Sec. 28-34. Notice of completion and cost; hearing.

(a) The city manager shall for three consecutive days advertise in a newspaper of general circulation that: such improvements have been or are about to be completed and accepted; specifying the whole cost of the improvements; the share so apportioned to each lot or tract of land or parcel; the part to be paid by the city; and that any complaints or objections may be made in writing by owners or interested persons to the city council by filing with the city manager within 30 days from the first publication of notice. Complaints or objections will be heard and determined by the city council at its first regular meeting after such 30 days and before the adoption of any ordinance assessing the costs of improvements.

(b) At the meeting specified in the notice provided by subsection (a) of this section, the council shall hear and determine all complaints and objections. The council may thereupon make modifications and changes as equitable and just, or may confirm the apportionment. The council shall thereafter, by ordinance, assess the cost of improvements against all real estate or property in the district and against such persons in proportions determined.

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(Code 1965, § 18-28)

Sec. 28-35. Lien for assessments; new assessments.

All assessments made pursuant to this article, together with all interest thereon and penalties for default in payment thereof and all costs in collecting such assessments, shall constitute a perpetual real estate lien equivalent to general property (state, county, city, town or school) taxes. No sale of such property to enforce any general state, county, town or school tax or other lien shall extinguish the perpetual lien of such assessment. As to any subdivision of any land assessed pursuant to this article, the assessment shall in each case be a lien upon all portions of the subdivision without any regard to proportion or area. No delay, mistake, error, or irregularity in any act or proceeding authorized by this article shall prejudice or invalidate any final assessment, but the same may be remedied by subsequent amending acts or proceedings, as the case may require. When so remedied, the assessment shall take effect and have the priority as of the date of the original act or proceeding. If any court of competent jurisdiction declares any final assessment made pursuant to this article invalid, then the city council may, upon notice as required for the making of an original assessment, make a new assessment in accordance with this article.

(Code 1965, § 18-30)

Sec. 28-36. Preparation, form of assessment roll.

The city manager shall prepare a local assessment roll showing each piece of real estate assessed, the total amount of the assessment, the amount of each installment of principal and interest, if the assessment is payable in installments, and the date or manner in which such installments will become due. No error, failure, neglect or default on the part of the city, county treasurer or county assessor in complying with recordation, certification or collection of any assessment shall invalidate any tax or assessment or affect the underlying lien.

(Code 1965, § 18-31)

Sec. 28-37. Payment, collection of assessments.

(a) All assessments upon real estate made pursuant to this article shall be due and payable within 30 days of the final publication of the assessing ordinance without demand, provided, that all such assessments may at the election of the owners be paid in installments with interest as provided. Failure to pay the whole assessment within 30 days shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. All persons electing to pay in installments shall be conclusively considered and held as consenting to such improvements, and such election to pay in installments shall be conclusively held and considered as a waiver of any and all right to question the powers or jurisdiction of the city to order or construct the improvements, the

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quality of the work, the regularity or sufficiency of the proceedings, the validity or correctness of the assessment, or any other objection or matter. The number of installments, the period of payment and the rate of interest shall be determined by the city council in its sole and absolute discretion.

(b) All installments of principal and interest for assessments under this article shall be payable at such times as may be specified by the assessing ordinance, provided that the county treasurer shall be permitted, without the assessment of penalty or penalty interest, to collect installments in accordance with statutory provisions for the collection of general taxes. When installments are to be paid annually, failure to pay any installment, whether of principal or interest or both, when due shall cause the whole of the unpaid balance to become due and payable immediately and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at a rate established by the city council. At any time prior to the date of sale, the owner may pay the amount of all delinquent installments together with interest and shall thereupon be restored to the right to pay installments in the same manner as if default had not occurred.

(Code 1965, §§ 18-31–18-37)

Sec. 28-38. Payment of delinquent assessments; sale of real estate or purchase by city; report of collections; actions by council.

(a) The county treasurer shall receive payment of all delinquent assessments against any real estate, together with interest and other charges and, in case of default in the payment of any installment of principal or interest when due, shall advertise and sell any and all real estate concerning which such default is suffered for the payment of the due but unpaid installment or installments with interest thereon. Such sales and advertisements shall be made at the same time or times and in the same manner and under the same conditions and penalties and to the same effect as are provided by the general laws of the state for the sale of real estate in default of payment of general taxes. The holder of a certificate from the county treasurer, including the city, showing payment of an assessment, may have subsequent assessments endorsed thereon under the same terms and conditions as provided by the general laws of the state for the endorsement of subsequent taxes on tax certificates.

(b) At any sale by the county treasurer of any real estate in the city for the purpose of paying any special assessment, the city manager or his designee may purchase any such real estate without paying for the real estate in cash and shall receive certificates of purchase in the name of the city. Such certificates shall be received and credited at face value, with all interest penalties and other charges accrued, to the city manager on account of the assessments in pursuance of which the sale was made. The certificates may thereafter be sold by the city manager at face value, with all interest and penalties accrued. The city manager shall assign the certificates and the proceeds shall be credited to the fund created by ordinance for the payment of assessments. Assessments shall be made without recourse upon the city in any event. Any

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such sale and assignment shall operate as a lien in favor of the city and of the holders of certificates as provided by law in the case of sales of real estate for default in payment of general taxes. The owner of any divided or undivided interest may pay his share of any assessment.

(c) All collections made by the county treasurer upon any assessments in any calendar month shall be accounted for to the city manager on or before the tenth day of the next succeeding calendar month with separate statements of all collections for each improvement or assessment.

(d) In carrying out the provisions of this article, the city council shall act by resolution in all cases, except that the cost of all improvements shall be assessed by ordinance.

(Code 1965, §§ 18-38–18-41)

Secs. 28-39–28-60. Reserved.

ARTICLE III. DISTRICTS CREATED BY PETITION

Sec. 28-61. Authorized.

The establishment of a district may be accomplished by petition by the procedure set forth in this article.

(Code 1965, § 18-64)

Sec. 28-62. Form of petition; filing.

The petition establishing a district shall set forth the name of the proposed district, a legal description thereof, a statement that if the district is established the city shall acquire, construct, install, finance and operate improvements within the district and defray the costs of doing so by levying special assessments against the property within the district, and a request for the establishment of a district. The petition shall be subscribed by more than 50 percent of the landowners in the district and also by landowners with property within the district comprising more than 50 percent in the aggregate of the valuation for assessment of all property therein. The petition shall be filed in the office of the city manager. Counterpart petitions may be filed and together shall be regarded as one petition.

(Code 1965, § 18-64(a))

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Sec. 28-63. List of landowners in proposed district; notice.

Upon receipt of a petition for establishment of a district, the city manager shall cause to be prepared a list of all landowners as of the date of filing. Such list shall be prepared from the official records of the county treasurer and from such other reliable information as may be available. The city manager shall give published notice of the date of the intended completion of the list, affording all persons claiming to be landowners an opportunity to present evidence satisfactory to the city manager of their rights to be included on the list of landowners. Any person who fails to present evidence prior to the date of completion of the list, as announced in the notice thereof, shall be deemed to have waived any objection to the sufficiency of the petition or the failure of the city to give mailed notice to such person of any subsequent proceeding, and the published notice required by this section shall specifically state upon completion of such list that the city manager shall fix a place and time not less than 20 days nor more than 40 days thereafter for a hearing on the petition before the city council. The city manager shall give published and mailed notice to all landowners of the pendency of the petition and of the place and the time of the hearing thereon. Such notice shall also set forth the name of the proposed district, a legal description thereof and a statement that if the district is established the city shall acquire, construct, install, finance or operate improvements within the district and defray the costs of doing so by levying special assessments against the property within the district.

(Code 1965, § 18-64(b))

Sec. 28-64. Hearing on petition; challenges; rulings.

At the hearing called pursuant to this article, the city council shall determine if the petition complies with the requirements of this article and shall determine the qualifications of the subscribers to the petition and the genuineness and sufficiency of the signatures thereon. Any landowner having information relevant to such determinations shall be afforded the opportunity at such hearing to present such information. Unless challenged at the hearing by an interested party having such information, the information contained in the list of landowners prepared by the city manager shall be presumed correct. In the event of any such challenge, the city council shall hear and rule upon the challenge. Regardless of whether any challenge is made, the city council shall make a finding as to its accuracy and completeness. All rulings on challenges and findings concerning the accuracy and completeness of the list shall be embodied in any ordinance adopted pursuant to this article. Any petition may be amended to conform to the facts or to correct technical defects and, whether or not so amended, may be recirculated for the purpose of obtaining additional signatures.

(Code 1965, § 18-64(c))

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Sec. 28-65. Establishment of district.

If the city council finds that the petition complies with the requirements of this article and that it bears the requisite number of signatures, it shall by ordinance declare the district established, giving it the name required by this chapter and an appropriate number and describing its boundaries in accordance with the petition, or any amendment thereto, necessitated by the proceedings.

(Code 1965, § 18-64(d))

Secs. 28-66--28-85. Reserved.

ARTICLE IV. IMPROVEMENTS

Sec. 28-86. Procedures generally.

The city council shall proceed with respect to the acquisition, construction or installation of improvements within any district as follows:

- (1) Any improvement authorized by this article shall be initiated by resolution of the city council declaring its intention to acquire, construct or install such improvement. Such resolution shall describe with particularity the nature and location of the improvement, refer to plans and specifications and maps on file with the city manager, estimate the costs of the improvement, and specify the manner in which such costs will be defrayed. If the costs are to be defrayed in any part by special assessment against the property benefitted, the resolution shall also describe the properties to be assessed, set forth the method of apportioning the total cost among such properties, and state the share of such cost to be assessed against each property. The resolution shall also fix a place and time for public hearing before the city council on the matters contained in the resolution.
- (2) The city manager shall give published notice of the adoption of the resolution and of the place and time of the hearing on the matters contained therein. The city manager shall also give mailed notice thereof to all landowners scheduled to bear any portion of the assessment burden, if the scheduled cost is to be defrayed, in whole or in part, by special assessments. Such notice shall describe the matters required to be contained therein by this article. Such notice shall also state that the city council may not proceed if written protests to the acquisition, construction, or installation of the proposed improvements are filed with the city manager on or before the date of the hearing by landowners scheduled to bear 50 percent or more of the assessment burden, if any portion

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of the scheduled cost is to be defrayed by special assessments.

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- (3) At the hearing, the city council shall review the nature, location and cost of the proposed improvements and the method of financing such improvements. If any portion of the cost is to be defrayed by special assessments, the city council shall receive expert testimony concerning the special benefits to be conferred on the properties to be assessed and the fairness of the method of apportioning assessments. Any such method may take into consideration such factors as the city council deems relevant, including without limitation the following factors:
- a. The distance of the improvements from the property to be assessed;
 - b. The need for parking for each property;
 - c. The valuation for assessment of each property;
 - d. The square footage of each property;
 - e. The square footage of usable floor space with respect to each property and the use thereof; and
 - f. The availability of existing facilities with respect to each property.

Any method must result in the levy of assessments upon every property assessed not in excess of the special benefit conferred thereon and among all such properties in rough approximation to the special benefits conferred. The city council shall afford all landowners scheduled to bear any portion of the assessment the opportunity to be heard on the matters before it. Any objection to the method of apportioning the assessment not made at such hearing shall be deemed waived. Any objection to the amount proposed to be assessed not made at such hearing shall be deemed waived to the extent of such amount. The city council shall determine the sufficiency of protests filed. If the city council finds that written protests to the acquisition, construction or installation of the proposed improvements have been filed with the city manager on or before the date of the hearing by landowners scheduled to bear 50 percent or more of the assessment who have not previously signed a petition for formation of the district, it shall not proceed. If the city council finds that insufficient protests have been received as provided in subsection (2) of this section, the city council shall rule upon all objections made, may make such adjustments in the nature, location and cost of the improvements as may be warranted, and shall by ordinance authorize the acquisition, construction or installation of the improvement and, if appropriate, the assessment of the cost thereof in accordance with the method approved. By ordinance, the city council shall also

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fix an interest rate to be paid on unpaid installments.

- (4) Except in cases in which the city receives aid from an agency of the federal government, the city manager shall give published notice for bids on all contracts for work or material or both involving an expense of \$10,000.00 or more in connection with any improvement within a district. The city council may reject any and all bids and if it appears that the city can perform the work or secure material for less than the lowest bid, it may proceed to do so.

(Code 1965, § 18-67)

Sec. 28-87. Special assessments.

Whenever the cost of any improvement or the cost of operating or maintaining any improvement is to be defrayed in whole or in part by special assessment, the following procedure shall be observed:

- (1) Upon completion of any improvement or upon completion from time to time of any part thereof and upon acceptance thereof by the city manager or when the total cost of any improvement or any such part thereof can be definitely ascertained, the city manager shall cause to be prepared a statement showing the whole cost of the improvement and the portion thereof to be defrayed by special assessment. Such cost may be either greater or lesser than that originally approved by the city council and may include additional expenditures, the nature and amount of which were unforeseen at the time of the authorization of the improvement. Such statement shall also contain an apportionment of the cost to be assessed among the properties to be assessed in conformity with the method previously approved. Such statement shall be filed in the office of the city manager.
- (2) The city manager shall give published and mailed notice to all landowners scheduled to bear any portion of the assessment burden that the proposed apportionment has been completed and of the hearing thereon. The notice shall specify the whole cost of the improvement, the portion to be defrayed by special assessment, the amount to be assessed against each property, and that any complaints or objections to the proposed assessments which are made in writing by any landowner scheduled to bear any portion of the assessment burden and filed with the city manager on or before the date of the hearing will be heard and determined by the city council before the passage of any ordinance assessing the cost of such improvement.
- (3) At the time specified in such notice or at some adjourned time, the city council shall hear and determine all such complaints and objections. If the city council

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determines that the assessment is inequitable in any case, the city council shall make a just and equitable assessment based upon the benefits accruing to the property assessed by reason of the improvement(s) made.

- (4) The city council shall by ordinance apportion and assess the cost of the improvement. The passage of such ordinance shall be prima facie evidence that the assessments have been lawfully levied.
- (5) Any clerical or technical errors or mistakes in the levy of assessments may be corrected by amendatory ordinance. Such corrections shall take effect as of the date of the original assessing ordinance.
- (6) All assessments, together with all interest thereon, penalties for default in payment thereof, other authorized charges and all costs incurred in collecting the same shall constitute, from the date of the passage of the assessing ordinance, a perpetual lien in the several amounts assessed against each property and shall have priority over all other liens except general tax liens.

(Code 1965, § 18-68)

Sec. 28-88. Reapportionment of assessments.

Whenever due to a change in the use of property assessed for the cost of any improvement, or due to other changes within the district and upon the request of any interested party, the city council may reapportion the cost of the improvement among the property benefitted thereby as follows:

- (1) Reapportionment proceedings shall be commenced only in the discretion of the city council by resolution declaring its intent to reapportion. Such resolution shall contain a proposed schedule of reapportioned assessments showing with respect to all properties previously or prospectively to be assessed the net change in the assessment obligation. The resolution shall also fix a place and time for a public hearing before the city council on the proposed reapportionment.
- (2) The city manager shall give published notice of the adoption of the resolution and of the place and time of the hearing on the proposed reapportionment. The city manager shall also give mailed notice thereof to the landowners with respect to all properties previously or prospectively to be assessed. Such notice shall summarize the resolution and set forth in detail the matters required to be contained therein by this section. Such notice shall also state that the city council may not proceed if written protests to the proposed reapportionment are filed with the city manager on or before the date of the hearing by landowners

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scheduled to bear 50 percent or more of the proposed assessed burden as reapportioned.

- (3) At the hearing so set, the city council shall afford all landowners scheduled to bear any portion of the assessment burden as reapportioned the opportunity to be heard. Any objection not made at such hearing shall be deemed waived. The city council shall determine the sufficiency of the protests filed. If the city council finds that written protests to the proposed reapportionment have been filed with the city manager on or before the date of the hearing by the affected landowners, it shall not proceed. If the city council finds that insufficient protests have been received as provided in this section, the city council shall rule on any objections and shall by ordinance reapportion the assessment in accordance with a proposed schedule or any amendment thereto necessitated by the proceedings. In reapportioning the assessment, the city council shall at the hearing thereon receive expert testimony concerning the special benefits conferred on the properties subject to assessment and the fairness of the proposed method of reapportioning the assessments. Any such method may take into consideration such factors as the city council deems relevant, including without limitation the factors stated in this article. Any such method must, however, result in the levy of assessments upon every property assessed not in excess of the special benefits conferred thereon and among all such properties in rough approximation to the special benefits conferred.
- (4) No such reapportionment shall become effective until after the expiration of the limitation of actions period prescribed in this article or until after all judicial or further city council proceedings in connection with any action commenced within such period shall have been completed, whichever is later. Reapportioned assessments shall be collected as provided in this article, except that the reapportioned assessments payable in installments shall be payable on the same installment schedule as originally prescribed by the city council. No assessment shall be reapportioned more frequently than once in any 12-month period and no such reapportionment shall reduce the aggregate amount of the assessment payable when such assessments constitute in whole or in part the security for any bonds of the city then outstanding.

(Code 1965, § 18-69)

Sec. 28-89. Collection of assessments.

All assessments levied as provided in this article shall be collected as follows:

- (1) The city manager shall cause to be prepared an assessment roll in book form, showing in suitable columns each property assessed, the total amount of each

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assessment, if applicable, the amount of each installment of principal and interest, and the date when the whole amount or each installment will become due. The assessment roll shall also have suitable columns for use in the event of payment of the whole amount or of any installment before due and of payment of any penalty.

- (2) Payment in full of assessments levied pursuant to this article may be made to the city manager without interest at any time within 30 days after the passage of an assessing ordinance.
- (3) At the expiration of such 30-day period, the city manager shall prepare an assessment roll, therein showing all payments made and the date of each, which roll shall be certified by the city clerk under the seal of the city and delivered to the county treasurer for the collection of the same.
- (4) The owner of any partial interest in any property assessed may pay such owner's share of any assessment upon producing evidence of the extent of such separate interest satisfactory to the city manager or county treasurer having charge of the roll.
- (5) All collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the city manager on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement.
- (6) All special assessments shall be due and payable within 30 days after the passage of the assessing ordinance without demand. The city manager shall give mailed notice to the landowners of the property assessed.
- (7) The city shall have the following rights and remedies with respect to any sale by the county treasurer of any property for the purpose of paying any special assessment made under the provisions of this article:
 - a. The city may purchase any such property without paying for such property in cash and shall receive a certificate of purchase therefor in the name of the city. The certificate shall be received and credited at its face value, with all interest and penalties accrued, on account of the assessments in pursuance of which the sale was made. Any such certificate may thereafter be sold by the city at its face value, with all interest and penalties accrued and assigned to the purchaser in the name of the city. If all bonds issued in payment for the improvement have been discharged in full, such certificate may be sold by the city for the best price obtainable at public sale, at auction or by sealed bids in the

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manner and under the same conditions as provided in this article. Such assignment shall be without recourse and the sale and assignment shall operate as a lien in the favor of the purchaser and as assignee as provided by law in the case of sales of real estate in the default of payment of general property tax.

- b. The city as purchaser has the right to apply for a tax deed on any such certificate of purchase at any time after three years from the date of issuance thereof, and any such deed shall be issued as provided by law for issuance of tax deeds for the nonpayment of general property tax.
- c. If the city is the owner of the property by virtue of a tax deed, or is the owner of the property otherwise acquired, in satisfaction or discharge of the lien represented by any such certificate of sale, it may sell such property as provided by ordinance and/or city Charter.
- d. If the city is a holder of a certificate of purchase, it may bring a civil action for foreclosure thereof, joining as defendants all persons holding record title, persons having or claiming any interest in the property or the proceeds of foreclosure sale, all government taxing units having taxes or other claims against such property and all unknown persons having or claiming any interest in such property. Any number of certificates may be foreclosed in the same proceeding. In such proceeding the city, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property.

(Code 1965, § 18-70)

Sec. 28-90. Special assessment bonds.

For the purpose of paying all or such portion of the cost of any improvement constructed under the provisions of this article as may be assessed against the property specially benefitted thereby and not otherwise paid, the city council may issue special assessment bonds of the city as provided in this section without an election. If the cost of any improvement is not known with certainty, such bonds may be issued upon estimates approved by the city council.

- (1) Special assessment bonds issued pursuant to the authority of this article may be in such form and bear such date as may be prescribed by the city council. Such bonds shall mature a sufficient number of years from their date so that payment may be made from assessments levied therefor but subject to call as provided in this article. Such bonds shall be subscribed by the presiding officer of the city council with the seal of the city affixed thereto and attested by the city clerk. Such bonds shall bear such rate or rates of interest as may be determined

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by the city council, not exceeding the maximum net effective interest rate specified by the city council prior to the use of such bonds in payment for improvements or the sale thereof. Such interest shall be payable annually or semiannually and evidenced by one or two sets of coupons executed with the facsimile signature of the city manager. The holders of such bonds may look for the payment thereof solely to, and the bonds shall be secured solely by, a pledge of the appropriate special improvement fund established therefor into which shall be deposited all monies received on account of special assessments levied against the properties in the district specially benefitted by the acquisition, construction and installation of the improvements financed by the issuance of the bonds. Notwithstanding the foregoing, the city may at its option apply any other funds legally available therefor to the payment of the bonds. All monies collected from such assessments for any improvement shall be applied to the payment of bonds issued until payment is made in full of all bonds, both principal and interest. The bonds may be used in payment of the cost of the improvement, or the city council may sell the bonds at public or private sale on such terms as it may determine at a price sufficient to pay such costs.

- (2) All such bonds shall be negotiable instruments within the meaning of state statutes, as amended.
- (3) Whenever the city manager has a sum of money to the credit of any special improvement fund exceeding six months' interest on the unpaid principal of the bonds issued therefor and outstanding, he shall call in a suitable number of such bonds for payment by giving published and mailed notice to the holder or holders of all bonds to be so redeemed. For this purpose, the holder of any bond may at any time furnish his postal address to the city manager. At the expiration of 30 days from such publication of notice, interest on the bonds so called shall cease. The notice shall specify by number the bonds called and all such bonds shall be paid in direct numerical order.

(Code 1965, § 18-71)

Chapter 29

RESERVED

Chapter 30 SOLID WASTE*

***Cross reference(s)**--Cleanliness of premises where domestic animals are kept, § 6-31; certain solid waste disposal and collection practices declared nuisances, § 16-61.

Article I. In General

Sec. 30-1. Definitions.

Sec. 30-2. Collection area, duty of owner or occupant.

Secs. 30-3--30-25. Reserved.

Article II. Collection and Disposal

Sec. 30-26. Who may collect, dispose of rubbish.

Sec. 30-27. Supervision of collection; regulations authorized.

Sec. 30-28. Licensing procedure; fee.

Sec. 30-29. New service fee.

Sec. 30-30. Appeals from decisions of the solid waste superintendent.

Sec. 30-31. Preparation of refuse.

Sec. 30-32. Refuse containers--Nature and size of containers.

Sec. 30-33. Same--Duty to provide and maintain in sanitary condition.

Sec. 30-34. Same--Ashes.

Sec. 30-35. Same--Collection point.

Sec. 30-36. Storage of refuse.

Sec. 30-37. Collection practices.

Secs. 30-38--30-60. Reserved.

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Article III. Rates, Charges, Billing Procedure

Sec. 30-61. Collection at ground level of right-of-way.

Sec. 30-62. Delinquent accounts.

Sec. 30-63. Responsibilities of owner of premises.

SOLID WASTE

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ARTICLE I. IN GENERAL

Sec. 30-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes means the residue from the burning of wood, coal, coke, or other combustible material.

Garbage means putrescible animal or vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

Refuse means all putrescible and nonputrescible solid waste, except human body wastes, ashes, street cleanings, dead animals, abandoned motor vehicles, solid market and industrial wastes, and all material or substances which are hazardous, infectious, toxic, or contain radioactive particles or are regulated by any federal or state law concerning hazardous, toxic or other similar substances or materials.

Residential means used by natural persons for living accommodations, but excludes structures or uses containing eight or more dwelling units.

Rubbish means nonputrescible solid waste consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials, but excluding ashes.

(Code 1965, § 14-2; Ord. No. 2614, § 1, 11-18-92)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 30-2. Collection area, duty of owner or occupant.

It shall be the duty of each owner or occupant of property from which refuse is collected to provide a surface or area with sufficient structural integrity so that the refuse collection trucks and equipment may safely operate thereon.

(Code 1965, § 14-10(d))

Secs. 30-3--30-25. Reserved.

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ARTICLE II. COLLECTION AND DISPOSAL*

*Cross reference(s)--Disposal of manure, § 6-32; buildings and building regulations, ch. 8.

State law reference(s)—General Police Powers, C.R.S. § 31-15-401.

Sec. 30-26. Who may collect, dispose of rubbish.

(a) Refuse accumulated in the city shall be collected, conveyed and disposed of in accordance with applicable statutes, rules and regulations including, but not limited to 31-15-401, C.R.S.

(b) No person other than as authorized and otherwise in compliance with applicable statutes, rules and regulations shall collect, convey over any of the streets in the city, or dispose of, any refuse accumulated in the city. The city shall have the sole and exclusive right to serve and charge for service any and all residential customers of the city, existing as of April 9, 1994. Areas annexed on or after April 9, 1994 may be served by the city or a private refuse provider in accordance with 31-15-401, C.R.S. This article shall not prohibit the actual producer of refuse, or the owner or occupant of premises upon which refuse has accumulated, from personally collecting, conveying and disposing of such refuse provided such refuse is of a nature not normally collectible or is in addition to the amount normally collected from the producer and the disposal of such refuse is in compliance with the provisions of this article and with any other applicable ordinance(s), statute(s), rules and regulations. Hauling by the producer shall not effect the obligation of residential refuse producer(s) or owner(s) to pay the charges established by this article.

(Code 1965, § 14-3; Ord. No. 2598, § 1, 9-16-92)

Sec. 30-27. Supervision of collection; regulations authorized.

The city manager shall have the authority to adopt regulations concerning the days of collection, type and location of waste containers, routes, safety and related matters and such other matters pertaining to collection, conveyance and disposal of refuse as he shall find necessary and to change and modify such regulations after notice as required by law, provided that such regulations are not contrary to law.

(Code 1965, § 14-4)

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Sec. 30-28. Licensing procedure; fee.

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Licenses referred to under this article shall be granted in accordance with chapter 10, article II, of this Code and under regulations established by the city council. Such license shall be issued upon payment of a license fee as established by resolution of the city council and on file in the city clerk's office for each refuse/recycling motor vehicle or truck which operates in or on the city rights-of-way. Such fee(s) shall be nonrefundable and shall be revocable upon violation of any regulation or ordinance of the city or other applicable law. Any person operating in the city without such license shall be guilty of a misdemeanor.

(Code 1965, § 14-5)

Sec. 30-29. New service fee.

Whenever a solid waste account is created or is changed, a service fee in the amount as established by resolution of the city council and on file in the city clerk's office, shall be charged for the creation or change of the account, unless at the same time, water or sewer service is being commenced or changed and a fee is being charged therefor. Such account change fee shall be in addition to any and all collection fees.

(Code 1965, § 14-6)

Sec. 30-30. Appeals from decisions of the solid waste superintendent.

Any person aggrieved by the application of a regulation, or fee charged by, or the decision made by the city may appeal to the city manager or his designee, who shall have the authority to confirm, modify or revoke any such fee or decision or the application of a regulation.

(Code 1965, § 14-7)

Sec. 30-31. Preparation of refuse.

(a) *Refuse.* Each producer of refuse shall, before placing such refuse for collection, drain from the refuse all free liquids and shall contain all refuse in an approved container.

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(b) *Cans and bottles.* Each producer of refuse cans and bottles shall thoroughly rinse and drain all such cans and bottles before depositing them for collection.

(c) *Trimming and clippings.* Each producer shall cut tree trimmings, hedge clippings, and similar materials to lengths not to exceed three feet before depositing such materials in a approved container for collection.

(Code 1965, § 14-8(a); Ord. No. 2614, § 2, 11-18-92; Ord. No. 2988, 3-5-97)

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Sec. 30-32. Refuse containers--Nature and size of containers.

All refuse containers serviced by the city shall be approved by the city. Containers for recyclables shall meet the requirements and specifications established by the city manager. The owner or producer shall remove all noncomplying containers from service and from the public rights-of-way.

(Code 1965, § 14-8(b)(1); Ord. No. 2598, § 2, 9-16-92; Ord. No. 2614, § 3, 11-18-92; Ord. No. 2988, 3-5-97)

Sec. 30-33. Same--Duty to provide and maintain in sanitary condition.

Every refuse producer shall maintain his refuse containers in sanitary condition. The city manager shall have the authority to refuse collection services and/or remove containers from service for failure to comply with this article.

(Code 1965, § 14-8(b)(2); Ord. No. 2614, § 4, 11-18-92; Ord. No. 2988, 3-5-97)

Sec. 30-34. Same--Ashes.

Ashes shall be contained in paper or plastic bags and shall be cold. The generator of any hot ashes shall be liable for damages including damages to any city owned container .

(Code 1965, § 14-8(b)(3); Ord. No. 2988, 3-5-97)

Sec. 30-35. Same--Collection point.

Containers shall be kept on the owner's or tenant's premises and off the city right-of-way except on the days of pickup.

(Code 1965, § 14-8(b)(4); Ord. No. 2614, § 5, 11-18-92)

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Sec. 30-36. Storage of refuse.

(a) No person shall place any refuse in any street, alley or other public place, or upon any private property whether owned by such person or not, within the city, except in proper containers for collection or under express approval granted by the city manager or other authorized city official. No person shall throw or deposit any refuse in any stream, other body of water, or any place other than a lawfully designated sanitary landfill site.

- (1) *Unauthorized accumulations.* Any unauthorized accumulation of refuse on any premises is hereby declared to be a public nuisance and is prohibited.

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- (2) *Scattering of refuse.* No person shall cast, place, sweep or deposit anywhere within the city any refuse in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway, or other public place, or onto any premises, occupied or not, within the city.
- (3) *Depositing refuse in container of another.* No person shall place or deposit his refuse in the container of another or in a manner so that it will be collected as though it had been generated by another.

(b) Refuse containers shall:

- (1) Be placed for collection at the ground level of the right-of-way designated by the city manager.
- (2) Be accessible from the curb of the street or side of the alley from which collection is made.
- (3) Not obstruct a sidewalk.
- (4) Not be more than two feet from the traveled portion of the rights-of way.
- (5) Not be placed within three feet of any obstruction.

(c) City solid waste equipment operators may not enter private property to collect residential refuse. The city manager may provide additional services when extra payment is agreed upon by both parties for the additional service rendered.

(Code 1965, § 14-8(c); Ord. No. 2988, 3-5-97)

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Sec. 30-37. Collection practices.

- (a) *Limitation of quantity.*
 - (1) *Residential.* The city shall collect from its customers a designated volume of refuse not to exceed the volume of the container during the collection period for a specified charge. Extra accumulations or non-refuse items may be collected upon request. The city shall have the authority to refuse to collect extra accumulation of refuse and/or non refuse items, or it may require additional charges for such amounts.

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- (2) *Commercial.* The city shall collect from its customers the amount of refuse agreed upon according to the weight, volume and frequency of collections. The city may collect additional amounts of refuse which shall require the payment of additional charges, which additional charges shall be established by the city manager.
- (b) *Special refuse problems.*
 - (1) *Contagious/diseased refuse.* No person shall deposit or place for collection any garbage, refuse, rubbish or substance or thing which is contagious, infectious, or contains any disease-producing item or thing regulated by the state department of health including, but not limited to those organisms, conditions, substances or activities controlled in Title 25 of C.R.S.
- (c) *Collection Practices.*
 - (1) *Requirements for vehicles.* Persons who dispose of waste material which is not refuse and all persons who haul refuse in the city or over the streets in the city shall use a watertight hauling area provided with a tight cover and operated so as to prevent offensive odors escaping therefrom and to prevent refuse from being blown, dropped or spilled.
 - (2) *Disposal.* Disposal of refuse shall be made outside the city limits, unless otherwise specifically authorized by the city manager. The city manager shall have the authority to permit the disposal of such material in a city sanitary landfill if one exists, provided the charge(s) as provided in this article is paid.
 - (3) *Rules and regulations.* The city manager shall have the authority to adopt such other regulations concerning collection and disposal, and/or relating to the hauling of refuse in or over the streets in the city, as he shall find necessary,

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subject to the right of appeal as set forth in section 30-30 and if otherwise in accordance with law.

(Code 1965, § 14-9)

Secs. 30-38--30-60. Reserved.

ARTICLE III. RATES, CHARGES, BILLING PROCEDURE

Sec. 30-61. Collection at ground level of right-of-way.

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(a) Each owner or occupant shall place refuse for collection by the city in an approved container at ground level of the street and within two feet of the traveled portion of the right-of-way from which collection is made.

(b) Additional service by the city to a customer may be provided on a cost basis determined by the city manager based on the frequency, volume, weight, loading-out difficulty and nature of material to be disposed of.

(c) Where the collection of refuse from other than ground level of the right-of-way and not within two feet of the traveled portion of the right-of-way is accepted by the city manager, the fee shall be as established by resolution of the city council and on file in the city clerk's office, plus a fee set by the city manager to cover the cost of the extra service rendered.

(Code 1965, §§ 14-10(a), 14-10(b); Ord. No. 2598, § 3, 9-16-92; Ord. No. 2614, § 6, 11-18-92; Ord. No. 2714, § 1, 11-17-93; Ord. No. 2988, 3-5-97)

Sec. 30-62. Delinquent accounts.

Each producer, owner, occupant of a property has a duty to pay such fees and charges as established in or by this article at the rates established by resolution of the city council and on file in the city clerk's office. Amounts shall be billed monthly. A city customer is delinquent if such customer has not paid in full within ten days after the due date on the bill. If the customer has not paid the bill in full within that time, the service may be discontinued and other city services including water and sewer may be shut off. Refuse services shall resume when all amounts owed to the city are paid in full, plus a fee or interest as established by resolution of the city council and on file in the city clerk's office, on the delinquent amount for each month, or portion of a month, that the account was delinquent. In addition, water and sewer service may be discontinued to enforce collection of delinquent refuse accounts. The city may proceed to collect all amounts due in the manner provided by law for the collection of a

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municipal claim. Any and all amounts unpaid pursuant to this article shall be a personal debt of the owner of the lands benefitted or served and in addition shall constitute a lien upon each lot, land, building and premises served or benefitted. If such amounts are not timely paid when due, the city manager may, in addition to other remedies, certify to the county treasurer a lien to be by him placed upon the tax list for the current year to be collected in the manner other taxes are collected, plus a ten percent administrative charge to defray the cost of collection. All laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption of the same shall apply.

(Code 1965, § 14-10(c))

Sec. 30-63. Responsibilities of owner of premises.

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(a) The owner of the premises, as well as the occupant or occupants thereof, shall be subject to the terms of this article, shall be jointly and severally liable for payment of all charges authorized by this chapter, and the failure to timely pay all charges authorized by this chapter shall constitute a misdemeanor violation of this chapter.

(b) The owner of the premises and each adult occupant thereof shall be jointly and severally responsible to, within 30 days of any change of use or structure, notify the utility accounting department of such change of building structure and/or use to ensure correct monthly charges. The city shall have no obligation to credit or refund any account unless such timely and proper notice is given.

(Code 1965, § 14-11)

Chapter 31

RESERVED

Chapter 32 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

***Cross reference(s)**--City datum established, § 2-1; dogs running at large prohibited, § 6-59; procedure for moving buildings, § 8-136 et seq.; cemeteries, ch. 12; smoking restricted in certain places, § 16-127; parks and recreation, ch. 26.

Article I. In General

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Sec. 32-2. Sale, display of merchandise.

Sec. 32-3. Encroachments.

Sec. 32-4. Discharging water, other liquids.

Sec. 32-5. Ditches--Uncovered prohibited.

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Sec. 32-8. Permit required for construction of sidewalks and curbing.

Sec. 32-9. Duty to clean sidewalks.

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Article II. Driveways

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Sec. 32-35. Authority to order alteration or repair; failure to comply.

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Article III. Commercial Use of Public Right-of-Way in Downtown Area

Sec. 32-61. Purpose.

Sec. 32-62. Definitions.

Sec. 32-63. Permit fees.

Sec. 32-64. Permit requirements.

Sec. 32-65. Review of permit application.

Sec. 32-66. Restrictions to conduct of business.

Sec. 32-67. Suspension or revocation of permit.

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public right-of-way means and includes all streets, roadways, sidewalks, alleys, and all other areas reserved for present or future use by the public, as a matter of right, for the purpose of vehicular or pedestrian travel or utility installation.

(Code 1965, § 26-1)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 32-2. Sale, display of merchandise.

It shall be unlawful for any person to place in or upon any public sidewalk, street, alley or public right-of-way any sign, advertisement or any article of merchandise offered, exhibited or advertised for sale or any other thing tending to interfere, obstruct or encroach upon the use of such public sidewalk, street, alley or public right-of-way or which renders such public sidewalk, street, alley or other right-of-way less commodious or convenient for public use, except when directed by the city council that such display or sale of merchandise or any other thing may be permitted as part of a coordinated promotional effort involving a majority of the retail business establishments in the immediate shopping area. When directed by the city council, such display or sale may be permitted for a maximum of seven days.

(Code 1965, §§ 19-13, 26-2)

Sec. 32-3. Encroachments.

(a) *Duty to remove on notice.* The owner of any building, fence, vegetation or other obstruction of like nature on any street, avenue, alley, sidewalk or public ground within the city shall remove such obstruction within 30 days after notice in writing signed by the city manager and served upon such owner or his agent, and a failure or refusal to do so shall be a misdemeanor.

(b) *Removal by city.* Whenever the owner of any building, fence, vegetation or other obstruction of like nature standing or encroaching upon any street, avenue, alley, sidewalk or public ground shall refuse or neglect to remove such encroachment after notice as provided in subsection (a) of this section, the same shall be deemed a nuisance and it shall be lawful for the

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city council to cause the same to be removed or taken down, and the expense thereof shall be recoverable from the owner.

(Code 1965, §§ 26-4, 26-5)

Sec. 32-4. Discharging water, other liquids.

(a) It shall be unlawful to discharge steam, water, including but not limited to swimming pool water and irrigation water, or other liquids from any building directly onto or in such a manner that it will flow onto or seep under the streets, alleys and sidewalks within the city; provided, that the provisions of this section shall not apply to runoff water resulting from natural precipitation or sprinkling.

(b) It is unlawful to discharge or cause to be discharged any gasoline, oils, benzene, naphtha, fuel oil, or other flammable, toxic, explosive or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to be capable of causing damage or hazard to structures, equipment or people, into the streets or other public ways.

(Code 1965, §§ 19-75, 26-7)

Sec. 32-5. Ditches--Uncovered prohibited.

(a) No person, other than the commissioner of highways [city manager] in the performance of his official duties, shall construct, maintain or conduct water through any open or uncovered ditch or canal, along or across any of the public highways in the city.

(b) It shall be the duty of any person conducting irrigating water through any part of the city to immediately cover such [opened or uncovered] ditch or canal in some safe and substantial manner, to be approved by the commissioner of highways [city manager], or to convey such waters through pipes, tiling or other closed conduits to be approved by said commissioner [city manager].

(People's Ord. No. 3, 11-7-11; Code 1965, §§ 26-8, 26-9)

Charter reference(s)--This section was derived from People's Ordinance Number 3 which was adopted by referendum and which pursuant to the Charter § 142 must be amended by referendum.

Sec. 32-6. Same--Finding, abatement of nuisances.

(a) To carry out the intent of section 32-5, the city council shall determine whether an existing open ditch within the city constitutes a nuisance by endangering the public health, safety or welfare. Such finding of nuisance shall be made by resolution of the city council after

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consideration of the conditions in regard to such ditch.

(b) Upon a finding by the city council that a nuisance exists, the city manager shall proceed to either eliminate the ditch by closing such ditch or seek the covering of such ditch. As an encouragement to elimination of the ditch entirely, the city manager may offer any one or all of the following inducements to the water users from the ditch:

- (1) The payment of a lump sum equal to the estimated water charges for a five-year period for watering the existing planted portion of the ditch water users' premises; provided, however, that the maximum lump sum payment to the owner of any one premises shall not exceed the amount established by resolution of the city council and on file in the city clerk's office.
- (2) The purchase by the city, at the option of the ditch water user, of the shares of ditch water at current value. The ditch water user may elect to retain ownership of such shares or sell them elsewhere.
- (3) Upon the closing of a ditch, or portion thereof, within the city, the former water users from such ditch or such portions shall be relieved of all responsibility in connection with such ditch, or portions thereof.

(c) If the closing of the ditch is impractical, the city may participate with the ditch water users in the covering of such ditch, or portions thereof. In such case, the city's share as custodian of the public right-of-way shall not exceed one-half of the cost of such covering, with the balance being assumed by ditch water users. If the city is also a user as well as custodian of the right-of-way, the share of cost of covering may be increased proportionately.

(Code 1965, § 26-10)

Sec. 32-7. Excavations, permit required.

No person shall make any excavation in any street or alley within the city unless he shall first have obtained a permit in accordance with section 38-161 et seq.

(Code 1965, § 26-11)

Sec. 32-8. Permit required for construction of sidewalks and curbing.

(a) A person shall, before commencing the work of building, reconstructing or repairing a sidewalk or curbing, make application and procure from the city manager a permit therefor, which permit shall be issued only to such person who shall have paid a permit fee as established by resolution of the city council and on file in the city clerk's office for each location for which a permit is sought, and shall have filed with the city manager a correct description of the lots,

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tracts or parcels of land in front of which and along which such proposed sidewalk or curbing is to be constructed, reconstructed or repaired; provided further, that no such permit shall be issued by the city manager to construct any such sidewalk or curbing until a record grade therefor shall have been established by the city manager.

(b) The permittee under this section shall procure and maintain, or shall cause any contractor or subcontractor of the permittee to procure and maintain, worker's compensation insurance and employer's liability insurance in conformance with applicable statutes or requirements of the state. All coverage shall be so maintained as to cover any and all employment liability, claims, demands and other obligations assumed or incurred by the permittee arising out of, or resulting from, activities entered into in furtherance of such permit.

(Code 1965, § 17-108; Ord. No. 2605, 10-21-92)

Sec. 32-9. Duty to clean sidewalks.

The owner, or his agent, or the occupant of any premises or property in the city shall maintain those sidewalks adjoining such premises or property in a condition free from snow, ice, mud, dirt, rubbish and filth. Any accumulation of snow and ice shall be removed from such sidewalk into the street within 24 hours after every snowfall.

(Code 1965, §§ 19-28, 26-6)

Sec. 32-10. Drinking of alcoholic beverages in public ways; use of glass containers in grassed areas prohibited.

(a) It shall be unlawful for any person to drink malt or vinous beverages in the city, in or on any public street, road, highway, park or public way which is either publicly or privately owned and used by the public, unless such possession and consumption is pursuant to and in accordance with a special events permit issued in accordance with C.R.S. § 12-48-101 et seq. or such public place is a part of the premises designated under a valid license issued pursuant to state law and the consumption is otherwise lawful. Consumption of spirituous liquors in or on any public street, road, highway or public way which is either publicly or privately owned shall be unlawful.

(b) No person shall drink from or use glass containers on the grassed areas of any public park.

(Code 1965, §§ 19-29, 19-29.1; Ord. No. 2743, § 1, 5-4-94)

Secs. 32-11--32-30. Reserved.

ARTICLE II. DRIVEWAYS*

***Cross reference(s)**--Buildings and building regulations, ch. 8.

Sec. 32-31. Defined.

As used in this article, a driveway is that portion of the street right-of-way between the pavement edge and the property line which is designed and used for the interchange of traffic between the public roadway pavement and the abutting property.

(Code 1965, § 26-27)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 32-32. Permit required to construct, alter, repair.

It shall be unlawful to construct, reconstruct, alter or repair any driveway in the city without first obtaining a permit therefor and paying the permit fee as required in this article; provided however, that no permit fee shall be required of a subdivider constructing driveways as a part of street and sidewalk installation within the subdivision, nor shall such fee be required when such driveway construction occurs as a part of a special improvement district.

(Code 1965, § 26-28)

Sec. 32-33. Application for permit.

Any person desiring to obtain a permit for a driveway shall file an application therefor with the city manager. This application shall be in writing and upon a form provided by the city and shall contain such information showing the location of the driveway, the type of construction, the length of the driveway and any other information which may be required by the city manager.

(Code 1965, § 26-29)

Sec. 32-34. Permit fees.

The permit fee for each driveway approved by the city manager shall be as established by resolution of the city council.

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(Code 1965, § 26-30)

Sec. 32-35. Authority to order alteration or repair; failure to comply.

The city manager may, at his discretion, order the reconstruction, alteration or repair of driveways and curbs associated therewith, presently constructed or to be constructed under the terms of this article, where the city manager determines such to be an impediment to the free movement of vehicles upon the streets or the economic distribution of parking space at the curb of the aforementioned streets, or to travel or safety of pedestrians thereon. Such notice to reconstruct, alter or repair shall be given by registered or certified mail to the owner of the premises involved, who shall commence such reconstruction, alteration or repair within 30 days thereafter. If the owner fails to so commence, the city may make such reconstruction, alteration or repair, billing the costs of the same to such owner, who shall be obligated therefor. The costs shall constitute a lien on the property served by such driveway.

(Code 1965, § 26-31)

Sec. 32-36. Authority to order removal of abandoned driveways; failure to comply.

When, in the opinion of the city manager, an abandoned driveway constitutes a hazard to vehicular traffic or to pedestrians within the city, the city manager may order the removal of such driveway, the reconstruction to be made by the owner of the premises involved, notice having been given to such owner as provided in section 32-35. In the event of the failure of the owner to remove such driveway, restoring the curblane and sidewalk area, the city may undertake such removal and reconstruction, billing the owner for such removal and reconstruction as provided in section 32-35, and the owner shall be obligated therefor. The costs shall constitute a lien on the property served by such driveway.

(Code 1965, § 26-32)

Sec. 32-37. Length, location regulated.

The length of driveways and their location with respect to the right-of-way lines of public streets shall be in accordance with standards and specifications developed by the city manager.

(Code 1965, § 26-34)

Sec. 32-38. Service driveways; number, location, specifications.

No more than two service driveways shall be permitted in 100 feet of frontage to allow entrance to a single business establishment. No entrance or approach shall be located or constructed so as to interfere with or prevent the proper location or functioning of any traffic

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regulating device. All service driveways, curb returns and expansion joints shall be constructed according to specifications required by the city manager.

(Code 1965, § 26-35)

Secs. 32-39--32-60. Reserved.

ARTICLE III. COMMERCIAL USE OF PUBLIC RIGHT-OF-WAY IN DOWNTOWN AREA

Sec. 32-61. Purpose.

The purposes of this article shall be to:

- (1) Control the type and manner of activities conducted in the downtown shopping park area.
- (2) Enhance the environment in the downtown shopping park area and to provide the maximum possible usage subject to appropriate restrictions of the downtown shopping park area.

(Code 1965, § 26-50)

Sec. 32-62. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Areawide permit means a permit which allows the permitted use within the entire downtown shopping area, rather than at a specific location.

Conducting business means the act of selling or offering for sale goods, merchandise, food or services of any type whatsoever.

D.D.A. means the downtown development authority of the city.

Downtown shopping park area means those half blocks abutting Main Street from Third Street to Seventh Street within the city.

G.J.D.A. means the Grand Junction Downtown Association, a nonprofit state corporation whose purpose is to serve the interests of the merchants located in the downtown

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shopping park.

Kiosks means small, light structures that are stationary, but may be permanent or seasonal in nature, and constructed in accordance with guidelines for design as listed in the plan of development.

Location means that particular area for which a permit or special use permit has been issued and which is stated upon the permit or special use permit.

Mobile vending cart means a structure with at least two large operational wheels that is easily removed and is used for vending and falls within the restrictions contained within this article.

Pedestrian vendor means an individual operating without the use of a mobile vending cart or kiosk and with a minimum of equipment (e.g., balloons, portrait artist, shoeshine). A pedestrian vendor must be able to move or remove all his equipment at one time without mechanical assistance.

Permit. The types of permits which may be issued under this article are:

- (1) Pedestrian vendor permits.
- (2) Mobile vending cart permits.
- (3) Kiosk permits.
- (4) Sidewalk restaurant permits.
- (5) Special use permits.

Plan of development means that plan of development adopted by the city council for the development and preservation of the downtown area as well as any special or contingent plans of development approved by the city council prior to the time of the adoption of a formal plan of development by the city council. The term also includes all amendments to the original plan of development of the downtown development authority.

Sidewalk restaurant means the extension of an existing food facility extending out into the public right-of-way for no more than 20 feet, but in no event shall the remaining width of sidewalk for pedestrian flow be less than ten feet, and set off from the public right-of-way by some manner of partition at least three feet in height which may be moveable or installed on a semipermanent basis.

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Special use permit means a short term permit granted for unique or charitable uses of the downtown shopping park for which no other permit is appropriate. A special use permit may be granted to the sponsor of an activity rather than the specific individuals conducting business within the downtown shopping park area and may permit the use of tables, chairs, and other items of a moveable nature which are not included in any other permit category. If all other necessary permits are obtained, a special use permit may allow use of the street areas and cause closure of specific roadways as requested in the permit. No more than 12 special use permits allowing roadway closure in excess of two hours during normal business hours shall be issued per year and no more than two such permits shall be issued in any calendar month.

(Code 1965, § 26-51)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 32-63. Permit fees.

(a) *Established.* The fees for permits under this article shall be as established by resolution of the city council and on file in the city clerk's office.

(b) *Submission.* The fees required in this article shall be submitted with the permit application by check or money order payable to the city, and shall be deposited by the city manager to the account of the D.D.A.

(c) *Waiver.* Any organization which is nonprofit (devoted to a charitable or public purpose) and which relies only on volunteer help may, when applying for a special use permit, ask for a waiver of fees for the special use permit. Such waiver shall be requested in the application for the special use permit and shall be accompanied by proof that the proceeds from the special use permit will be used:

- (1) By a nonprofit organization;
- (2) For a charitable public purpose; and
- (3) Such special use permit will be used only by volunteers.

If the D.D.A. decides that adequate proof has been presented of these requirements, it shall so state in the certification required by subsection 32-65(b), and then the city manager shall issue such permit without requiring payment of the necessary fees.

(Code 1965, § 26-52)

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Sec. 32-64. Permit requirements.

(a) *Length of permits.* Permits may be issued according to the terms of this article and may be issued within 90 days of the beginning date of such use, for the following lengths of time:

- (1) Pedestrian vendor permits: Thirty days.
- (2) Mobile vending carts: Six months.
- (3) Special use permits: Three days.
- (4) All other permits: One year.

(b) *Special use permits.* Any person seeking the issuance of a special use permit, including renewals, shall first contact the G.J.D.A. The G.J.D.A. shall have ten days in which to elect to become the sponsor of the activity. If the G.J.D.A. declines, the person may make application directly to the D.D.A. If the G.J.D.A. elects to become the event sponsor, it shall make application for the special use permit and may enter into such contracts and charge such fees as shall be reasonably necessary to pay for the costs associated with the operation of the event.

(c) *Application for permits.* All permit applications, including those for renewals, shall be made to the office of the downtown development authority on a form deemed appropriate by the executive director of the downtown development authority and shall include, but not be limited to, the following:

- (1) Name and address of applicant.
- (2) Names of all beneficial owners of the applicant if the applicant is other than a sole proprietorship.
- (3) Type of business to be conducted, which shall include a description of the merchandise to be sold or displayed.
- (4) A signed statement that the permittee shall hold harmless the city and the downtown development authority, its officers and employees, and shall indemnify the city and/or the downtown development authority, its officers and employees, for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. The permittee shall furnish and maintain such public liability, food products' liability, products' liability, and other insurance as will protect the permittee, the city and the D.D.A. from all claims for damage to property or bodily

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injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide insurance of not less than \$150,000.00 for bodily injury on each person, \$600,000.00 for each occurrence, and not less than \$600,000.00 for property damage per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insureds the city and the downtown development authority, their officers and employees, and shall further provide that the policy shall not terminate or be cancelled prior to the completion of the contract without 30 days' written notice to the executive director of the downtown development authority.

- (5) Description of the building, structure, mobile vending cart or other implements to be used in connection with conducting business if the permit is granted. This shall also include blueprints, drawings, sketches and detailed building information where applicable.
- (6) The location for which the permit is requested within the downtown shopping park area.
- (7) A description as to how the business is to be conducted and how such business shall enhance the downtown shopping park area, and shall be in conformity with the plan of development of the city for the downtown area.
- (8) A listing of all applicable permits obtained and those expected to be obtained prior to the commencement of the business.
- (9) A statement as to whether the structure will be of a permanent or semipermanent nature or a mobile vending cart and, if so, the proof of consent of two-thirds of the businesses within 75 feet of the location.
- (10) If a special use permit is sought, in addition to the above requirements, the applicant shall supply drawings and diagrams of facilities to be used. The description of any street closures or other activities required to be done, the procedures that the applicants shall follow in obtaining needed permits, a listing of all sponsors for the activity and all possible distribution of the funds earned from such activities.
- (11) If any musical presentation, vocalization or mechanical presentation is to be presented, then the application shall so state and shall particularly describe the manner, means and mode of such presentation.

(d) *Renewal.* A renewal of a permit issued under this article shall be granted to the permit holder if the D.D.A. certifies that the application is in proper form for the same type of permit in the same location and additionally that:

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- (1) No violations of the restrictions imposed by section 32-66 have occurred; and
- (2) The permit holder did not cease to conduct business under the prior permit during the time the permit was in force.

(Code 1965, § 26-53)

Sec. 32-65. Review of permit application.

(a) The downtown development authority shall review the application for a permit under this article and determine if:

- (1) The application is properly completed and the information required is supplied.
- (2) All applicable permits have been or will be obtained prior to the beginning date of the permit, and the appropriate insurance has been obtained.
- (3) Whether the proposal shall be in accordance with the goals and objectives in the plan of development and whether such activities would enhance the downtown shopping park area according to such plan of development.
- (4) If more than one application is received for the same use in the same location, that application which was received by the D.D.A. first shall be granted the permit if all necessary requirements have been satisfied and that application is otherwise in order.

(b) If the downtown development authority finds that the application for a permit under this article is in order, it shall then:

- (1) Certify to the city manager that the application appears to be in order.
- (2) State to the city manager the reasons for feeling the application conforms to the plan of development of the downtown shopping park area.
- (3) List any restrictions contained within this article that may be or would be violated by the granting of such a permit.

(c) If the downtown development authority finds that the application for a permit under this article is not in order, it shall:

- (1) Return the application to the applicant and ask that he correct it; or

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- (2) Forward the application to the city manager along with the reasons the D.D.A. believes the proposed application would not meet the goals and objectives of the plan of development and a permit should not be issued.

(d) If the city manager finds that the application for a permit under this article is proper and, according to the certification of the D.D.A., meets the plans and objectives of the D.D.A., the city manager shall issue the permit applied for.

(e) If the city manager determines that the application for a permit under this article is not proper or if it is certified by the D.D.A. that such permit does not further the goals and objectives of the plan of development, the city manager shall deny the application. If a permit is denied on the grounds that it is not in the plan of development for the downtown shopping park area, no permit shall be issued for a period of one year for the same type of activity for the same location.

(f) If an applicant feels that his application for a permit under this article has been wrongly denied, he may appeal to the city manager, by written request, within 15 days of the denial, requesting that the matter be heard before the entire city council.

- (1) If the city manager decides that there is a basis for the appeal, then the matter shall be put on the agenda of the city council, which may then issue or deny a permit after reviewing the file.
- (2) If the city manager decides that there are no grounds for appeal for the issuance of a permit, he may deny the request.

(Code 1965, § 26-54)

Sec. 32-66. Restrictions to conduct of business.

(a) The person to whom a permit or special use permit under this article has been issued may conduct business on the public right-of-way subject to the following restrictions:

- (1) That a mobile vending device shall occupy an area no larger than 16 square feet; nor four feet in width, excluding wheels, nor six feet in length, including any handle; nor five feet in height, excluding a canopy, umbrella or transparent enclosure.
- (2) The holder of a mobile vending cart permit, kiosk permit or sidewalk restaurant permit shall pick up any paper, cardboard, wood or plastic containers, wrappers, or any similar litter which is deposited by any person on the sidewalk within 25 feet of the approved location designated on the permit; and the permittee shall provide a suitable container for the placement of such litter by

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customers or other persons.

- (3) That the permittee shall not locate a mobile vending device on a public sidewalk within the boundaries of a crosswalk, nor in a location that will restrict the flow of pedestrian traffic within a crosswalk.
- (4) That the permittee shall not sell to any person who is standing in a street, highway or roadway, unless such roadway has been closed under the terms of a special permit.
- (5) That the permittee shall not sell from a mobile vending device that is located in any portion of a street, alley, roadway or highway that is designated or ordinarily used for vehicular travel unless specifically permitted.
- (6) That the permittee shall not sell at a location other than that designated on his permit.
- (7) That the permittee shall not leave his equipment or merchandise unattended, except for a restaurant and kiosk, which must be secured when not attended.
- (8) That the permittee shall not conduct the business for which his permit was issued under this article between the hours of 12:00 midnight and 6:00 a.m.
- (9) No permit shall be issued to any individual to conduct business from a permanent or semipermanent structure or mobile vending cart within the shopping park area unless and until consent is obtained from two-thirds of the businesses within 75 feet of the proposed location.
- (10) No permittee may change the type of merchandise sold from that described in his application without applying for a new permit for that type of merchandise.
- (11) No permittee may hold more than one permit at any one time.

(b) All persons conducting business on a sidewalk shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a sidewalk or to remove his items from the sidewalk entirely to avoid such congestion or obstruction.

(c) No permittee under this article shall make unlawful noise or any continuous noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his merchandise. A special use permit may allow the use of musical presentations if the manner, mode and means of such presentation are necessary to the purpose set forth in the plan of development for special use permits.

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(d) No permittee under this article shall conduct business in violation of the provisions of any ordinance providing for a community event.

(e) The holder of a mobile vending cart permit, a kiosk permit or a pedestrian vendor permit may engage only in the sale of sundries, perishable goods or handcrafted materials unless he has obtained an areawide permit.

(f) No permittee under this article shall conduct business in violation of any other ordinance or law, or without any of the required health, sanitation or other permits.

(Code 1965, § 26-55)

Sec. 32-67. Suspension or revocation of permit.

(a) The city manager may revoke or suspend the permit of any person to conduct business on the sidewalks of the city upon receipt of written notice from the D.D.A. or if the city manager finds that:

- (1) Such person has violated any of the provisions of this article.
- (2) Any necessary health permit has been suspended, revoked or cancelled.
- (3) The permittee does not have a currently effective insurance policy in the minimum amount provided as specified in this article.

(b) Upon suspension or revocation of a permit under this article, the executive director of the D.D.A. shall give notice of such action to the permit holder or applicant, as the case may be, in writing stating the action he has taken and the reasons therefor. If the action of the executive director of the D.D.A. is a revocation based on subsection (a)(2) or (a)(3) of this section, the action shall be effective upon giving such notice to the permittee, otherwise such notice shall contain the further provision that it shall become final and effective within ten days unless appealed to the city manager by filing a written notice of appeal with the city manager, as described in subsection 32-65(f). Any revocation effective immediately may also be appealed to the council by such filing within ten days.

(c) The placement of any cart or device on any sidewalk in violation of the provisions of this article is declared to be a public nuisance. The city manager may cause the removal upon notice received from the D.D.A. or city clerk of any cart or device found on a sidewalk in violation of this article, and is authorized to store such cart or device until the owner thereof shall redeem it by paying the removal and storage charges therefor to be established by the city manager.

(Code 1965, § 26-56)

Chapter 33

RESERVED

Chapter 34 TAXATION*

***State law reference(s)**--Authority to tax, Colo. Const. arts. X, XX, § 6(g).

Article I. In General

Secs. 34-1--34-25. Reserved.

Article II. Liquor Occupational Tax

Sec. 34-26. Definitions.

Sec. 34-27. Businesses classified.

Sec. 34-28. Declaration of policy and purpose.

Sec. 34-29. Tax levied.

Sec. 34-30. When tax due, delinquent; prepayment.

Sec. 34-31. Issuance, contents of revenue receipt.

Sec. 34-32. Revenue receipt to be posted.

Sec. 34-33. Prorating taxes.

Sec. 34-34. Interest on delinquent taxes.

Sec. 34-35. Effect of delinquency.

Sec. 34-36. Recovery of taxes by suit.

Sec. 34-37. Use of proceeds.

Secs. 34-38--34-60. Reserved.

Article III. Lodgers

- Sec. 34-61. Title.
- Sec. 34-62. Purpose.
- Sec. 34-63. Definitions.
- Sec. 34-64. Levy of tax; amount; payment; collection, etc.
- Sec. 34-65. Records; regulations; enforcement, etc.
- Sec. 34-66. Collection and refund of disputed tax; refund procedure.
- Sec. 34-67. Status of unpaid tax in bankruptcy and receivership.
- Sec. 34-68. Trust status of tax in possession of vendor.
- Sec. 34-69. Hearings, subpoenas and witness fees.
- Sec. 34-70. Judge compels attendance.
- Sec. 34-71. Depositions.
- Sec. 34-72. Tax lien/enforcement.
- Sec. 34-73. Recovery of unpaid tax.
- Sec. 34-74. Statute of limitation.
- Sec. 34-75. Penalty.
- Sec. 34-76. Severability.
- Sec. 34-77. Rules of construction.
- Secs. 34-78--34-100. Reserved.

Article IV. Sales and Use Tax

- Sec. 34-101. Legislative intent.
- Sec. 34-102. Definitions.
- Sec. 34-103. Levied.

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- Sec. 34-104. Imposition and collection.
- Sec. 34-105. Transactions and items subject to sales tax.
- Sec. 34-106. Application of use tax.
- Sec. 34-107. Exemptions from sales tax.
- Sec. 34-108. Exemptions from use tax.
- Sec. 34-109. Exemption; burden of proof.
- Sec. 34-110. Deductions and credits.
- Sec. 34-111. Tax on credit sales and leases.
- Sec. 34-112. Maintenance and service contracts.
- Sec. 34-113. Tax on construction materials and supplies.
- Sec. 34-114. Computation of use tax on construction equipment.
- Sec. 34-115. Alternative sales and use tax rate on construction equipment.
- Sec. 34-116. Acquisition, inception or cessation of business.
- Sec. 34-117. Retailer responsible for collection and payment of tax.
- Sec. 34-118. Trust status of tax in possession of retailer.
- Sec. 34-119. Use tax; method of payment.
- Sec. 34-120. Filing returns; due date.
- Sec. 34-121. Reporting periods.
- Sec. 34-122. Duty to keep books and records.
- Sec. 34-123. License--Required.
- Sec. 34-124. Same--Application and content.
- Sec. 34-125. Same--Cancellation or revocation.
- Sec. 34-126. Authority of city manager.
- Sec. 34-127. Audit of records.

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- Sec. 34-128. Coordinated audit procedure.
- Sec. 34-129. Tax information confidential.
- Sec. 34-130. Timely payment; computation of dates.
- Sec. 34-131. Notice of sales and use tax ordinance amendment.
- Sec. 34-132. Participation in simplification meetings.
- Sec. 34-133. Intercity claims for recovery.
- Sec. 34-134. Overpayment from returns.
- Sec. 34-135. Tax overpayment determined through audit.
- Sec. 34-136. Refunds of disputed tax.
- Sec. 34-137. Claim for refund.
- Sec. 34-138. Underpayment from returns.
- Sec. 34-139. Tax deficiencies from failure to file.
- Sec. 34-140. Tax deficiencies determined through audit.
- Sec. 34-141. Penalties.
- Sec. 34-142. Interest.
- Sec. 34-143. Notice of assessment.
- Sec. 34-144. Abatement of tax deficiency.
- Sec. 34-145. Protest of notice of assessment or denial of refund.
- Sec. 34-146. Hearings.
- Sec. 34-147. Review by district court.
- Sec. 34-148. Appeals.
- Sec. 34-149. Lien for tax due.
- Sec. 34-150. Perpetuance of lien.
- Sec. 34-151. Release of lien.

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- Sec. 34-152. Civil action to recover tax due.
- Sec. 34-153. Jeopardy assessment.
- Sec. 34-154. Distraint and sale.
- Sec. 34-155. Status of tax due in bankruptcy and receivership.
- Sec. 34-156. Violations; summons and complaint; penalty.
- Sec. 34-157. Statute of limitations.

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ARTICLE I. IN GENERAL

Secs. 34-1--34-25. Reserved.

ARTICLE II. LIQUOR OCCUPATIONAL TAX*

***Case law reference(s)**--The ordinance from which this article is derived is purely a revenue measure, not regulatory, and therefore does not contravene Colo. Const. art. XXII, giving legislature exclusive jurisdiction to make regulations regarding manufacture, sale, distribution of liquor. 186 Fed. Supp. 70(1949).

Cross reference(s)--Alcoholic beverages, ch. 4.

Sec. 34-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Malt liquors shall include beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar products, or any combination thereof, in water, containing more than 3.2 percent of alcohol by weight.

Medicinal liquors means any liquor sold by a duly licensed pharmacist or drugstore solely on bona fide doctor's prescription.

Operator means a person licensed by law to sell malt, vinous and spirituous liquors, other than medicinal liquors, for beverage purposes at retail and who is engaged at any time during the calendar year in such operation within the city.

Spirituous liquors means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as provided in this section shall not be construed to be malt or vinous liquors, but shall be construed to be spirituous liquor.

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3.2 beer or fermented malt beverage means malt liquor as defined in this section containing not more than 3.2 percent of alcohol by weight.

Vinous liquors means and includes wine and fortified wines not exceeding 21 percent of alcohol by volume and shall be construed to mean alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural produce containing sugar.

(Code 1965, § 4-12)

Cross reference(s)—Definitions generally, § 1-2.

State law reference(s)—Similar provisions, C.R.S. §§ 12-46-103, 12-47-103.

Sec. 34-27. Businesses classified.

The business of selling at retail any malt, vinous or spirituous liquor, other than medicinal liquors, for beverage purposes is hereby defined and separately classified as such occupation for the purposes of this article as follows:

- (1) *Class A operators.* All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotels or restaurants or under a beer and wine license shall be class A operators.
- (2) *Class B operators.* All operators licensed to sell malt or vinous liquors only by the drink for consumption on the premises as taverns shall be class B operators.
- (3) *Class C operators.* All operators licensed as retail liquor stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises shall be class C operators.
- (4) *Class D operators.* All operators licensed as drugstores to sell, malt, vinous or spirituous liquors in original containers for consumption off the premises shall be class D operators.
- (5) *Class E operators.* All operators licensed to sell malt, vinous or spirituous liquors as clubs are class E operators.
- (6) *Class F operators.* All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises as racetracks shall be class F operators.

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- (7) *Class G operators.* All operators licensed to sell fermented malt beverages for consumption on the premises where such consumption is in a restaurant to customers of the restaurant and only if meals are actually and regularly served and provide not less than 25 percent of the gross income of the licensed premises are class G operators.
- (8) *Class H operators.* All operators licensed to sell fermented malt beverages for consumption on the premises, or for both consumption on the premises and in the original package or container for consumption off the premises, where the consumption on the premises is not to customers in a restaurant where meals are actually and regularly served and provide not less than 25 percent of the gross income of the licensed premises are class H operators.
- (9) *Class I operators.* All operators licensed to sell only 3.2 percent beer or fermented malt beverage and who sell the same solely in the original package or container for consumption off the premises shall be class I operators.
- (10) *Class J operators.* All operators licensed to sell malt, vinous and spirituous liquor under an arts license shall be class J operators.

(Code 1965, § 4-13)

Sec. 34-28. Declaration of policy and purpose.

The city council hereby finds, determines and declares that considering the nature of the business of selling at retail 3.2 percent beer, malt, vinous and spirituous liquors for beverage purposes, and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required of the city and a proper, just and equitable distribution of tax burdens within the city, and all other matters properly to be considered in relation thereto, the classification of such business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and that the amount of tax hereby imposed by this article is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the city.

(Code 1965, § 4-14)

Sec. 34-29. Tax levied.

There is hereby levied and assessed for the year 1977 and for each year thereafter an annual occupation tax upon the business of selling fermented malt beverages or 3.2 percent beer, malt, vinous or spirituous liquors, except medicinal liquors, in the city, as such occupation has been classified in this article, as follows:

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- (1) For all class A operators, the sum of \$300.00.
- (2) For all class B operators, the sum of \$500.00.
- (3) For all class C operators, the sum of \$300.00.
- (4) For all class D operators, the sum of \$300.00.
- (5) For all class E operators, the sum of \$150.00.
- (6) For all class F operators, the sum of \$300.00.
- (7) For all class G operators, the sum of \$100.00.
- (8) For all class H operators, the sum of \$300.00.
- (9) For all class I operators, the sum of \$100.00.
- (10) For all class J operators, the sum of \$150.00.

(Code 1965, § 4-15)

Sec. 34-30. When tax due, delinquent; prepayment.

The tax imposed by this article shall be due and payable to the city manager on January 1 of each year and shall be delinquent on February 1 of the same year. Prepayment of such tax may be made in the month of December preceding the due date.

(Code 1965, § 4-16)

Sec. 34-31. Issuance, contents of revenue receipt.

Upon receipt of the tax levied by this article, it shall be the duty of the city manager to execute and deliver to the operator paying the tax a revenue receipt showing the name of the operator paying the tax, the date of payment, the annual period for which such tax is paid, and the place at which such operator conducts business.

(Code 1965, § 4-17)

Sec. 34-32. Revenue receipt to be posted.

The operator of businesses licensed under this article shall, at all times during the year, keep the revenue receipt posted in a conspicuous place in his place of business.

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(Code 1965, § 4-18)

Sec. 34-33. Prorating taxes.

If any operator begins business subsequent to January 1 of any year, the tax required by this article shall be prorated on a monthly basis for the remaining portion of the year; but no refund shall be made to any person who discontinues such business during the year. All prorated taxes provided for in this section shall be due and payable upon the beginning of business and shall be delinquent ten days thereafter.

(Code 1965, § 4-19)

Sec. 34-34. Interest on delinquent taxes.

Interest shall accrue on all delinquent taxes due under this article from the day of delinquency until paid or collected, at the rate of one percent per month.

(Code 1965, § 4-20)

Sec. 34-35. Effect of delinquency.

No delinquency in payment of the tax provided for in this article shall be grounds for suspension or revocation of any license granted to any such operator by any licensing authority pursuant to the statutes enacted by the general assembly of the state, and in performance of any duties imposed upon the city council as a licensing authority by such statutes, the city council shall exclude from consideration any delinquency in payment of the tax provided for in this article.

(Code 1965, § 4-21)

Sec. 34-36. Recovery of taxes by suit.

The city shall have the right to recover all sums due by the terms of this article, including attorney fees, court costs and expert fees, by judgment and execution thereon in a civil action, in any court of competent jurisdiction; such remedy shall be cumulative with all other remedies provided in this article for the enforcement of this article.

(Code 1965, § 4-22)

Sec. 34-37. Use of proceeds.

The purpose of this article being to raise revenue for the city and to secure a proper distribution of the burden of taxation, this article shall be void in case the state supreme court

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shall hold that any part of the moneys to be raised under this article must be used for any other purpose.

(Code 1965, § 4-23)

Secs. 34-38--34-60. Reserved.

ARTICLE III. LODGERS*

***Editor's note--**This article on lodger's taxes was adopted by referendum of the people, People's Ordinance Number 34, and pursuant to the Charter section 142 may only be amended by referendum. It is printed herein as it was codified in the 1965 Code as chapter 24.1, as provided in § 18 of People's Ordinance Number 34.

Sec. 34-61. Title.

This article shall be known and may be cited as "The Lodgers' Tax Ordinance."

(People's Ord. No. 34, § 1, 10-4-89; Code 1965, § 24.1-1)

Sec. 34-62. Purpose.

For the purposes of this article, every person who purchases in the city any lodging is exercising a taxable privilege. The purpose of this article is to impose a tax which will be collected by every vendor from persons using lodging accommodations in the City of Grand Junction, which tax will provide revenues for advertising the community, promoting tourism and visitors, attracting conferences, conventions, and meetings to the City of Grand Junction, and to allocate a portion of the revenue derived therefrom for administrative and clerical expenses, as set forth.

(People's Ord. No. 34, § 2, 10-4-89; Code 1965, § 24.1-2)

Sec. 34-63. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings, unless the context requires otherwise:

Finance director means that person appointed by the city manager of the City of Grand Junction as the director of the finance department or his designee.

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Gross taxable sale means the total amount received in money, credits, property or other consideration valued in money from sales and purchases of lodging that is subject to the tax imposed in this article, but excluding the amounts received pursuant to any other state, county or municipal tax.

Lodging shall mean the providing of the right to use or possess, for consideration, any room or rooms for temporary occupancy, such as, but not limited to: a room in a hotel, guesthouse, hotel apartment and lodgings, motel, ranch, resort, mobile home, mobile home park, bed and breakfast establishment, movable structure, auto camp, trailer court, inn, hostel or park under any concession, permit, right of access, lease, contract, license to use or other arrangement or otherwise, but shall not include rentals under a written agreement for occupancy for a period of 30 consecutive days or more.

Person shall include any individual, firm, partnership, joint enterprise, corporation, estate or trust, or any group or combination acting as a unit, in the plural as well as in the singular number.

Purchase or sale means the acquisition or furnishing for consideration by any person of lodging within the city.

Purchaser means any person exercising the taxable privilege of purchasing lodging.

Purchasing lodging means the buying of lodging by a purchaser as herein defined.

Tax means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this article.

Taxpayer shall mean any person obligated to account to the finance director for taxes collected or to be collected, or from whom a tax is due, under the terms of this article.

Vendor means a person making sales of or furnishing lodging to a purchaser in the city.

(People's Ord. No. 34, § 3, 10-4-89; Code 1965, § 24.1-3)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 34-64. Levy of tax; amount; payment; collection, etc.

(a) *Amount of tax.*

- (1) There is hereby levied and shall be collected and paid a tax by every person exercising the taxable privilege of purchasing lodging as in this article defined.

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- (2) The amount of the tax levied hereby is three percent of the gross taxable sale paid or charged for purchasing such lodging.
- (3) Any person providing lodging within the City of Grand Junction shall collect a tax from all those to whom lodging is provided amounting to three percent of the total rental revenue received by such vendor. Such tax shall be in addition to any other tax or levy for providing such service.

(b) *Payment of tax and filing of reports.* Every vendor making a sale to a purchaser in the city which sale is taxable under the provisions of this article shall, at the time of the sale, collect and pay to the finance director all tax funds collected by him during each calendar month not later than 20 days after the last day of said month and each payment shall be accompanied by a report for said month.

(c) *Exclusions.* Purchases shall include all revenues earned and received for the purchase or sale of lodging excluding the following:

- (1) Charges for other services, such as food and/or telephone charges, furnished by a person providing lodging;
- (2) Deposits placed by any purchaser with a request to hold a room for such purchaser for a future date until such time as said deposit has been credited against the purchase or sale;
- (3) All sales to the United States government, the State of Colorado, its departments and institutions, the political subdivisions of the state, and the City of Grand Junction in their governmental capacities only;
- (4) All sales to those charitable, religious and eleemosynary organizations which have received from the federal Internal Revenue Service status under section 501(c)(3) of the Internal Revenue Code as a tax exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities.

(d) *Deductions.* The following deductions shall be allowed against sales received by the vendor providing lodging:

- (1) Refunds of sales actually returned to any purchaser;
- (2) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale for lodging and does not include any adjustments for other services furnished by a vendor.

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(e) *Collection requirement.* It shall be unlawful for a person providing lodging to rent lodging without collecting, in addition to the rental thereof, the tax as provided for in this article.

(f) *Unlawful for person providing lodging to assume tax.* It shall be unlawful for the person providing lodging to assume or absorb the payment of the tax provided for in this article.

(g) *Unlawful for person providing lodging to refuse payment.* It shall be unlawful for the person providing lodging:

- (1) To fail or refuse to pay to the city finance director the tax collected by such vendor;
or
- (2) To fail to file reports required of such vendor under the terms of this article.

(h) *Compliance required of agents and employees.* It shall be unlawful for any person, whether as principal, agent or employee of any vendor, to fail to comply with the several provisions of this article.

(i) *Use and disposition of funds.* All funds collected pursuant to this article, less any authorized lodgers' collection fee (pursuant to section 34-65(k)), and less five percent for city administrative costs, shall be used as outlined in section 34-62, Purpose, and shall be expended as directed by the city council or its designee.

(j) *Violations, evasion of collection or payment of tax.* In addition to the other violations set forth elsewhere in this article, it shall be a violation of this article for any vendor to refuse to make any return provided to be made in this article, or to make any false or fraudulent return, or any false statement in any return, or to fail or refuse to make payment to the finance director of any tax collected or due the city, or in any manner to evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by this article. Any corporation, or any other entity, making a false return or a return containing a false statement shall be guilty of a violation of this article as shall every person preparing or assisting in preparing such false return or return containing a false statement.

(People's Ord. No. 34, § 4, 10-4-89; Code 1965, § 24.1-4)

Sec. 34-65. Records; regulations; enforcement, etc.

(a) *Forms/regulations.* The finance director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said lodging tax and in particular and without limiting the general language of this section, to provide for:

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- (1) A form of report on sales and purchases to be supplied to all vendors;

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- (2) The records which vendors providing lodging are to keep concerning the tax imposed by this article.

(b) *Duty to keep books and records.* It shall be the duty of every vendor to keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the finance director in order to determine the amount of the tax for the collection or payment of which the vendor is liable under this article. It shall be the duty of every such vendor to keep and preserve for a period of three years all such books, invoices and other records and the same shall be open for examination by the finance director. If such vendor keeps or maintains books, invoices, accounts and other records, or any thereof, outside of Mesa County, upon demand by the finance director, the vendor shall make the same available at a suitable place within Mesa County, to be designated by the finance director, for examination, inspection and audit by the finance director. The finance director, in the finance director's discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts and other records so kept or maintained by such vendor or such person outside of Mesa County, Colorado, at the place where the same are kept or maintained or at any place outside of Mesa County, Colorado, where the same will be made available, provided such vendor or such person shall have entered into a binding and enforceable agreement with the city to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.

(c) *Keeping of reports; inspection.* All reports and information received pursuant hereto shall be retained by the finance director and shall not be open to the inspection of the general public. However, any officer or employee of the City of Grand Junction who may be charged with the duty of enforcement of this article shall be entitled to inspect said reports and any information supplemental thereto. Any city officer or employee or any member of the office of, or officer, or employee of the finance director who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided by law, shall be guilty of a violation hereof.

(d) *Enforcement; inspection.* Any police officer of the City of Grand Junction or any person designated by the finance director to enforce this article shall have the right at any reasonable time to enter upon the premises of any vendor providing lodging and to request to see the register of guests or rate schedule maintained by any vendor for the purpose of attending to the enforcement of this article.

(e) *Special accounting basis for remittance of tax.* If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, as determined by the finance director, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the finance director may, upon request of the vendor, or at the election of the finance director, accept returns at such intervals as will, in the finance director's

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opinion, better suit the convenience of the vendor and the city and will not jeopardize the collection of the tax; provided, however, the finance director may by rule permit a vendor to make returns and pay taxes at intervals not greater than annually.

(f) *Consolidation of returns.* A vendor doing business in two or more places or locations, whether within or without the city, and collecting taxes under this article may file one return covering all such places or locations, when accompanied by a supplemental report showing the gross and net taxable sales and taxes collected thereon for each such place or location.

(g) *Investigation of vendor's books.* For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the finance director may hold investigations and hearings concerning any matters covered by this article, and may examine any relevant books, papers, records or memoranda of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for their information. The finance director shall have power to administer oaths to such persons.

(h) *Refusal to make return; estimate of tax; penalty; notice; assessment.*

- (1) If any person neglects or refuses to make a return in payment of the taxes as required by this article, the finance director shall make an estimate, based upon such information as may be available, of the amount of the taxes due for the period for which the taxpayer is delinquent; and upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to ten percent thereof, together with interest on such delinquent taxes at the rate of 1 1/2 percent per month from the date when due.
- (2) Promptly thereafter, the finance director shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice must be served personally on the vendor or on an agent or employee at the vendor's place of business or by registered or certified mail.
- (3) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the finance director ten days from the date of service of the notice or the date of mailing by certified or registered mail; provided, however, that within the ten-day period such delinquent taxpayer may petition the finance director for a revision or modification of such assessment and shall, within such ten-day period, furnish the finance director the documents, facts and figures showing the correct amount of such taxes.

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- (4) Such petition shall be in writing and the facts and figures submitted shall be

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submitted either in writing or orally, and shall be given by the taxpayer under penalty of perjury.

- (5) Thereupon the finance director may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this article. Such assessment shall be considered the final order of the finance director, and may be reviewed under rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided, that the taxpayer gives written notice to the finance director of such intention within ten days after receipt of the final order of assessment.

(i) *Failure to report; penalties and interest.* Any vendor who fails to make said payment or fails to file said report within the period of time as herein provided shall pay a penalty of ten percent of the total amount collected by such vendor for each month or fraction thereof, together with interest at the rate of 1 1/2 percent per month of said total amount collected, until said payment and report shall be properly filed with the finance director and such vendor shall not be entitled to deduct any amounts collected as a collection fee.

(j) *Finance director may waive penalty.* The finance director is hereby authorized to waive, for good cause shown, any penalty assessed as in this article provided. Any interest imposed in excess of 12 percent per annum shall be deemed a penalty for the purposes of this section only.

(k) *Vendors' collection fee.* Vendors collecting and remitting the tax can, if such vendor is in compliance with the several provisions of this article, deduct 3 1/3 percent of the amount remitted as a collection fee.

(People's Ord. No. 34, § 5, 10-4-89; Code 1965, § 24.1-5)

Sec. 34-66. Collection and refund of disputed tax; refund procedure.

(a) *Collection and refund of disputed tax.* Should a dispute arise between the purchaser and vendor as to whether or not the sale of lodging is exempt from taxation under this article, nevertheless, the vendor shall collect and the purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the finance director, showing the names of the purchaser and vendor, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the finance director for a refund of such taxes, and it shall be the duty of the finance director to determine the question of exemption, subject to review by the courts.

(b) *Refund procedure.*

- (1) *Generally.* A refund shall be made, or credit allowed, for the tax paid under

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dispute by any purchaser who has an exemption as in this article set out. Such refund shall be made by the finance director after compliance with the conditions of this section.

- (2) *Application.* Applications for a refund must be made within 60 days after the

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purchase of the lodging on which the exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and a certificate issued by the vendor, and be made upon such forms as shall be prescribed and furnished by the finance director, which forms shall contain such information as the finance director shall prescribe.

- (3) *Decisions.* Upon receipt of such application, the finance director shall examine the same as soon as is practicable and shall give notice to the applicant by an order in writing of the decision thereon.
- (4) *Hearing.* An aggrieved applicant may, within ten days after such decision is mailed to him, petition the finance director for a hearing on the claim in the manner provided in this article.
- (5) *Refunds not assignable.* The right of any person to a refund under this article shall not be assignable, and application for refund must be made by the same person who purchased the lodging and paid the tax thereon as shown in the invoice of the sale thereof.
- (6) *Penalty for violating refund provisions.* Any applicant for refund under the provisions hereinabove, or any other person, who shall make any false statement in connection with an application for a refund of any tax shall be deemed guilty of a violation of this article.
- (7) *Violations of refund provisions to be used as evidence of fraudulent intent.* If any person be convicted under the provisions of subsection (6), such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the finance director is hereby empowered and directed to bring appropriate action for recovery of such refund. A brief summary of the abovementioned penalties shall be printed on each form application for refund.
- (8) *Burden of proof.* The burden of proof that sales of lodging on which tax refunds are claimed are exempt from taxation under this article shall be [on] the one making such claim under such reasonable requirements of proof as the finance director may prescribe.

(People's Ord. No. 34, § 6, 10-4-89; Code 1965, § 24.1-6)

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Sec. 34-67. Status of unpaid tax in bankruptcy and receivership.

Whenever the business or property of any taxpayer subject to this article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this article and for which the taxpayer is in any

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way liable under the terms of this article shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, other than the goods and stock in trade of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this article under process or order of any court, without first ascertaining from the finance director the amount of any taxes due and payable under this article, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature, except the cost of the proceedings and other preexisting tax liens as above provided.

(People's Ord. No. 34, § 7, 10-4-89; Code 1965, § 24.1-7)

Sec. 34-68. Trust status of tax in possession of vendor.

All sums of money paid by the purchaser to the vendor as taxes imposed by this article shall be and remain public money, the property of the city, in the hands of such vendor, and the vendor shall hold the same in trust for the sole use and benefit of the city until paid to the finance director as herein provided, and for failure so to pay to the finance director, such vendor shall be punished for a violation hereof.

(People's Ord. No. 34, § 8, 10-4-89; Code 1965, § 24.1-8)

Sec. 34-69. Hearings, subpoenas and witness fees.

All subpoenas issued under the terms of this article may be served by any person of full age. The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the finance director, such fees shall be paid in the same manner as other expenses under the terms of this article, and when a witness is subpoenaed at the instance of any party to any such proceeding, the finance director may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the finance director, in the finance director's discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

(People's Ord. No. 34, § 9, 10-4-89; Code 1965, § 24.1-9)

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Sec. 34-70. Judge compels attendance.

Any judge of the district court of Mesa County, upon the application of the finance director, may compel the attendance of witnesses, the production of books, papers, records of memoranda, and the giving of testimony before the finance director or any duly authorized deputies, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

(People's Ord. No. 34, § 10, 10-4-89; Code 1965, § 24.1-10)

Sec. 34-71. Depositions.

The finance director or any party in an investigation or hearing before the finance director may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

(People's Ord. No. 34, § 11, 10-4-89; Code 1965, § 24.1-11)

Sec. 34-72. Tax lien/enforcement.

(a) The tax imposed by this article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the city and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the finance director whenever the taxpayer is in default in the payment of the tax, interest, penalty, or costs. Such warrant may be served and the goods subject to such lien seized by any deputy or employee of the city thereunto duly authorized. The property so seized may be sold by the agency seizing the same or by the finance director at public auction after ten days have passed after an advertisement in a newspaper published in the city.

(b) The finance director or the sheriff of Mesa County shall forthwith levy upon sufficient of the property of the taxpayer, and the property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

(c) The tax imposed by this article shall be, and remain, a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions

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occurred.

(People's Ord. No. 34, § 12, 10-4-89; Code 1965, § 24.1-12)

Sec. 34-73. Recovery of unpaid tax.

(a) The finance director may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the city from the taxpayer.

(b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs, or interest thereon, when due, the finance director may recover at law the amount of such taxes, penalties, costs, the reasonable value of an attorney's time or the reasonable attorney's fees charged, plus interest, in any municipal, county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amounts sought to be collected.

(c) The return of the taxpayer or the assessment made by the finance director shall be prima facie proof of the amount due.

(d) Such actions may be actions in attachment, and writs of attachment may be issued to the police or sheriff, as the case may be, and in any such proceeding no bond shall be required of the finance director, nor shall any policeman or sheriff require of the finance director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The finance director may prosecute appeals in such cases without the necessity of providing bond therefor.

(e) It shall be the duty of the city attorney, when requested by the finance director, to commence action for the recovery of taxes due under this article and this remedy shall be in addition to all other existing remedies, or remedies provided in this article.

(f) The city may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the county treasurer for collection in the same manner as delinquent ad valorem taxes.

(People's Ord. No. 34, § 13, 10-4-89; Code 1965, § 24.1-13)

Sec. 34-74. Statute of limitation.

(a) The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this article shall not be assessed, nor shall any notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration

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of such three-year period, notice of lien with respect to which has been filed prior to the expiration of such period.

(b) In case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time.

(c) Before the expiration of such period of limitation, the taxpayer and the finance director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(People's Ord. No. 34, § 14, 10-4-89; Code 1965, § 24.1-14)

Sec. 34-75. Penalty.

It shall be unlawful for any person to violate, omit or refuse or fail to comply with the several provisions of this article, or to commit any act or omission declared to be a violation of this article. A violation of any provision of this article shall be punished by a fine not exceeding \$300.00 or imprisonment for not more than 90 days, or both. Each day, or portion thereof, any violation of this article shall continue shall constitute a separate offense.

(People's Ord. No. 34, § 15, 10-4-89; Code 1965, § 24.1-15)

Sec. 34-76. Severability.

The several sections, sentences, clauses and provisions of this article are intended to be severable; if any such section, sentence, clause or provision is declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not effect the remaining portions of this article.

(People's Ord. No. 34, § 16, 10-4-89; Code 1965, § 24.1-16)

Sec. 34-77. Rules of construction.

The construction of terms and the rules set forth in section 1-2 of the Code of Ordinances of the City of Grand Junction are incorporated herein by this reference as though fully set forth here.

(People's Ord. No. 34, § 17, 10-4-89; Code 1965, § 24.1-17)

Secs. 34-78–34-100. Reserved.

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ARTICLE IV. SALES AND USE TAX*

*State law reference(s)--Sales and use tax, C.R.S. § 29-2-101 et seq.

Sec. 34-101. Legislative intent.

(a) It is the intent of the city council, in exercising the home rule powers reserved by the state constitution, that, through this legislation and in the manner described in this article, 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 of tangible personal property and taxable services defined in this article are taxable unless specifically exempted by this article. The sales tax imposed upon tangible personal property by this article applies to each transfer of ownership, possession and control of such property and may occur more than once during the life of the property.

(b) The sales tax is a transaction 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. The use tax is levied upon the privilege of persons in the city to store, use, distribute 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, and not subject to the sales tax imposed by this article. The use tax is remitted to the city by the persons storing, using, distributing 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.

(Code 1965, § 24-2)

Sec. 34-102. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

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Auction means any sale where tangible personal property is sold by an auctioneer who is either the agent or the owner of such property or is in fact the owner thereof.

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 or right-of-way, or any device used or designed for aviation or flight in the air. Such term includes, but is not limited to, motor vehicles, trailers, semitrailers, or mobile homes. "Automotive vehicle" shall 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.

Charitable organization means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, so long as:

- (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
- (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Construction activity means to build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure, or improvement, on or to real property.

Construction equipment means any purchased tangible personal property used, owned, operated or stored by a person engaging in construction activity, including, but not limited to, equipment, machinery, tools, automotive vehicles, mobile machinery and self-propelled construction equipment.

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 including public and private improvements. Construction materials include, but are not limited to, 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,

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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, wallboard, wall coping, wallpaper, weatherstripping, 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.

Consumer means any individual person, or any other 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.

Document means all written, printed, typed, recorded or graphic matter, photographic matter, sound reproductions, computer files, tapes, inputs or outputs, however produced or reproduced, or all other matters from which information may be obtained, and drafts and nonidentical copies thereof. "Nonidentical copies" refers to reproductions, however made, of the original document which have notations, markings, comments or other material not appearing on the original.

Drugs dispensed in accordance with a prescription means drugs dispensed in accordance with an order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by such a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison 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, but is not limited to, any one of the following activities by a person:

- (1) Maintaining or using, directly, indirectly or by a subsidiary, a building, store, office, salesroom, warehouse, or other place of business within the city;
- (2) Sending one or more employees, agents or 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 other reasons;
- (3) Maintaining one or more employees, agents or sales persons at a location within the city;
- (4) Owning, leasing, renting or otherwise exercising control over real or personal property within the city; or
- (5) Making more than one delivery into the city within any 12-month period.

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Exempt commercial packaging materials means containers, labels or shipping cases sold to 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:

- (1) Are used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;
- (2) Are transferred by such person along with, and as a part of, the finished product to the purchaser; and
- (3) Are not returnable to such person for reuse.

Farm closeout sale means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

Food means food for domestic home consumption as defined in 7 U.S.C. section 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. section 2012(h), as amended, except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; cold sandwiches; delicatessen trays; and food or drink vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

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 services.

License means a city sales and use tax license.

Linen services means services involving provision and cleaning of linens, including, but not limited to, rags, uniforms, coveralls and diapers.

Lodging services means the furnishing of rooms or accommodations by any person to another 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, lodginghouse, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, or similar establishment, for a period of less than 30 days under any concession, permit, right of access, license to use, or other agreement, or otherwise.

Manufacturing means the operation of producing a new product, article, substance or commodity different from and having a distinctive name, character or use from raw or prepared materials.

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Manufacturing equipment means machinery or machine tools used directly and exclusively in manufacturing by a person engaged in manufacturing, compounding for sale, profit or use, any article, substance or commodity.

Medical supplies means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose useable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a practitioner of the healing arts as part of professional services provided to an individual; and corrective eyeglasses, contact lenses, or hearing aids.

Mobile machinery and self-propelled construction equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways; and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways; and includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, or the digging of ditches.

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 sale means retail sales by charitable organizations for fundraising purposes, which funds are retained by the organization to be used in the course of that organization's charitable service to the community, provided the following occur:

- (1) The sale of tangible personal property takes place no more than 12 days, consecutive or not, during any one calendar year; and
- (2) Gross sales do not exceed \$25,000.00 in one calendar year.

Pay television shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

Person means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee, or any person acting in a

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fiduciary or representative capacity, whether appointed by court or otherwise, or any group or

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combination acting as a unit.

Preprinted newspaper supplements means inserts, attachments, or supplements circulated in newspapers that:

- (1) Are primarily devoted to advertising; and
- (2) The distribution, insertion, or attachment of which is paid for by the advertiser.

Prescription drugs for animals means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Price or purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, 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 such exchanged property is to be sold thereafter in the usual course of the retailer's business; or 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 this state, including, but not limited to, vehicles operating upon public highways, off-highway recreational vehicles, watercraft, and aircraft. Any money and/or other consideration paid over and above the value of the exchanged property is subject to tax.

- (1) *Price or purchase price* includes:
 - 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 any other person reimburses the retailer for part of the purchase price and other media of exchange;
 - d. The total price charged on credit sales, including 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 a note or other written evidence of debt is not part of the purchase

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price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price;

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- e. Installation, delivery 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; and
 - h. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all materials used, labor and service performed and the profit thereon.
- (2) *Price or purchase price* shall not include:
- a. Any sales or use tax imposed by the state 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. Out-of-state trade-ins are not included in 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 included in the purchase price.

Private communications services means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate intercommunications system for the subscriber's stations.

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. The term "prosthetic devices" includes, but is not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, oxygen concentrators, and oxygen with related accessories.

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Purchase or sale means the acquisition, for any consideration by any person, of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bona fide gift of property or services.

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- (1) The term “purchase” or “sale” includes capital leases, installment and credit sales, and property and services acquired by:
 - a. 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;
 - c. Performance of taxable services; or
 - d. Barter or exchange for other property or services, including coupons.
- (2) The terms “purchase” and “sale” do not include:
 - a. A division of partnership assets among the partners according to their interests in the partnership;
 - b. The formation of a corporation by the owners of a business and the 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. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
 - d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
 - e. A transfer of a partnership interest;
 - f. The transfer in a reorganization qualifying under section 368(a)(1) of the Internal Revenue Code of 1954, as amended;
 - g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;

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- h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- i. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which is owned at least 80 percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- j. The transfer of assets from a subsidiary corporation or corporations which are owned at least 80 percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least 80 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;
- k. The 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 with identical percentages of stock, computed on a share-by-share basis, when a tax imposed by this article was paid by the transfer corporation at the time it acquired such assets; however, any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation is taxable. For the purposes of this paragraph, a "closely held subsidiary corporation" is one in which the parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

Recreation services means all services relating to athletic or entertainment participation events, including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin-operated amusement devices, video games and video club memberships.

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 any:

- (1) Auctioneer;
- (2) Salesperson, representative, peddler or canvasser who makes sales as direct or indirect agent of, or obtains such property or services sold from, a dealer,

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distributor, supervisor or employer;

- (3) 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 consideration received is 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 pursuant to this article.

Security system services means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

Sound system services means sound system services involving provision of broadcast or prerecorded audio programming to a building or portion thereof. "Sound system service" does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

Tangible personal property means corporeal personal property.

Tax means the 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 and paid on or before the due date.

Taxable sales means gross sales less any exemptions and deductions specified in this article.

Taxable services means services subject to tax pursuant to this article.

Taxpayer means any person obligated to collect and/or pay tax under the terms of this article.

Telecommunications service means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means including, but not limited to, wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. "Telecommunications service" includes, but is not limited to, basic local exchange telephone service; toll telephone service; teletypewriter service including but not limited to residential and business service;

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directory assistance; cellular mobile telephone or telecommunication service; specialized mobile radio and two-way pagers and paging service; and any form of mobile two-way communication. "Telecommunications service" does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

Therapeutic device means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality. If such a device, appliance or related accessory has a retail value of more than \$100.00, it must be sold in accordance with a written recommendation from a practitioner of the healing arts to qualify as a therapeutic device for purposes of this article.

Total tax liability and tax due means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Use tax means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the city.

WATS/800 service means any outbound or inbound interstate-wide area telecommunications service or other similar service which entitles the subscriber, upon payment of a periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

Wholesale sales means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed 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.

Yard sale means the retail sale of tangible personal property by an individual who resides on the real estate on which the retail sale occurs for which sales occur no more than four calendar days, whether consecutive or not, in any 12-month period, and which the gross sales do not exceed \$5,000.00 in any 12-month period, so long as such individual is not authorized to operate a home occupation, pursuant to section 5-1-9 of the zoning and development code, from out of the residence at which the retail sale occurs.

(Code 1965, § 24-3)

Cross reference(s)--Definitions generally, § 1-2.

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Sec. 34-103. Levied.

(a) *Sales tax.* There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in section 34-105. The rate levied shall be 2.75 percent of the purchase price.

(b) *Use tax.* There is hereby imposed and shall be collected from every person in the city a use tax for the privilege of storing, using, distributing, or consuming in the city any articles of tangible personal property or taxable services purchased for which no city sales tax has been paid. The rate levied shall be 2.75 percent of the purchase price.

(Code 1965, § 24-4)

Sec. 34-104. Imposition and collection.

The taxes levied by this article are imposed upon, and are to be paid by, the purchaser. Each seller engaged in business in the city shall collect such tax and remit it to the city pursuant to the schedules or systems approved and specified by the city manager.

- (1) The tax imposed in this article shall continue to be levied and collected until specifically amended or repealed by ordinance.
- (2) The tax imposed in this article shall be in addition to all other taxes imposed by law.

(Code 1965, § 24-5)

Sec. 34-105. Transactions and items subject to sales tax.

The sales tax levied by subsection 34-103(a) shall apply to the purchase price of the following:

- (1) Tangible personal property that is sold, leased or rented, whether or not such property has been included in a previous taxable transaction.
- (2) Telecommunications services for all international, interstate and intrastate telecommunications service originating from or received on telecommunications equipment in the city if the charge for the service is billed to an apparatus, telephone, or account in this city, without regard to where the bill for such services is actually received, except:
 - a. Carrier access services; and

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b. Interstate or international private communication service.

If a taxpayer presents to the city manager written proof of a sales tax paid to another municipal taxing entity of such telecommunication services, the city manager shall credit against the tax accruing under this article the amount of tax actually paid by the taxpayer to another municipal taxing entity. If the tax accruing under this article exceeds the amount of the tax actually paid by the taxpayer to another municipal taxing entity, the taxpayer shall pay the difference to the city. The credit provided for in this section shall not be allowed if the tax actually paid by the taxpayer to another municipal taxing entity was not by law required to be paid.

- (3) Telecommunications services sold for resale to other persons for purposes of providing telecommunications services to the final end user will not be subject to the sales tax.
- (4) Installation in the city of equipment which is used to receive or transmit telecommunication service.
- (5) Meals sold to employees, except that meals which are sold to employees at a reduced charge and which are reported to the Internal Revenue Service as part of the employee's salary, wages or income shall be exempt from taxation under this section.
- (6) Natural gas, manufactured gas, liquefied gas, electricity, steam, coal, wood, fuel oil, coke, or nuclear energy furnished for commercial consumption, whether furnished by municipal, public, or private corporations or enterprises or any other person.
- (7) Warranty or maintenance services relating to tangible personal property, whether included in the cost of the tangible personal property relating thereto or sold separately.
- (8) Lodging services.
- (9) Coin-operated services that dispense tangible personal property.
- (10) Food or drink served or furnished in or by restaurants, cafes, lunchcounters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snackbars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink.

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(Code 1965, § 24-6)

Sec. 34-106. Application of use tax.

The use tax levied by subsection 34-103(b) shall apply to the purchase price of the following:

- (1) Tangible personal property purchased for use in the city without previous payment of the sales or use tax and used, stored, or consumed in the city in conjunction with the rendering of a service.
- (2) Tangible personal property purchased at wholesale or component parts purchased for manufacture which are subsequently used by the taxpayer, either personally or in the business.
- (3) Taxable services purchased without previous payment of the sales tax.
- (4) Automotive vehicles required to be registered at an address inside the city on which a municipal sales tax has not been paid. The county clerk or the city's authorized agent is authorized to collect such tax for the city prior to or at the time of registration.
 - a. The determination of vehicle registration requirements for individuals shall be the same as for the determination of residency for voter registration purposes.
 - b. The determination of vehicle registration requirements for a vehicle which is owned by any person and operated primarily for business purposes shall be based on the address from which such motor vehicles are principally operated or maintained.
- (5) Construction or building materials which are used or consumed within the city and upon which a sales or use tax equal to or greater than the rate set in subsection 34-103(a) has not been paid.

(Code 1965, § 27-7)

Sec. 34-107. Exemptions from sales tax.

The tax levied by subsection 34-103(a) shall not apply to the following:

- (1) Vehicles purchased by nonresidents of the city for registration outside the city, except business vehicles pursuant to subsection 34-106(4)b.

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- (2) Sale of tangible personal property when both of the following conditions exist:
 - a. The sale is to an individual who resides, or to a business which is located, outside the city; and
 - b. The articles purchased are delivered to the purchaser outside the city by common carrier or by the conveyance of the seller or by mail, and such articles delivered are used outside the city.
- (3) Sale of construction materials and fixtures to licensed building contractors purchased within the city for use outside the city when compliance with all three of the following conditions exists:
 - a. That such licensed building contractor shall certify to the vendor that the construction materials and fixtures so purchased are to be used outside the city;
 - b. That construction materials and fixtures are delivered to the licensed building contractor outside the city by common carrier, by the conveyance of the seller, or by the motor vehicle of the licensed building contractor;
 - c. That such exemption shall not apply to tools, machinery or parts for repair of such tools and machinery used by such licensed building contractor in his trade or occupation. Such certification to the vendor by the licensed building contractor shall be made on forms furnished by the finance director, and any sale so made without proper certification shall be subject to the sales tax provided in this article.
- (4) Sale of tangible personal property for use outside the city to persons engaged in manufacturing, processing, mining, or to an irrigation company when compliance with all of the following conditions exist:
 - a. That such purchaser shall certify to the vendor that the tangible personal property is to be used outside the city;
 - b. That such purchase of tangible personal property is delivered to the purchaser outside the city by common carrier, or by conveyance of seller, or by the motor vehicle of such purchaser;
 - c. That such exemption shall not apply to tools, machinery or parts for repairs of such tools and machinery used by such purchaser in his trade or occupation. Such certification to the vendor by the purchaser shall

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be made on forms furnished by the finance director, and any sale so made without proper certification shall be subject to the sales tax provided in this article.

- (5) The sale and purchase of medical supplies.
- (6) An occasional sale.
- (7) A yard sale.
- (8) Sale of prosthetic devices.
- (9) Sale of a drug dispensed in accordance with a prescription.
- (10) Cigarettes.
- (11) A direct sale to a charitable organization in the conduct of its charitable functions and activities, when billed to and paid for by the charitable organization.
- (12) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by charitable organizations in the conduct of their regular charitable functions and activities.
- (13) All direct sales to the United States government, the state, its departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
- (14) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by the United States government, the state, its departments and institutions, or the political subdivisions thereof, in their governmental capacities only.
- (15) All sales which the city is prohibited from taxing under the Constitution or laws of the United States, or the constitution of the state.
- (16) Sale of tangible personal property sold to a public utility company or railroad doing business both inside and outside the city, for use in its business operations outside the city, even though delivery thereof is made inside the city.

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- (17) All commodities which are taxed under the provisions of C.R.S. title 39, art. 27, and all commodities which are taxed under such provisions and for which the tax is

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refunded, and the sale of special fuel, as defined in C.R.S. § 39-27-201(8), used for the operation of farm vehicles when such vehicles are being used on farms and ranches. Notwithstanding provisions to the contrary, aviation and special fuel, whether used in turbo-propeller or jet engine aircraft, shall not be exempt, except that aviation and special fuel used as fuel for the propulsion of aircraft of "air carriers" engaged in interstate, intrastate and foreign air transportation, as those terms are defined in 49 U.S.C. section 1301, are exempt.

- (18) Neat cattle, sheep, lambs, fish for stock purposes, swine and goats; mares and stallions for breeding purposes.
- (19) Sale of feed for livestock, poultry or horses.
- (20) Sale of seed and orchard trees.
- (21) All wholesale sales.
- (22) Sale of exempt commercial packaging materials.
- (23) Sale of tangible personal property to a person engaged in the business of manufacturing or compounding for use, profit or sale, which tangible personal property meets all of the following conditions:
 - a. Is transformed by the process of manufacturing;
 - b. Becomes, by the manufacturing process, a necessary and recognizable ingredient, component and constituent part of the finished product;
 - c. Its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer and, when not sold for resale, shall be deemed wholesale sales and shall be exempt from taxation in this section.
- (24) Sale of electricity, coal, coke, fuel oil, nuclear energy or gas if used in processing, manufacturing, mining, refining, irrigation, telegraph and telephone and radio communication, street and railroad transportation services and all industrial uses.
- (25) Sale of electricity, coal, wood, gas, fuel oil or coke sold, but not for resale, to occupants of residences, whether owned, leased or rented by such occupants,

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for the purpose of operating residential fixtures and appliances which provide light, heat and power for such residences. For the purpose of this subsection, "gas" includes natural, manufactured and liquefied petroleum gas.

- (26) Tangible personal property sold for rental or leasing inventory, including but not limited to coin-operated devices, provided that such property is not otherwise used except for customer demonstration or display. The rental or leasing of such tangible personal property is subject to sales tax.
- (27) Labor sold with tangible personal property, but only if such labor is stated separately on the invoice from the tangible personal property sold; except that labor used in or necessary in manufacturing, fabricating or processing is not exempt.
- (28) Construction materials, if the purchaser of such materials presents to the retailer a building permit, or other documentation acceptable to the city manager, which evidences that a use tax on such materials has been paid to the city or a municipality.
- (29) Tangible personal property sold through coin-operated devices for a price of \$0.15 or less.
- (30) All sales of food as defined in this article.
- (31) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline.
- (32) Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in C.R.S. § 24-32-703(3), shall be exempt from taxation under this article.
- (33) The entire purchase price in any subsequent sale of a mobile home, as such vehicle is defined in C.R.S. § 42-1-102(106)(b), after sales tax pursuant to subsection 34-103(a) has been paid on such mobile home.
- (34) Farm close-out sales.
- (35) Farm implements, and parts and accessories for farm implements.
- (36) Newspapers.
- (37) Newsprint and printer's ink for use by publishers, newspapers, and commercial printers.

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The list of exemptions shall not be increased by implication or similarity. It is the intent of this article to exempt only those items or transactions which are specifically set forth in this section.

(Code 1965, § 24-8)

Sec. 34-108. Exemptions from use tax.

The tax levied by subsection 34-103(b) shall not apply to the following:

- (1) Tangible personal property which is exempt from the sales tax pursuant to section 34-107.
- (2) The storage, use or consumption of any tangible personal property the sale of which is subject to the sales tax imposed by the city.
- (3) Tangible personal property which is first used or consumed inside the city more than three years after its purchase, if such property has been significantly used for the principal purpose for which it was purchased outside the city.
- (4) Automotive vehicles if the owner is, at the time of registration, a nonresident of the city who purchased the vehicle for use outside the city.
- (5) The storage of tangible personal property purchased from a nonresident vendor by a common carrier, public utility company or construction company which is a resident of the city or is doing business in the city, provided such tangible personal property is stored but not used or consumed in the city.
- (6) Manufacturing Equipment
- (7) Tangible personal property used and consumed exclusively and directly in the manufacturing process when such tangible personal property **does not** become a necessary and recognizable ingredient, component and constituent part of the finished product.

The list of exemptions shall not be increased by implication or similarity. It is the intent of this article to exempt only those items or transactions which are specifically set forth in this section.

(Code 1965, § 24-9, Ord. No. 2810, 2-15-95)

Sec. 34-109. Exemption; burden of proof.

(a) The burden of proving that any retailer is exempt from collecting or paying sales tax shall be on the retailer under such reasonable requirements of proof as the city manager may prescribe.

(b) The burden of proving that any consumer is exempt from paying the use tax shall be on such consumer under such reasonable requirements of proof as the city manager may prescribe.

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(Code 1965, § 24-10)

Sec. 34-110. Deductions and credits.

(a) *Deductions from gross sales.* If included in reported gross sales, the following are deductible from gross sales:

- (1) *Refunds.* The price of tangible personal property or taxable services returned by a purchaser when the price and the sales tax collected are refunded in cash or by credit.
- (2) *Bad debts charged off.* Taxable sales which are represented by accounts not secured by a conditional sales contract, rental purchase contract or security interest and which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the state; provided, however, that if such amounts are thereafter collected by the taxpayers, a tax shall be paid on the amount so collected.
- (3) *Interest and finance charges.* The amount of interest or finance charges on credit extended in connection with any sale, if the interest or finance charges are separately stated from the price on the invoice.

(b) *Credits from total tax liability.*

- (1) *Vendor's fee.* A retailer's collection and remittance expense equal to 3 1/3 percent of the sum of the sales tax collected and any excess tax collected may be taken as a credit against sales tax paid on or before the due date. However, no such credit shall be allowed for any sales tax that is not timely reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this article.
- (2) Amounts previously paid pursuant to a tax levied by a municipality may be credited against the tax due on transactions but only as follows:
 - a. When the present owner or user has previously paid a legally imposed municipal sales or use tax on the transaction or item; except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established by subsection 34-103(a).
 - b. When the present owner or user of construction equipment has not previously paid a legally imposed sales or use tax attributable to any one municipality on the full price of such equipment, the credit shall be

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the aggregate value of all such taxes paid on such equipment up to the

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amount of tax due to the city on such equipment.

(Code 1965, § 24-11)

Sec. 34-111. Tax on credit sales and leases.

Whenever an article is sold to a person who thereby is obligated to the vendor on an account, chattel paper, contract right, general intangible, or a writing which supports a right to the payment of a purchase price, or any part thereof, the tax shall be based on the total purchase price and shall become immediately due and payable. No refund or credit shall be allowed to either party to a transaction in case of repossession by the vendor of collateral securing the purchase price or any part of the purchase price.

(Code 1965, § 24-12)

Sec. 34-112. Maintenance and service contracts.

The full contract price of tangible personal property and services sold in connection with the maintenance or service of tangible personal property shall be subject to the tax. Application may be made to the city manager for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The city manager is hereby authorized, but not required, to determine a percentage based on the ratio that the price of the tangible personal property bears to the total price under such contract.

(Code 1965, § 24-13)

Sec. 34-113. Tax on construction materials and supplies.

(a) Estimated percentage basis. Any person who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or improvement on or to real property in the city and who shall purchase or acquire construction materials used therefor from sources within or without the city, upon approval of the city manager, may elect to be subject to the estimated percentage basis. Prior to the issuance of a building permit, the estimated cost of construction materials shall be calculated by multiplying the estimated value of this construction project, entered on the building permit by the city building official, or by general or mechanical contract cost if available, by 50 percent. The resulting product will be multiplied by the current sales/use tax rate in effect. Upon payment of such deposit amount, the city shall issue a deposit tax receipt identifying the address for which the purchase is being made and the city building permit number. Deposit receipt will be issued to each contractor and subcontractor engaged in construction activity under the permit and will be evidence to retailers and suppliers that city sales tax has been paid on construction materials and fixtures. For estimated values or contract costs exceeding \$500,000.00, the deposit amount will only be

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required on the first \$500,000.00 value. Estimated payments on the values exceeding \$500,000.00 will be made in monthly installments based on percentage of contract completed. Payment of deposit will relieve contractors from filing monthly use tax returns for each permit issued. In any case, the general contractor and/or the owner shall pay such taxes and shall be jointly and severally liable for all taxes due on such materials.

(b) Those persons not electing the estimated percentage basis shall make payment and remit tax on the actual cost of construction materials used. The actual cost of construction materials shall be reported and tax paid on monthly returns for which tax will be due, pursuant to such rules and regulations as the city manager may adopt.

(c) Each owner and each contractor shall keep and preserve all invoices, receipts and statements showing such purchases of construction materials and tangible personal property for a period of three years after final inspection by the building official or issuance of certificate of occupancy, whichever is later. The city may, prior to the expiration of such three-year period, conduct an audit of such records of the owner and contractor and any other relevant information to establish or to verify the total tax liability on the construction materials and tangible personal property used therein. If the total tax liability is more than the deposit paid or tax paid on monthly returns, the city manager shall serve a notice of determination, assessment and demand for payment on the taxpayer notifying him of the deficiency, including penalty and interest. Interest on any tax deficiency related to construction materials shall accrue from the date that the certificate of occupancy or temporary certificate of occupancy or final inspection occurred or should have occurred, whichever is later, until the tax is paid in full. The amount of any use tax due and not paid constitutes a lien, which shall be first and prior to all other liens and encumbrances, upon the real property benefited by the use of such materials.

If the city manager determines that the deposit or tax paid on monthly returns is sufficient to pay for the total tax liability, then the deposit or tax paid on monthly tax returns shall be credited against the total tax liability, and any excess amount shall be timely mailed to the person who made the deposit.

(d) No final inspection shall be made by the city building official and no certificate of occupancy shall be issued if the city manager determines that all tax due on construction materials for the project for which the building permit was issued has not been paid or arrangement therefor made with the city manager.

(Code 1965, § 24-14)

Sec. 34-114. Computation of use tax on construction equipment.

In addition to the use tax on construction materials, use tax shall be due on construction equipment used, owned, operated or stored inside the city. No person shall use, store, operate or own construction equipment in the city without having paid the applicable use tax pursuant

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to this article.

- (1) The taxpayer shall identify construction equipment used inside the city, as follows:
 - a. Prior to or on the date the equipment is located inside or brought into the city, the taxpayer shall file with the city manager an equipment declaration on a form approved by the city manager. Such declaration shall be made under oath or affirmation; state the dates on which the taxpayer anticipates the equipment will be located inside and removed from the boundaries of the city; describe each such anticipated piece of equipment; state the purchase price of each such piece of equipment; and shall include such other information as reasonably deemed necessary by the city manager.
 - b. The taxpayer shall file with the city manager an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every 90 days after the equipment is brought inside the city. For equipment which is brought inside the city for fewer than 90 days, such amended declaration shall be filed no later than ten days after substantial completion of the project or within ten days from the time the equipment is removed from the city, whichever occurs first. Amended declarations for all other projects shall be filed at least once every 90 days after the equipment is brought inside the city.
 - c. The taxpayer need not declare any equipment for which the purchase price was less than \$2,500.00. Such equipment shall be presumed to have been purchased in a municipality having a sales or use tax at a rate at least equal to the rate established pursuant to subsection 34-103(a) and such tax shall be presumed to have been paid to that municipality.
- (2) Construction equipment located inside the city for 30 consecutive days or less, for which a declaration is properly filed, shall be subject to the tax in an amount equal to 1/12 of the purchase price of the equipment at the time it was purchased multiplied by the rate established by section 34-103(b).
- (3) Construction equipment located inside the city for 30 consecutive days, or equipment for which a declaration has not been properly filed, shall be subject to the tax in an amount equal to the purchase price of the equipment multiplied by the rate established by subsection 34-103(b).

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- (4) In no event will tax be imposed in an amount greater than 100 percent of the full use tax rate on the purchase price of any piece of equipment.

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(Code 1965, § 24-15)

Sec. 34-115. Alternative sales and use tax rate on construction equipment.

(a) Upon receipt of a written request from a person in the construction business who uses, stores, operates, or owns construction equipment in the city, the city manager is hereby authorized to establish an alternative tax calculation which shall apply to the purchase or use of construction equipment.

(b) The alternative sales and use tax calculation will be calculated as follows:

The taxpayer's gross revenue from construction activities during the prior year (gross revenue reported on the taxpayer's last fiscal year federal tax return or other annual period as approved by the city manager) shall be the denominator. The taxpayer's revenues generated from construction activities within the city limits during the prior year shall be the numerator. The ratio of such numerator and denominator shall be converted to a percentage. Such percentage calculated shall be compared to 25 percent and the greater of the two percentages shall be multiplied by the sales/use tax rate in effect in section 34-103(a). The resulting product is the alternative rate to be applied to the purchase price of construction equipment sold or used inside the city limits. If a taxpayer has not been in existence for at least 365 days prior to the request, the city manager may establish an alternative tax calculation based on verified information supplied by the taxpayer; the city manager may refuse to determine an applicable alternative tax calculation for a taxpayer who has not been in existence for the requisite 365 days if the city manager determines that the information available to him is insufficient to make an accurate estimate.

(c) The credit pursuant to subsection 34-110(b)(2) shall apply with respect to construction equipment on which the taxpayer has paid a legally imposed municipal sales or use tax. Such construction equipment would not be allowed or included in the alternative tax calculation as provided above.

(d) If a taxpayer has more than one place or location of business, revenues generated from the business located inside the city or the place of business closest to the city will be used in the calculation of the numerator.

(e) The alternative tax calculation established in this section will be effective for only 24 months from the date of approval of the city manager on new purchases, leases and acquisitions. A taxpayer must make written application to the city manager on forms provided by the city manager in order to be entitled to this calculation.

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(f) The city manager may, at any time but not to exceed once each calendar year unless for good cause, inspect, interview and audit the taxpayer and the employees of the taxpayer and any and all of the taxpayer's books, documents, or other records as may be necessary to determine total

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tax liability. If the city manager determines an underpayment of tax of five percent or more with respect to any reporting period has occurred, the city manager shall impose, and the taxpayer shall pay, in addition to amounts otherwise due pursuant to this article, a penalty of 20 percent of the underpaid amount in addition to the costs incurred by the city (including but not limited to accounting fees, the value of accountants or other professionals engaged in such audit, inspection or interview) in making such determination.

(Code 1965, § 24-16)

Sec. 34-116. Acquisition, inception or cessation of business.

(a) Acquisition of an existing business.

- (1) *Seller's duties.* Each person engaged in business in the city who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business.
- (2) *Purchaser's duties.*
 - a. Each person who purchases an existing business shall determine the total tax liability of that business and shall withhold from proceeds available on an amount sufficient to pay the total tax liability to the city, unless the seller produces a receipt signed by the city manager showing that the total tax liability has been paid or a certificate signed by the city manager that there is no tax due.
 - b. Any amount so withheld shall be paid to the city within ten days of the date of the sale of the business.
 - c. Each purchaser who fails to withhold such tax due or fails to pay to the city the amount so withheld within the ten-day period allowed shall be jointly and severally liable, along with the seller, for any unpaid tax due.

(b) *Inception of business; initial use tax.* Each person who purchases or establishes a business inside the city shall file an initial use tax return.

- (1) *Existing businesses.* Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase of a business. The tax rate shall be multiplied times the value as evidenced by

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the bill of sale or agreement which is a part of the total transaction at the time of the sale or transfer; provided the value is not less than the fair market value of such property. Where the transfer of ownership provides for a lump sum transaction, which does not allocate the price of tangible personal property, the use tax shall be due on the book value established by the purchaser for federal income tax depreciation purposes, or fair market value if no determination has been made. When a business is sold in exchange for the assumption of outstanding indebtedness, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. Such tax shall be reported on an initial use tax return. The reporting period for such return shall be the calendar month of the date of sale.

- (2) *New businesses.* Use tax shall be paid on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased for use inside the city. Such tax shall be reported on the initial use tax return. The reporting period for such return shall be the calendar month of the opening day of business.

(c) *Cessation of business.* Each person engaged in business in the city who quits doing business in the city shall file a final return. The reporting period for such return shall end on the last day of business in the city.

(Code 1965, § 24-17)

Sec. 34-117. Retailer responsible for collection and payment of tax.

Each retailer engaged in business in the city shall be liable for and shall pay an amount equal to the total purchase price multiplied by the rate established by subsection 34-103(a).

- (1) *Tax added to price.* Retailers shall add the tax imposed to the price, showing such tax as a separate and distinct item. Except as provided in this subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.
 - a. Nothing contained in this subsection shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from electing to include in the purchase price any tax levied under this subsection 34-103(a). Once having made the election, such retailer shall continue to impose and collect the tax in the manner elected unless granted authorization to change by the city manager. Any excess taxes collected shall be remitted to the city in accordance with this article.

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- b. Sales tax may be included in the price of items sold from coin-operated devices or the price of utilizing such devices.
- (2) *Tax constitutes debt.* Any tax added to the price, or included in the price pursuant to subsection (1) of this section, by a retailer shall constitute a debt from the purchaser to the retailer and from the retailer to the city until paid and shall be recoverable in the same manner as other debts.
- (3) *Excess tax.* No retailer shall retain any sales tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected, include it in the calculation of tax due, and pay it to the city.
- (4) *Disputed tax.* When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser shall submit a claim for refund to the city manager within 60 days of the date of purchase or thereafter be barred. Any such tax refunded by the city will be paid directly to the purchaser.

(Code 1965, § 24-18)

Sec. 34-118. Trust status of tax in possession of retailer.

All sales tax and use tax collected by or paid to any retailer shall be the property of the city and shall remain public money while in the possession of such retailer, who shall hold such money in trust for the sole use and benefit of the city until paid to the city.

(Code 1965, § 24-19)

Sec. 34-119. Use tax; method of payment.

Each person who has not paid the sales tax to a retailer shall, unless the credit established in subsection 34-110(b)(2) applies, complete the use tax schedule of a return and pay the tax due to the city.

- (1) The due date for licensed taxpayers shall be that established by section 34-120.
- (2) The due date for all other taxpayers shall be 20 days from the end of the reporting period in which the taxable transaction occurred.

(Code 1965, § 24-20)

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Sec. 34-120. Filing returns; due date.

(a) Every taxpayer shall file a return, whether or not tax is due, and remit any tax due the city on or before the 20th day of the month following the reporting period.

(b) A retailer engaged in business in the city at two or more locations, whether inside or outside the city, who is obligated to collect sales tax, may file one return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

(c) Any person reporting use tax due from two or more locations may file one return for all such locations.

(d) For good cause shown and upon written request of a taxpayer, the city manager may extend the time for making a return and paying tax due.

(e) No person shall make any false statement nor provide false information in connection with a return.

(Code 1965, § 24-21)

Sec. 34-121. Reporting periods.

(a) Unless otherwise approved by the city manager, each taxpayer shall file a return and pay tax based on the filing frequency periodically prescribed by resolution of the City Council.

(b) The reporting period for a final return shall end on the date of the transfer of ownership of business.

(c) The reporting period for an initial use tax return shall be the calendar month of the date of sale if a business was purchased or the opening day of business if a business is new.

(d) The reporting period for a vendor selling tangible personal property at a special event inside the city who is not required to obtain a license shall end on the day the special event concludes.

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(e) If the accounting methods employed by the taxpayer, or other conditions, are such that returns made on a calendar month basis will impose unnecessary hardship, the city manager may, upon written request of the taxpayer, accept returns at such intervals as will, in the opinion of the city manager, better suit the convenience of the taxpayer, but not jeopardize the collection of the tax.

(f) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the city manager. Thereafter following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis.

(Code 1965, § 24-22)

Sec. 34-122. Duty to keep books and records.

(a) Each person engaged in business in the city shall keep and preserve, for at least three years after the date of the taxable transaction, suitable records which will allow the accurate determination of the tax due. The date of such taxable transactions for construction projects inside the city shall be the date the final certificate of occupancy is issued or final inspection, whichever is later.

(b) Each person who uses construction equipment inside the city shall keep and preserve, for at least three years after the final certificate of occupancy or final inspection, whichever is later, records of the time, dates and location each piece of construction equipment was located inside the city and any sales or use tax paid on such construction equipment.

(c) Each person shall provide all records required by this section for audit by the city manager during normal business hours.

(Code 1965, § 24-23)

Sec. 34-123. License--Required.

(a) No person shall engage in business in the city without first obtaining a license.

- (1) No license shall be required of any charitable organization which is exempt from the sales and use tax under this article.
- (2) No license shall be required for a retailer selling tangible personal property at a special event inside the city for periods of seven consecutive days or less, not exceeding a total of 21 days per calendar year. The reporting period for such special event shall end on the day the special event concludes.

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(b) When business is transacted by one person at two or more separate locations inside the city, a separate license for each place of business shall be required.

(Code 1965, § 24-24)

Sec. 34-124. Same--Application and content.

(a) Each person who is required to obtain a license shall deliver to the finance department an application stating: the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as may be required by the city manager.

(b) A nonrefundable application fee as established by resolution of the city council and on file in the city clerk's office shall be paid before any license will be processed and issued.

(c) For each tax license issued for a period of 30 days or less, the fee shall be as established by resolution of the city council and on file in the city clerk's office. Each application shall be accompanied by the prepayment of anticipated tax receipts or \$50.00, whichever is greater.

(d) Each annual license shall be in effect through December 31 of the year of issuance and fees thereon will not be prorated. Each annual license shall be automatically renewed if the taxpayer has timely complied with all provisions of this article.

(e) Each license shall be numbered and shall show the name, location and mailing address posted in a conspicuous place at the business location for which it is issued.

(f) No license shall be transferable. After any sale of a business, the new owner shall apply for a new license.

(Code 1965, § 24-25)

Sec. 34-125. Same--Cancellation or revocation.

(a) *Cancellation.* The city manager may cancel any license:

- (1) Upon receipt of a written notice that the taxpayer is no longer engaged in business in the city;
- (2) Upon the taxpayer's failure to respond to three consecutive notices of delinquency. The city manager shall give notice to the taxpayer that the license has been canceled at the taxpayer's last known address on file with the finance

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department.

(b) *Revocation.* The city manager may, after a reasonable notice and after an opportunity for a hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this article.

(c) *Appeal.* Any licensee may appeal a finding, order or determination of the city manager revoking their license in district court, pursuant to the process set forth in C.R.S. § 29-2-106.1.

(d) *Reissuance.* Before a sales tax license may be issued to a person whose license has been canceled or revoked, the licensee shall have complied with all provisions of this article and shall post a cash bond in an amount equal to the licensee's estimated sales tax payment for a two-month period. If the licensee timely complies with the provisions of this article for 12 months after the issuance of the sales tax license, the bond shall be refunded to the licensee upon request by the licensee.

(e) *Engaging in business after revocation.* No person shall engage in business in the city after such person's license has been cancelled or revoked.

(Code 1965, § 24-26)

Sec. 34-126. Authority of city manager.

The power to administer this article is hereby vested in the city manager.

- (1) *Forms and procedures.* The city manager shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax levied by this article.
- (2) *Regulations.* The city manager may promulgate, after hearing, regulations to effectuate the purposes of this article.
- (3) *Additional information.* The city manager may require any person to make additional returns, render statements, furnish records, or make informational reports to determine whether or not such person is liable for payment and/or collection of tax.
- (4) *Subpoenas.* The city manager may issue a subpoena to command a person to attend and give testimony and/or to produce books, accounts and records.
 - a. Any subpoena issued under the terms of this article shall be served as set forth in the Colorado Rules of Civil Procedure, including the

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payment of witness fees. When the witness is subpoenaed by the city, such fees shall be paid by the city. When a witness is subpoenaed at the request of a taxpayer, the city manager shall require that the cost of service of the subpoena and the fee be paid by the taxpayer. The city manager shall require a deposit to cover the costs of the service of subpoena and witness fees.

- b. If a subpoena issued by the city manager is duly served and the respondent fails to attend, give testimony or to produce books, accounts and records as commanded, the city manager may apply to, with the assistance of the city attorney, the municipal court of the city for an order enforcing the subpoena. The municipal court shall have jurisdiction to enforce such a subpoena through appropriate proceedings including contempt.
- (5) *Oaths.* The city manager is authorized to administer oaths and take testimony at the hearing.
- (6) *Agents.* The city manager may designate one or more agents to perform any of the duties, powers and responsibilities set forth in this article.
- (7) *Partial payments.* The city manager may accept any partial payment made and apply such payments towards the tax due. Acceptance of such payments shall not in any way limit the power to collect any total tax liability.
- (8) *Registration of vehicles.* If the city manager determines that a person has registered or caused to be registered a motor vehicle outside the city and that such motor vehicle should have been registered at an address in the city, the city manager is authorized to assess a civil penalty of \$500.00 against such person in addition to the total tax liability. A written notice of the civil penalty shall be issued, paid and protested in the same manner as a notice of assessment. The city manager may enforce collection of such civil penalty in the same manner as provided in this article for the collection of tax due. Assessment and collection of such penalty shall not preclude the collection of any tax due or fee or the imposition of other civil or criminal penalty provided by law.
- (9) *Notices.* Notices required by this article shall be in writing and delivered in person or sent postpaid by first class mail, to the last known address of the taxpayer on file with the finance department.

(Code 1965, § 24-27)

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Sec. 34-127. Audit of records.

(a) For the purpose of ascertaining the correct amount of tax due from any person engaged in business in the city, the city manager may conduct an audit by examining any relevant books, accounts and records of such person and by interviewing a taxpayer and the taxpayer's officers, agents and employees.

(b) The city manager may make, permit, or cause to be made the examination, inspection, and audit or interviews of books, accounts and records of any taxpayer at a location inside the city limits during regular business hours. The taxpayer may elect to make available such books, accounts and records at a location outside the city provided the taxpayer has agreed in writing with the city manager to reimburse the city for all costs and expenses incurred in order to perform such examination, inspection, or audit made outside the city. If any taxpayer refuses to provide any of the foregoing information when requested, the city manager may issue a subpoena to require that the taxpayer or an agent or employee of the taxpayer attend a hearing and produce any such books, accounts and records for examination and copying.

(c) When the taxpayer does not make available suitable records, the city manager may determine total tax liability based upon generally accepted accounting principles, expert testimony or any other method deemed reasonable by the city manager.

(d) If a taxpayer provides records which, in the judgment of the city manager, are so voluminous that excessive and undue time would be required to review and examine each and every record, the city manager may use a test-period or other appropriate sampling technique to determine and compute the total tax liability.

(e) Any charitable entity claiming exemption under the provisions of this article is subject to audit in the same manner as any other person engaged in business in the city.

(Code 1965, § 24-28)

Sec. 34-128. Coordinated audit procedure.

(a) Any taxpayer licensed by the city pursuant to this article and holding a similar sales tax license in at least four other municipalities in the state that administer their own sales tax collection may request a coordinated audit as provided in this section.

(b) Within 14 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 of this city, 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 municipalities of the state utilizing local collection of their sales tax in which the taxpayer holds a current sales

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ax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon this city's right to recover tax owed by the taxpayer 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 the statute of limitations may be audited by this city during the 12 months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If this city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (c) of this section, the city manager shall so notify the finance director of the municipality whose notice of an audit prompted the taxpayer's request within ten days after the receipt of the taxpayer's request for a coordinated audit. The city manager shall 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 this city, this city's city manager shall facilitate arrangements between this 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 shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be 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 this city, this city's city manager shall, 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 and the records most likely to be required by participating municipalities for completion of the coordinated audit. The city manager shall also propose a 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 the statute of limitations;

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- (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection (b) of this section.

(Code 1965, § 24-29)

Sec. 34-129. Tax information confidential.

All specific information gained under the provisions of this article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the city and its officers, employees or legal representatives as confidential.

- (1) Except in accordance with judicial order or as otherwise provided by law, the city manager and his employees shall not divulge or make known in any way any information disclosed in any document, report, or return filed under this article, 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 city manager in an action or proceeding under the provisions of this article 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 such reports or of the facts shown thereby as are pertinent to the action or proceeding, and no more.
- (2) 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 equalling with the originals and may be received as evidence of their contents.
- (3) Nothing in this section shall be construed to prohibit the publication of statistics classified so as to reasonably prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the city attorney or other authorized representatives of the city.
- (4) Notwithstanding the provisions of this section, the city manager may furnish to the taxing officials of the state, its political subdivisions, any other state or political subdivisions, any Colorado municipality, or the United States, any information contained in tax returns and related documents filed pursuant to this

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article or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the city manager to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax related purposes.

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- (5) Any city officer or employee or any member of the office of, or officer, or employee of the city manager who shall divulge any information classified in this article as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided by law, shall be guilty of a violation of this article.

(Code 1965, § 24-30)

Sec. 34-130. Timely payment; computation of dates.

(a) Timely payment shall be evidenced by the postmark date if mailed; otherwise timely payment shall be evidenced by the city cashier validation date.

(b) Any due date, payment date, or deadline for paying tax due, providing information or taking other action which falls on a Saturday, Sunday or legal holiday recognized by either the federal government or the state shall be extended to the first business day following such weekend or holiday.

(Code 1965, § 24-31)

Sec. 34-131. Notice of sales and use tax ordinance amendment.

(a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the city manager shall file in a central repository prior to the effective date of this section a copy of the city sales and use tax ordinance reflecting all provisions in effect on the effective date of this section.

(b) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the city manager shall file in a central repository prior to the effective date of an amendment a copy of each sales and use tax ordinance amendment enacted by the city.

(c) Failure of the city to file such ordinance or ordinance amendment pursuant to this section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

(Code 1965, § 24-32)

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Sec. 34-132. Participation in simplification meetings.

The city manager shall cooperate with and participate on an as needed basis with a permanent statewide sales and use tax committee convened by the state municipal league, which is composed of state and municipal sales and use tax officials and business officials. Such committee will meet for the purpose of discussing and seeking resolution to sales and use tax collection and administration problems which may arise.

(Code 1965, § 24-33)

Sec. 34-133. Intercity claims for recovery.

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the city.

- (1) As used in this section, "claim for recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (2) When it is determined by the city manager that sales and use tax owed to the city has been reported and paid to another municipality, the city manager shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.
- (3) The city manager may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the city, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. 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 and/or vendor 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 90 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 shall not be unreasonably withheld.
- (4) Within 90 days after receipt of a claim for recovery, the city shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied, in whole or in part, including the

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reasons for the decision. If the claim is approved in whole or in part, the city shall remit the undisputed amount to the municipality submitting the claim within 30 days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

- (5) The city may deny a claim on the grounds that it has previously paid a claim for recovery rising out of an audit of the same taxpayer.
- (6) The period subject to a claim for recovery shall be limited to the 36-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

(Code 1965, § 24-34)

Sec. 34-134. Overpayment from returns.

If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified. Unless requested otherwise by the taxpayer, all overpayment shall be credited to the tax due for the next reporting period. Upon request by a taxpayer, a taxpayer may submit a claim for refund along with an amended return and other documentation as may be required by the city manager. Interest shall not be allowed and paid upon any overpayment in respect of any sales or use tax. At the city manager's discretion, any portion of sales or use tax, or any interest, assessable penalty, additional amount, or addition to tax, which has been erroneously refunded, shall bear interest at the rate established in subsection 34-142(1) from the date of the payment of the refund.

(Code 1965, § 24-35)

Sec. 34-135. Tax overpayment determined through audit.

If the city ascertains, through an audit of a taxpayer's records, that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim for refund, if such claim is signed and submitted by the taxpayer within 30 days of the date of the notice of overpayment.

(Code 1965, § 24-36)

Sec. 34-136. Refunds of disputed tax.

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting claim for refund on or before 60 days from the date of such purchase.

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(Code 1965, § 24-37)

Sec. 34-137. Claim for refund.

No tax overpayment shall be refunded unless a claim for refund is signed and submitted to the city by the taxpayer.

- (1) *Application.* An application for refund of tax shall:
 - a. Be made on a claim for refund form furnished by the city;
 - b. Be signed by the taxpayer; and
 - c. Include adequate documentation of the claim.
- (2) *Decision.* The city manager shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.
- (3) *Refunds not assignable.* The right of any person to obtain a refund pursuant to this article shall not be assignable.
- (4) *False claims.* No person shall make any false statement in connection with a claim for refund.

(Code 1965, § 24-38)

Sec. 34-138. Underpayment from returns.

If the amount remitted with a return is less than the tax computed from information in such return, the taxpayer shall be notified.

- (1) If the underpayment is at least \$15.00, a notice of assessment may be issued.
- (2) If the underpayment is less than \$15.00, it shall be added to the tax due for the next reporting period.

(Code 1965, § 24-39)

Sec. 34-139. Tax deficiencies from failure to file.

(a) If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.

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(b) If any taxpayer neglects or refuses to file a return by the due date, the tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.

(c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment.

(Code 1965, § 24-40)

Sec. 34-140. Tax deficiencies determined through audit.

If the city ascertains, through an audit of the taxpayer's records, that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

(Code 1965, § 24-41)

Sec. 34-141. Penalties.

(a) *Penalty for late payment.* A penalty shall be levied on any tax deficiency. Such penalty shall be \$15.00 or ten percent of the tax deficiency, whichever is greater.

(b) *Penalty for fraud.* If any tax deficiency is due to fraud or the intent to evade the tax, the penalty shall be 100 percent of the total tax deficiency.

(c) *Penalty for repeated enforcement.* If three notices of assessment have been issued to the same taxpayer within any 36 consecutive months, a special penalty of \$100.00 or 25 percent of the tax due, whichever is greater, shall be levied.

(d) *Penalty for returned checks.* If a taxpayer pays for any tax imposed pursuant to this article by check for which there are insufficient funds to cover such check or on a closed account, then the city manager may assess a penalty against such taxpayer as follows:

- (1) Ten dollars for the first violation;
- (2) Twenty-five dollars for the second violation; and
- (3) Fifty dollars for each additional violation.

(e) *Abatement of penalty.* Any penalty assessed in this section may be abated by the city manager if the taxpayer submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the city manager finds good cause therefor.

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(Code 1965, § 24-42)

Sec. 34-142. Interest.

Interest shall be levied on any tax deficiency.

- (1) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. The monthly interest rate shall be 1 1/2 percent per month.
- (2) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the city manager for the period between the interest date of such assessment and the payment date established in an informal meeting or 30 days after the date of a findings of fact, conclusion and decision issued after a hearing.
- (3) The city manager, at his discretion and for good cause shown, may abate interest assessed on any tax deficiency.

(Code 1965, § 24-43)

Sec. 34-143. Notice of assessment.

The city manager shall issue a notice of assessment for any total tax liability.

- (1) Notices of assessment shall be in writing and delivered in person or sent postpaid by first class mail, to the last known address of the taxpayer on file with the finance department.
- (2) The payment due date for the tax due pursuant to a notice of assessment shall be as stated in the notice of assessment.

(Code 1965, § 24-44)

Sec. 34-144. Abatement of tax deficiency.

The city manager, at his discretion and with good cause therefor and for the purpose of facilitating settlement, may agree to an amount of taxes due which may be less than the actual total tax liability. Payment in accordance with such agreement between the taxpayer and the city manager fully satisfies the tax liability for the periods and terms set forth in such agreement, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability thereof.

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(Code 1965, § 24-45)

Sec. 34-145. Protest of notice of assessment or denial of refund.

(a) Any notice of assessment for failure to file a return, underpayment of tax owed or as a result of an audit may be protested by the taxpayer or vendor to whom it is issued.

- (1) Such protests must be submitted in writing to the city manager within 20 calendar days from the date of the notice of assessment, and must identify the amount of total tax liability disputed and the basis for the contention that the tax is not due. The time period set forth in this section may, in the absolute discretion of the city manager, be waived for good cause on written application of a vendor or taxpayer.
- (2) When a timely protest is made, no further enforcement action will be instituted by the city for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner.

(b) Protest of denial of refund. Any denial of a claim for refund may be protested by the taxpayer who submitted the claim. Such protest must be submitted in writing to the city manager within 20 calendar days from the date of the denial of the refund and shall identify the amount of the denial contested and the basis for the contention that the refund is due. The time period set forth in this section may, in the absolute discretion of the city manager, be waived for good cause on written application of a vendor or taxpayer.

(c) Any timely protest entitles a taxpayer to a hearing under the provisions of this article.

- (1) If, in the opinion of the article, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the city manager may recommend an informal meeting with the taxpayer.
- (2) Participation in such an informal meeting does not prevent either the taxpayer or the city from holding a hearing if the dispute cannot be resolved by such meeting.

(Code 1965, § 24-46)

Sec. 34-146. Hearings.

(a) The city shall commence a hearing within 90 days after the city's receipt of the taxpayer's written protest; except the city may extend such period if the delay is requested by the taxpayer. The city manager shall notify the taxpayer in writing of the time and place of such

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hearing.

(b) Every hearing shall be held in the city before the city manager.

(c) The taxpayer may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required.

(d) Based on the evidence presented at the hearing, the city manager shall issue findings of fact, conclusions, and a decision which may modify or abate in full the tax, penalties and interest protested at the hearing, approve a refund, or uphold the assessment.

(e) After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial of refund.

(f) An appeal of a final decision of the city manager shall be commenced within 30 days of mailing of the city manager's written decision pursuant to the process set forth in C.R.S. § 29-2-106.1.

(g) Unless the decision of the city manager is appealed as provided in this article, the remaining tax due, if any, shall be paid on or before 30 days after the date of the findings of fact, conclusions and decision.

(Code 1965, § 24-47)

Sec. 34-147. Review by district court.

(a) If the petitioner or if an applicant for a refund is aggrieved by the final decision of the city manager, then he may appeal to the district court of the county. The procedure shall be in accordance with C.R.S. § 29-2-106.1.

(b) Within 15 days after filing a notice of appeal as provided in subsection (c) of this section, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated in the final decision by the city manager that are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of C.R.S. § 11-35-101(1), equal to twice the amount of the taxes, interest, and other charges stated in the final decision by the city manager. The taxpayer may, at his option, deposit the disputed amount with the city manager in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court or the court of appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the district

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court, either retained by the city manager and applied against the deficiency or returned in whole or in part to the taxpayer. No claim for refund of amounts deposited with the city manager need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the district court.

(c) Any appeal pursuant to C.R.S. § 29-2-106.1 shall, to the extent allowed by law, be filed on the district court of the county upon a verified petition of the taxpayer filed within 20 days after notice of the decision of the city manager in any such matter.

(Code 1965, § 24-48)

Sec. 34-148. Appeals.

(a) Subsequent to a hearing, the taxpayer may appeal the decision of the city manager in district court pursuant to the process in C.R.S. § 29-2-106.1.

(b) Upon appeal to the district court, the taxpayer shall either file with the city manager a bond for twice the unpaid amount or deposit the unpaid amount with the city manager.

(Code 1965, § 24-49)

Sec. 34-149. Lien for tax due.

(a) *Issuance.* If any tax due is not paid by the payment date of a notice of assessment, the city manager may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the tax due, the date of the accrual thereof, and the location of the property if known, and shall be certified by the city manager.

(b) *Filing.* The notice of lien may be filed in the office of the clerk and recorder of any county in the state. Such filing shall provide additional notice of such a lien.

(c) *Priority.* The attachment and priority of such a lien shall be as follows:

- (1) Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.
- (2) Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade, and business fixtures shall be a first and prior lien except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.

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- (3) The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in 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 leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or based.
- (4) Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee.
- (5) Where a lessor and lessee are blood relatives or relatives by law or have 25 percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(d) *Enforcement against real property.* If a notice of lien is filed against real property, the city manager may request the city attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property, and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(Code 1965, § 24-50)

Sec. 34-150. Perpetuance of lien.

- (a) Any lien for tax due shall continue until a release of lien is filed by the city manager.
- (b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the city manager for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired.

(Code 1965, § 24-51)

Sec. 34-151. Release of lien.

Upon payment of the tax due or enforcement of the lien, the city manager shall file a

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release of lien with the county clerk and recorder of the county in which the lien was filed.

(Code 1965, § 24-52)

Sec. 34-152. Civil action to recover tax due.

(a) Any unpaid tax due shall constitute a debt of the taxpayer to the city and the city manager may request the city attorney to file a civil action to collect such tax due.

(b) The return filed by a taxpayer or the notice of assessment issued by the city manager shall be prima facie proof of the tax due.

(c) If a judgment is obtained by the city, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the city manager, nor shall any sheriff require of the city manager an indemnity bond for executing the writ of attachment or writ of execution upon any judgment.

(Code 1965, § 24-53)

Sec. 34-153. Jeopardy assessment.

(a) *Issuance.* If the collection of any tax due from a taxpayer, whether or not previously assessed, may be jeopardized by delay, the city manager may declare the taxable period immediately terminated, determine the tax, and issue a jeopardy assessment and demand for payment. Any tax so assessed shall be due and payable immediately.

(b) *Security for payment.* Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the city manager.

(c) *Dispute of a jeopardy assessment.* If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the city.

(Code 1965, § 24-54)

Sec. 34-154. Distraint and sale.

(a) *Warrant commanding distraint.* Unless such property is exempt by state statute from distraint and sale, the city manager may sign and issue a warrant directed to any employee or agent of the city, or any sheriff of any county in the state, commanding the distraint and sale of personal property of the taxpayer on which a lien has attached for the payment of the tax due.

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- (1) Such warrant may be issued if the tax due is not paid on or before 21 days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.
- (2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment has been issued.

(b) *Application for warrant.* If the taxpayer does not volunteer entry to the premises, the city manager may apply to the municipal court of the city for a warrant authorizing any employee or agent of the city to search for and distrain property located inside the city to enforce the collection of tax due.

- (1) The city manager shall demonstrate to the court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due.
- (2) If a jeopardy assessment and demand for payment has been issued, the city manager shall specify to the court why collection of the tax will be jeopardized.
- (3) The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) *Disposal of distrained property.*

- (1) A signed inventory of the property distrained shall be made by the city or its agent. Prior to the sale the owner or possessor shall be served with a copy of such inventory, a notice of the sum of the tax due and related expenses incurred to date, and the time and place of sale.
- (2) A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the city manager, the notice shall be posted at the courthouse of the county where distraint is made, and in at least two other places within such county.
- (3) The time fixed for the sale shall not be less than ten days nor more than 60 days from the date of distraint. The sale may be postponed by the city or agent for no more than 90 days from the date originally fixed for the sale.
- (4) If the property is not sold, such property may be disposed of in the same manner as other city property, such as an annual auction, and the lien thereon shall be reduced by the amount of the net proceeds received.

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- (5) The property may be offered first by bulk bid, then subsequently for bid singularly

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or by lots, and the city or its agent may accept the higher bid.

- (6) The property offered for sale may be redeemed if the owner or possessor or other person holding a security interest pays the total tax liability and all collection costs not less than 24 hours before the sale.
- (7) The city manager shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold.
 - a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company, or association to record the transfer on its books and records.
 - b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.
- (8) Any surplus remaining after satisfaction of the tax due plus any costs of making the distraint and advertising the sale may be distributed by the city first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.

(d) *Property subject to distraint.* Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the personal property of corporate officers deemed to be in a fiduciary position of such sales and use tax, and the goods, stock in trade and business fixtures owned or used by any taxpayer, including those used under lease, installment sale, or other contract arrangement. Property exempt from distraint and sale shall include the personal property described as such in subsection 34-149(c)(3).

(e) *Return of the property.* The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the city manager, or the municipal court if the property was seized pursuant to a warrant issued by the court, for the return of the property.

- (1) The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the city's interest or that the property is exempt from the city's lien.
- (2) The fact finder shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact finder determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be

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returned.

(Code 1965, § 24-55)

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Sec. 34-155. Status of tax due in bankruptcy and receivership.

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or is under distraint for property taxes, total tax liability shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the city manager the amount of the total tax liability payable under this article. Such officer shall pay any total tax liability to the city before making payment to any judgment creditor or other claimants.

(Code 1965, § 24-56)

Sec. 34-156. Violations; summons and complaint; penalty.

(a) It shall be a violation of this article to fail to perform any applicable affirmative duty specified in this article, including, but not limited to:

- (1) The failure of any person engaged in business in the city to obtain a license.
- (2) The failure of any taxpayer to file a timely return or to make timely payment of any tax due.
- (3) The failure of any person to comply with the registration requirements for automotive vehicles.
- (4) The making of any false or fraudulent statement, whether orally or in writing, by any person in any return, claim for refund, application for a license, hearing or as a part of any audit.
- (5) The evasion of collection of any sales tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

(b) The city manager may request that the city attorney issue a complaint and summons to appear before the municipal court of the city to any person who may be in violation of this article or of the rules and regulations promulgated by the city manager to enforce this article.

(c) A violation of this article shall be punished by a fine or imprisonment or both pursuant to the limits established in section 1-9 of this Code. Each day or portion thereof that

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any violation of any provision of this article exists shall constitute a separate offense.

(Code 1965, § 24-57)

Sec. 34-157. Statute of limitations.

Unless the limitation period has been extended as provided in this section, the statute of limitations for provisions contained in this article shall be as follows:

- (1) *Refunds.*
 - a. Any claim for refund for disputed tax shall be submitted to the city on or before 60 days from the date of such purchase.
 - b. Any claim for refund resulting from a notice of overpayment shall be submitted to the city on or before 30 days after the date of such notice of overpayment.
 - c. Any other claim for refund shall be filed on or before three years after the date such overpayment was paid to the city.
- (2) *Assessments.* Except as otherwise provided in this article, no notice of assessment shall be issued more than three years after the due date of such tax due, or for a construction project which requires a city building permit, the date the final certificate of occupancy was issued for such project or final inspection, whichever is later.
- (3) *Liens.* Except as otherwise provided in the article, no notice of lien shall be issued more than three years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before 30 days from the date of the notice of assessment issued for such extended period.
- (4) *Returns.*
 - a. When a taxpayer fails or refuses to file a return, the tax due may be assessed and collected at any time.
 - b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun, at any time.
- (5) *Protests.* No protest of a notice of assessment or denial of a claim for refund shall be valid unless submitted to the city manager in written form within the

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period allowed in this article.

- (6) *Extension.* The period of limitation may be extended before its expiration.
 - a. The taxpayer and the city manager may agree in writing to extend the period.
 - b. If the city provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this article, such period of limitation shall be extended for the audit period until 30 days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. "Audit period" is the 36-month reporting period preceding the date of the notice of audit, or if a city building permit is required, the period between the issuance of such building permit and the issuance of a final certificate of occupancy, or final inspection.
- (7) *Audits.* Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this section.

(Code 1965, § 24-58)

Chapter 35

RESERVED

Chapter 36 TRAFFIC AND VEHICLES*

***Cross reference(s)**--Drivers of city-owned vehicles or emergency vehicles liability, § 2-72; vehicle loads required to be secured to prevent spillage, § 16-82.

State law reference(s)--Vehicles and traffic regulations, C.R.S. § 42-4-102.

Sec. 36-1. Model traffic code--Generally.

Sec. 36-2. Same--Amendments.

Sec. 36-3. Duty to obey traffic laws on state highways.

Sec. 36-4. Parking on state highways during snow removal.

Sec. 36-5. Approval of regulations on state highways.

Sec. 36-6. Driving golf carts on public rights-of-way to and from golf courses.

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Sec. 36-1. Model traffic code--Generally.

(a) *Adoption.* Pursuant to C.R.S. title 31, article 16, parts 1 and 2, there is hereby adopted by reference articles I to XXVI, inclusive, of the 1977 edition of the Model Traffic Code for Colorado Municipalities, promulgated and published as such by the state department of highways. The subject matter of the model traffic code relates primarily to comprehensive traffic control regulations for the city. The purpose of this section and the code adopted in this section is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the state and the nation. One copy of the model traffic code adopted in this section is now filed in the office of the city clerk and may be inspected during regular business hours. The 1977 edition of the model traffic code is adopted as if set out at length in this section.

(b) *Penalties.* The following penalties, herewith set forth in full, shall apply to this section.

- (1) It is unlawful for any person to violate any of the provisions stated or adopted in this section.
- (2) Every person convicted of a violation of any provision stated or adopted in this section shall be punished pursuant to section 1-9.

(c) *Application.* This section shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public parking area, either within or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction to regulate. The provisions of sections 5-1, 5-2, 15-12, 21-11 and 23-3 of the adopted model traffic code, respectively concerning reckless driving, careless driving, unauthorized devices, eluding officer and accident investigation, shall apply not only to public places and ways but also throughout this municipality.

(d) *Interpretation.* This section shall be so interpreted and construed as to effectuate its general purpose to conform with the state's uniform system for the regulation of vehicles and traffic. Article and section headings of the sections of the adopted model traffic code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

(Code 1965, § 28-1)

Sec. 36-2. Same--Amendments.

The model traffic code adopted in section 36-1 is hereby amended as follows:

Section 11-1(1). Section 11-1(1) is amended to read as follows:

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- (1) On a sidewalk or in a sidewalk area in a residentially zoned area.

Section 11-1(4). Section 11-1(4) is amended to read as follows:

- (4) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic authority indicates a different length by signs or markings; every vehicle shall be parked wholly within a designated parking space. Parking space designations shall be made by markings, signs or other appropriate indication upon the curb and/or pavement. Except where prohibited by other provisions of this code, a vehicle which is of a size too large to be parked within a single space shall be permitted to occupy two adjoining parking spaces when the vehicle will fit wholly and completely within the designated spaces and where, as applicable, the necessary number of parking meter charges have been paid.

Section 14-6. Section 14-6 is hereby added to read as follows:

Section 14-6. Immobilization of vehicles.

(a) When a driver, owner or person in charge of a vehicle has failed to respond to the following notices of illegal parking:

- (1) A notice placed on the vehicle pursuant to section 22-12, chapter 36 of the Code of Ordinances of the City of Grand Junction; and

- (2) An additional notice mailed to the registered owner of the vehicle; a police officer or other authorized person of the City of Grand Junction, acting in his official capacity, may temporarily immobilize such vehicle by attaching to it a device designed to restrict the normal movement of the vehicle; provided, however, that the vehicle shall be located on a public right-of-way or in such a place frequented by the public for public purposes or private property where the public frequents for public purposes or private property where the public is a business invitee. Prior to immobilization the municipal court shall review the procedure followed and enter an order directing the immobilization.

(b) If a vehicle is immobilized, the officer shall affix a conspicuous notice to the vehicle informing the driver, owner or person in charge of the vehicle that:

- (1) The vehicle has been immobilized by the City of Grand Junction for a parking violation pursuant to the Code of Ordinances of the City of Grand Junction by an order issued by the judge of the municipal court.

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(2) The owner of the vehicle may request an immediate hearing in the Grand Junction municipal court to contest the citation or immobilization of the vehicle, or the owner of the vehicle shall have the right, upon request, to a post-deprivation hearing within 48 hours after the request for such hearing, excluding Saturdays, Sundays and holidays. In the alternative, the owner may obtain immediate release of the vehicle by posting bond in the amount of the delinquent parking fines and fees plus booting costs as established by resolution of the city council and on file in the city clerk's office with the clerk of the municipal court. If the vehicle is so released, any hearing requested will be set within the normal time limits of any other hearing in municipal court.

(3) Release of the vehicle may be obtained without a hearing by payment of fines, fees and costs as established by resolution of the city council and on file in the city clerk's office to the clerk of the municipal court.

(4) Unless arrangements are made for the release of the vehicle within 72 hours, the vehicle will be removed from the streets by a police officer pursuant to section 22-20, chapter 34 of the Code of Ordinances of the City of Grand Junction.

(5) That removing or attempting to remove the device before a release is obtained is unlawful.

(c) It shall be unlawful for any person to remove or attempt to remove an immobilized vehicle before a release is obtained or to move any such vehicle before it is released by the police department.

Subsections 15-5(c) and (f). Subsections 15-5(c) and (f) are hereby repealed, and enacted in their place is the following:

(f) Steady red alone:

(1) Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or at a sign or pavement marking indicating where the stop shall be made, or in the absence of any such crosswalk, sign, or marking, then before entering the intersection and shall remain stopped or standing until a green indication is shown; except, that the driver of any such vehicle, after coming to a stop and after yielding the right-of-way to pedestrians and other traffic proceeding as directed, may make a right turn when a steady red signal alone is displayed unless such right turn is specifically prohibited as declared in section 2 of this ordinance [subsection (2) of this section].

(2) When signs are erected giving notice thereof, no driver shall make a right

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turn on a steady red signal.

(3) Pedestrians facing a steady red signal alone shall not enter the roadway, unless permitted to proceed by a pedestrian control signal as provided in section 15-8.

(4) The provisions of this section shall not apply to authorized emergency vehicles.

Section 20-13(n). Section 20-13 is hereby amended by adding subsection (n), which shall read as follows:

(n) (1) It shall be unlawful for any person to drive, ride or use a motorcycle, motor-driven cycle, motor scooter, motorbike, minibike, dune buggy or other similar on- or off-road vehicle upon any public or private property which is not an improved public street or highway, or improved private street approved by the City of Grand Junction, except that this subsection shall not apply in either of the following instances:

(i) Where such vehicle is being driven, ridden or used upon property by the owner, resident or tenant of such property, or by an authorized visitor when such visitor is accompanied by or has a written authorization in his possession from the owner, resident or tenant of the property.

(ii) Where such use is permitted pursuant to a use permit or otherwise in accordance with the zoning regulations of the City of Grand Junction.

(2) Nothing herein shall be interpreted to permit the operation on city streets of vehicles otherwise prohibited from such operation.

Section 20-18. Section 20-18 is added to read as follows:

Section 20-18. Child restraint systems required; definitions; exemptions.

(a) As used in this section, unless the context otherwise requires:

(1) *Child restraint system* means any device which is designed to protect, hold or restrain a child in a privately owned noncommercial passenger vehicle in such a way as to prevent or minimize injury to the child in the event of a motor vehicle accident and which conforms to all applicable federal motor vehicle safety standards.

(2) *Safety belt* means a lap belt, a shoulder belt or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, except any such belt which is physically a part of a child restraint

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equipment directly related to the operation of safety belts.

(3) *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.

(b) Unless exempted pursuant to subsection (c) of this section, every child who is under four years of age and weighs under 40 pounds being in this city in a privately owned noncommercial passenger vehicle which is driven by a resident of the state shall be provided with a child restraint system suitable for the child's size and shall be properly fastened into such child restraint system which is in a seating position and which is equipped with a safety belt or other means to secure such system according to the manufacturer's instructions. It is the responsibility of the driver transporting children, subject to the requirements of this section, to ensure that such children are provided with and that they properly use a child restraint system.

(c) The requirement of subsection (b) of this section shall not apply to a child who:

(1) Is being transported in a motor vehicle in which all seating positions equipped with safety belts or child restraint systems are occupied; or

(2) Is being transported in a motor vehicle as a result of a medical emergency.

(d) No person shall use a safety belt or child restraint system for children four years of age and under in a motor vehicle unless it conforms to all applicable federal motor vehicle safety standards.

(e) Any violation of this section shall not constitute negligence per se or contributory negligence per se.

Section 20-19. Section 20-19 is added to read as follows:

Section 20-19. Safety belt systems; mandatory use; exemptions; penalty.

(a) As used in this section:

(1) *Motor vehicle* means a self-propelled vehicle intended primarily for use and operation on the public highways, including passenger cars, station wagons, vans, taxicabs, ambulances, motor homes and pickups. The term does not include motorcycles, motor scooters, motor bicycles, motorized bicycles, passenger buses, school buses and farm tractors and implements of husbandry

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designed primarily or exclusively for use in agricultural operations.

(2) *Safety belt system* 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 conforms to federal motor vehicle safety standards.

(b) Unless exempted pursuant to subsection (c) of this section, every driver of and every front seat passenger in a motor vehicle equipped with a safety belt system shall wear a fastened safety belt while the motor vehicle is being operated on a street or highway in this city.

(c) The requirement of subsection (b) of this section shall not apply to:

(1) A child required by section 20-12 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 peace officer, level I, as defined in C.R.S. § 18-1-901(3)(I), while performing official duties, so long as the performance of such duties is in accordance with rules and regulations applicable to such officer which are at least as restrictive as subsection (b) of this section and which only provide exceptions necessary to protect the officer;

(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; and

(7) A person operating a 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

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the day and during the time period following the last delivery or pickup of

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the day.

(d) Any person who operates a motor vehicle while he or any passenger is in violation of the requirement of subsection (b) of this section commits a misdemeanor punishable in accordance with the general violation section of this code or with the fine schedule established by the municipal judge under the traffic violations bureau.

(e) No driver or passenger in a motor vehicle shall be cited for a violation of subsection (b) of this section unless the driver was stopped by a law enforcement officer for an alleged violation other than a violation of this section.

(f) Testimony at a trial for a violation charged pursuant to subsection (d) of this section may include:

(1) Testimony by a law enforcement officer that he observed the person charged operating a motor vehicle while such operator or any passenger was in violation of the requirement of subsection (b) of this section; or

(2) Evidence that the driver removed the safety belts or knowingly drove a vehicle from which the safety belts had been removed.

(g) Evidence of failure to comply with the requirement of subsection (b) of this section shall be admissible to mitigate damages with respect to any person who was involved in a motor vehicle accident and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. Such mitigation shall be limited to awards for pain and suffering and shall not be used for limiting recovery of economic loss and medical payments.

Section 22-20(b). Section 22-20(b) is amended to read as follows:

(b) In the event of abandonment of a vehicle on property within this municipality other than public rights-of-way, the owner of such property may, in addition to his other remedies, notify the police department, and such police shall after a period of 72 hours cause the abandoned vehicle to be removed and placed in storage in the nearest garage or other place of safety designated or maintained by the municipality.

Section 22-20(c). Section 22-20 is amended by adding subsection (c) as follows:

(c) [Impoundment.]

(1) As to any vehicle impounded pursuant to this chapter by or at the request of the city, its agents or employees, a person who has a legal

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entitlement to possession of the vehicle has a right to a post-seizure administrative hearing to determine whether there was probable cause to impound the vehicle if such person files a written demand, on forms so provided for such a hearing, with the city within ten days after such person has learned such vehicle has been impounded or within ten days after the mailing of the date set in the notice of stored vehicle, whichever occurs first. The notice of stored vehicle shall be sent in the mail to the legal and registered owner or his agent and to the garage where the vehicle is stored within 48 hours, excluding weekends and holidays, after impounding and storage of the vehicle.

(2) A hearing shall be conducted before a hearing officer designated by the city manager within 48 hours of receipt of a written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays and city holidays are to be excluded from the calculation of the 48-hour period. The hearing officer shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle in question.

“Probable cause to impound” shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the vehicle.

The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The police department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and the registered owner of the vehicle (if not the person requesting the hearing). The hearing officer's decision in no way affects any criminal proceeding in connection with the impounding in question and that any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner or his agent to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

(3) The hearing officer shall only determine that as to the vehicle in issue either (a) there was probable cause to impound the vehicle or (b) there was no such probable cause. If the hearing officer determines that there was no

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probable cause, the hearing officer shall prepare and date a certificate of no probable cause, copies of which shall be given to the possessor of the vehicle and the police department. Upon receipt of the possessor's copy of such certificate, the official police garage having custody of the vehicle shall release the vehicle to its possessor. Upon a finding of no probable cause, towing and storage fees shall be paid by the city in accordance with arrangements made between the city and the official police garage. If the possessor fails to present such certificate to the official police garage having custody of the vehicle within 24 hours of its receipt, excluding such days when the official police garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

Section 25-3(q). Section 25-3(q) is hereby amended to read as follows:

(q) Sidewalk or sidewalk area. That portion of a street between the curblines, or the lateral lines, of a roadway and the adjacent property lines.

Section 25-5(c). Section 25-5(c) is hereby amended to read as follows:

(c) Holidays: Where used in this ordinance or on official signs shall in addition to Sundays mean New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, General Presidential Election Day, Veterans Day, Thanksgiving Day and Christmas Day.

(Code 1965, §§ 28-1.1–28-3.20)

Sec. 36-3. Duty to obey traffic laws on state highways.

On no portion of any state highway or connecting link within the city shall any person violate any of the provisions of C.R.S. § 42-4-101 et seq., or any of the laws amending the same, or any of the rules or regulations issued pursuant thereto.

(Code 1965, § 28-4)

State law reference(s)—Traffic regulations generally, C.R.S. § 42-4-101 et seq.

Sec. 36-4. Parking on state highways during snow removal.

There shall be no parking whatsoever on any roadway or contiguous shoulder of any state highway or connecting link within the city during the times and at the places where snow removal operations are in progress.

(Code 1965, § 28-5)

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Sec. 36-5. Approval of regulations on state highways.

All traffic and parking regulations adopted by the city pertaining to the streets and roadways forming a part of the state highway system or being a connecting link thereof shall be submitted to the state department of highways for approval in accordance with the provisions of law before they shall become effective.

(Code 1965, § 28-6)

Sec. 36-6. Driving golf carts on public rights-of-way to and from golf courses.

(a) *Definition.* For the purposes of this section, "golf cart" means a four-wheel, pneumatic tired vehicle powered by a gasoline or battery driven motor that is designed for use as a transport device on a golf course.

(b) *Boundary.* A golf cart may be driven upon streets under the jurisdiction of the city, excluding county roads, state or federal highways, in the area bounded on the west by 26 Road, on the east by 28 Road, on the south by Patterson Road, and on the north by H Road. Golf carts may be driven on 26 Road, 28 Road, and H Road, but are not permitted on Patterson Road or Horizon Drive (however, crossing Horizon Drive at an intersection is permitted), nor on any interstate highway within the city limits of the city.

(c) *Rules and regulations.*

- (1) No person shall operate a golf cart on any public street in the city:
 - a. Unless within the boundaries set forth in subsection (b) of this section.
 - b. Unless the golf cart is equipped at a minimum with:
 1. A state approved slow moving triangle mounted on the rear of the cart;
 2. A rearview mirror;
 3. An audible warning device;
 4. A steering wheel;
 5. A foot-controlled accelerator; and
 6. A foot brake.

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- c. Except during the time from one-half hour before sunrise to one-half hour after sunset.
 - d. Unless in a direct route from the operator's residence to a golf course, or from a golf course to the operator's residence.
 - e. Unless such person possesses, on the person of the operator, a valid state driver's license.
 - f. In a way or at a speed which impedes the normal flow of traffic; the operator has the affirmative duty to observe traffic behind and around him. If the golf cart is traveling at a speed which is more than five miles per hour below the applicable speed limit, the operator of a golf cart shall pull over to the right side of the road at the first safe opportunity and allow vehicles to pass the golf cart.
 - g. While under the influence of, or impaired by, alcohol; nor shall any person operate a golf cart while under the influence of any drug. The definition of, and proof of, intoxication or impairment shall be as set forth in C.R.S. § 42-4-1301. The operator of a golf cart who is arrested for operating a golf cart while under the influence of or impaired by alcohol or drugs shall submit to chemical testing as set forth in C.R.S. title 42, part 13. Failure to submit to a test as required shall result in the immediate revocation of the permit issued to an operator.
 - h. Without first obtaining a permit from the city police department, which permit shall be attached to the golf cart at all times that such cart is being operated upon a city right-of-way.
 - i. Unless such person has, on his person, proof of recreational vehicle or similar insurance, that is current and provides coverage for injury to persons and property.
- (2) The operator of a golf cart on public streets shall comply with the provisions of the model traffic code as adopted by the city.
 - (3) Nothing in this section authorizes the operation of a golf cart on rights-of-way under the jurisdiction of the county. It is the duty of each operator of a golf cart to ascertain whether a right-of-way is within the city limits.

(d) *Permit required.* The police chief, after having determined that the golf cart and the operator are in compliance with requirements of this section, shall issue a permit. Such permits will be valid for three years from the date of issuance unless revoked for just cause. Fees for

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the permit will be as established by resolution of the city council. The city council may alter such fees by resolution.

(e) *Inspection.* Police officers are authorized to stop a golf cart which is being operated on a city right-of-way, without probable cause or other reason, at any time, to verify that the operator has a valid permit and to inspect for required safety equipment.

(f) *Insurance.* The city council shall, by resolution, establish the minimum requirements of required insurance for operation of golf carts on city rights-of-way.

(Code 1965, § 28-9)

Chapter 37

RESERVED

Chapter 38 UTILITIES*

***Cross reference(s)**--Buildings and building regulations, ch. 8.

State law reference(s)--Water and sewers, C.R.S. § 31-35-101 et seq.; sewer and water systems, C.R.S. § 31-35-401 et seq.

Article I. In General

Sec. 38-1. Liability for expense, loss, damage; jurisdiction of court.

Secs. 38-2--38-25. Reserved.

Article II. Wastewater System

Sec. 38-26. Definitions.

Sec. 38-27. Jurisdiction.

Sec. 38-28. Damaging or tampering with structures or equipment prohibited.

Sec. 38-29. Authority to enter premises for purposes of inspection, observation, measurement, sampling and testing.

Sec. 38-30. Duty to observe safety rules.

Sec. 38-31. Authority to enter private properties through which city has easement.

Sec. 38-32. Insanitary deposits prohibited.

Sec. 38-33. Discharge to natural outlets.

Sec. 38-34. Construction, maintenance of privies and septic tanks.

Sec. 38-35. Connection mandatory where public sewer available.

Sec. 38-36. Private disposal systems.

Sec. 38-37. Permit required to connect to, use or alter public sewer.

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Sec. 38-38. Building sewer--Cost of connection to public sewer to be borne by owner.

Sec. 38-39. Same--Separate sewer required for each building; exception.

Sec. 38-40. Same--Use of old building sewers.

Sec. 38-41. Same--Size, slope, materials of construction, other specifications.

Sec. 38-42. Same--Elevation.

Sec. 38-43. Same--Connection of roof downspouts, areaway drains.

Sec. 38-44. Same--Connection to public sewer to conform to code requirements, applicable rules; deviations from prescribed procedures and materials.

Sec. 38-45. Same--Guarding of excavations; restoration of streets.

Sec. 38-46. Changes in direction of private sewers.

Sec. 38-47. General construction of private sewers.

Sec. 38-48. Connection of property lying two miles outside city.

Sec. 38-49. Use of public sewers--Limitations on discharging certain substances, materials, waters, wastes.

Sec. 38-50. Same--Action of city manager upon discharge of waters possessing characteristics enumerated in section 38-49.

Sec. 38-51. Same--Grease, oil and sand interceptors.

Sec. 38-52. Same--Maintenance of preliminary treatment or flow-equalizing facilities.

Sec. 38-53. Same--Manholes.

Sec. 38-54. Same--Measurements, tests and analyses.

Sec. 38-55. Service charges--Assessed.

Sec. 38-56. Same--New service fee.

Sec. 38-57. Same--Charge for reconnecting after disconnection for sewer service charge delinquency; penalty for unauthorized reconnections.

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- Sec. 38-58. Same--Declared lien; collection.
- Sec. 38-59. Billing procedure.
- Sec. 38-60. Same--Review.
- Sec. 38-61. Disposition, use of sewer revenues.
- Sec. 38-62. Pretreatment of industrial wastes--Purpose and policy.
- Sec. 38-63. Same--Definitions.
- Sec. 38-64. Same--Abbreviations.
- Sec. 38-65. Same--Regulations.
- Sec. 38-66. Same--Fees.
- Sec. 38-67. Same--Pretreatment program administration.
- Sec. 38-68. Same--Enforcement.
- Sec. 38-69. Same--Actions for violation.
- Sec. 38-70. Same--Pretreatment authority outside of city.
- Sec. 38-71. Plant investment fees and connection procedures--Purpose of fee.
- Sec. 38-72. Same--Payment of fee.
- Sec. 38-73. Same--Amount of fee.
- Secs. 38-74--38-95. Reserved.

Article III. Water System

- Sec. 38-96. Kannah Creek--Territory covered.
- Sec. 38-97. Same--Police power of caretaker.
- Sec. 38-98. Same--Contamination prohibited.

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Sec. 38-99. Same—Permit to live or camp near.

Sec. 38-100. Same—Disposal of dead animals.

Sec. 38-101. Same—Injuring trees.

Sec. 38-102. Contractual nature of provisions.

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Sec. 38-104. Water rent payable monthly; charges constitute lien.

Sec. 38-105. New service fee.

Sec. 38-106. Payment of water rent; discontinuing service for nonpayment; delinquency charge.

Sec. 38-107. Resumption of services after discontinuance.

Sec. 38-108. Discontinuing water service at request of consumer.

Sec. 38-109. Charge for reading meters for customer turn-off and turn-on requests.

Sec. 38-110. Discontinuing service for violation.

Sec. 38-111. Meter rates.

Sec. 38-112. Certificate of number of users required; additional connections.

Sec. 38-113. Charge when meter defective.

Sec. 38-114. Charge for water sold by the tank.

Sec. 38-115. Meters required; installation, ownership, maintenance.

Sec. 38-116. Unlawfully using water, tampering with facilities.

Sec. 38-117. Permitting others to use water.

Sec. 38-118. Permits to tap street mains.

Sec. 38-119. Permits for new connections; work, materials supplied by city; stopcocks

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- Sec. 38-120. Requirements for service pipe.
- Sec. 38-121. Exclusive jurisdiction of water department over service pipe.
- Sec. 38-122. Application for service pipe; cost of installation.
- Sec. 38-123. Calculating charges for service pipe and connections.
- Sec. 38-124. Rates for service pipes.
- Sec. 38-125. Stop boxes.
- Sec. 38-126. Cost of cutting streets, sidewalks.
- Sec. 38-127. Repair, maintenance of service pipes.
- Sec. 38-128. Defective service pipe to be replaced or repaired.
- Sec. 38-129. Maintenance and repairs to service pipe.
- Sec. 38-130. Filling trench after laying service pipe.
- Sec. 38-131. Time for sprinkling, irrigating.
- Sec. 38-132. Wasting water.
- Sec. 38-133. City's right of entry; notice; correction of defects.
- Sec. 38-134. Using water for fire protection.
- Sec. 38-135. Unlawfully using water; tampering with facilities.
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- Sec. 38-137. City may shut off water from mains.
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- Secs. 38-139--38-160. Reserved.

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Article IV. Water and Wastewater Policy

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Sec. 38-170. Time for completion.

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Sec. 38-177. Noise, dust, debris, hours of work.

Sec. 38-178. Cleanup.

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Sec. 38-181. Boring.

Sec. 38-182. Suspension or revocation of permits and stop work orders.

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Sec. 38-184. Penalty for violation of article.

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Sec. 38-197. Same--Unlawful acts.

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Sec. 38-199. Same--Condemnation and appropriation of public and private waterworks and wastewater systems.

Sec. 38-200. Severability.

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ARTICLE I. IN GENERAL

Sec. 38-1. Liability for expense, loss, damage; jurisdiction of court.

Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned by the city by reason of such violation. The municipal court shall have concurrent jurisdiction in all causes arising under this chapter.

(Code 1965, § 25-3)

Secs. 38-2--38-25. Reserved.

ARTICLE II. WASTEWATER SYSTEM*

***Cross reference(s)**--Improper depositing or disposal of animal or human waste declared a nuisance, § 16-61.

Sec. 38-26. Definitions.

Unless otherwise defined in this article, the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer.

Building sewer means the extension from the building drain to the public sewer.

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Color means the true color due to the substances in solution expressed in milligrams per liter.

Combined sewer means a sewer receiving both surface runoff and sewage.

Director means the city manager of the city or his authorized deputy or representative.

Easement means an acquired legal right for the specific use of land owned by others.

Equivalent residential unit (EQU) means a single unit providing living facilities for one or more persons including permanent provisions for sleeping and sanitation.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Industrial wastes means the liquid wastes from industrial manufacturing processes, trade or business, as distinct from sanitary sewage.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

Normal sewage means that waste having a biochemical oxygen demand of 200 milligrams per liter or less, and having total suspended solids of 250 milligrams per liter or less.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, dirt, sand, industrial, municipal and agricultural waste discharged into water.

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Properly shredded garbage means the wastes from the preparation, cooking and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Sanitary sewer means a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

Sewage means the spent water of a community.

Sewer means a pipe or conduit for carrying sewage.

Sewer rental charges includes all rates, charges, fees and costs of inspection connected with the wastewater treatment works.

Slug means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five (in case of heavy metals, three) times the average 24-hour concentration or flows during normal operation and may adversely affect the wastewater facilities.

Storm drain (sometimes termed "storm sewer") means a drain or sewer for conveying water, groundwater, drainage water, or unpolluted water from any source, excluding sewage and industrial wastes.

Stormwater means the surface runoff from rainfall and other storm events.

Tap means an opening or connection between the service sewer and the sanitary sewer through which sewage is discharged.

Total suspended solids means total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater, also referred to as nonfilterable residue.

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Unpolluted water means the water is of quality equal to or better than effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions and industrial establishments, together with any incidental groundwater, surface water, and stormwater that may be present.

Wastewater facilities means the structures, equipment and processes required to collect, convey and treat domestic and industrial wastes and dispose of the effluent.

Wastewater treatment plant means any arrangement of devices and structures for treating wastewater, industrial wastes and sludge, including but not limited to the Persigo wastewater treatment works, also referred to in this article as the "WWTW."

Watercourse means a natural or artificial channel for the passage of water, either continuously or intermittently.

(Code 1965, § 25-14)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 38-27. Jurisdiction.

The provisions of this article shall apply to all sewer users and facilities served by the wastewater facilities and treatment works.

Sec. 38-28. Damaging or tampering with structures or equipment prohibited.

No unauthorized person shall maliciously, willfully, or in a grossly negligent manner break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater system. Any person violating this section shall be subject to immediate arrest under charge of disorderly conduct.

(Code 1965, § 25-40)

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Sec. 38-29. Authority to enter premises for purposes of inspection, observation, measurement, sampling and testing.

The city manager and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article. The city manager or his representatives shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper, or other industries, beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(Code 1965, § 25-41)

Sec. 38-30. Duty to observe safety rules.

While performing the necessary work on private properties referred to in section 38-29, the city manager or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the city employees, and the city shall indemnify the company against loss or damage to its property by the city employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 38-53.

(Code 1965, § 25-42)

Sec. 38-31. Authority to enter private properties through which city has easement.

The city manager and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater system lying within such easement. All entry and subsequent work, if any, on such easement shall be done in full accordance with the terms of a duly negotiated easement pertaining to the private property involved.

(Code 1965, § 25-43)

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Sec. 38-32. Insanitary deposits prohibited.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any insanitary manner on public or private property within the city and county, or in any area under the jurisdiction of the city and county, any human or animal excrement, garbage, or other objectionable waste.

(Code 1965, § 25-15)

Sec. 38-33. Discharge to natural outlets.

It shall be unlawful to discharge to any natural outlet within the city and county, or in any area under the jurisdiction of the city and county, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.

(Code 1965, § 25-16)

Sec. 38-34. Construction, maintenance of privies and septic tanks.

Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater when the site is within 400 feet of an existing public sewer with sufficient capacity.

(Code 1965, § 25-17)

Sec. 38-35. Connection mandatory where public sewer available.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the city or county and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city or county are hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within 120 days after date of official notice to do so, provided that such public sewer is within 400 feet (122 meters) of the property line.

(Code 1965 § 25-18)

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Sec. 38-36. Private disposal systems.

(a) *Connection to private disposal system where public system unavailable.* Where a public, sanitary or combined sewer is not available under the provisions of section 38-35, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article.

(b) *Type, capacities, location and layout.* The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the state department of public health.

(c) *Connection to public sewer upon availability of public sewer; abandonment of private facilities.* At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 38-35, a direct connection shall be made to the public sewer in compliance with this article within 120 days after the date of official notice to do so, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(d) *Sanitary operation.* The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city and county.

(e) *Additional requirements of county health officer.* No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the county health officer.

(Code 1965, §§ 25-19–25-23)

Sec. 38-37. Permit required to connect to, use or alter public sewer.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city manager.

(Code 1965, § 25-24)

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Sec. 38-38. Building sewer--Cost of connection to public sewer to be borne by owner.

All costs and expenses incident to the installation, connection and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the city and county from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Code 1965, § 25-25)

Sec. 38-39. Same--Separate sewer required for each building; exception.

A separate and independent building sewer shall be provided for every building except that where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(Code 1965, § 25-26)

Sec. 38-40. Same--Use of old building sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination by the city manager, to meet all requirements of this article.

(Code 1965, § 25-27)

Sec. 38-41. Same--Size, slope, materials of construction, other specifications.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the city and county.

(Code 1965, § 25-28)

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Sec. 38-42. Same--Elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(Code 1965, § 25-29)

Sec. 38-43. Same--Connection of roof downspouts, areaway drains.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sewer.

(Code 1965, § 25-30)

Sec. 38-44. Same--Connection to public sewer to conform to code requirements, applicable rules; deviations from prescribed procedures and materials.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the city and county. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the city manager before installation.

(Code 1965, § 25-31)

Sec. 38-45. Same--Guarding of excavations; restoration of streets.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city and county.

(Code 1965, § 25-32)

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Sec. 38-46. Changes in direction of private sewers.

When the course of a private sewer is not the same as the junction piece, it must be connected such that no 90-degree turns are used.

(Code 1965, § 25-52)

Sec. 38-47. General construction of private sewers.

The inside of every private sewer connecting with a public or sanitary sewer must be smooth and perfectly clean throughout its entire length, and the ends of all pipes not to be immediately used must be securely guarded against the introduction of sand or earth by brick and cement or other watertight and impervious metal.

(Code 1965, § 25-53)

Sec. 38-48. Connection of property lying two miles outside city.

(a) It is the policy of the city and county to require connections to the city's wastewater system for property lying within two miles of the city limits by arranging for sewage treatment through the city, either by annexation or through powers of attorney to accomplish annexation in the future, as possible. As annexations occur, the ownership of public or sanitary sewers within the annexed area will be transferred to the city.

(b) No property outside the city shall be connected to the wastewater system of the city until and unless the owner thereof shall submit an application, together with a signed and sworn statement, showing the plan, size and type of connection desired and the number of persons who will use the property so connected. Such plans and statement shall be referred to and examined by the city manager, who shall endorse his approval or disapproval of the same as complying or failing to comply with all of the ordinances, regulations and rules concerning connections with the wastewater system of the city.

(Code 1965, §§ 25-45, 25-46)

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Sec. 38-49. Use of public sewers--Limitations on discharging certain substances, materials, waters, wastes.

(a) No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the city manager that such wastes may harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the city manager will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewage treatment process, capacity of the wastewater treatment plant, degree of treatability of wastes at the wastewater treatment plant and other pertinent factors.

(b) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public or sanitary sewer:

- (1) Any solid or viscous substances in quantities or amounts or of such size capable of causing obstructions to the flow in sewers, pass through, or other interference with the proper operation of the sewerage system.
- (2) Sludge or other material from sewage or industrial waste treatment plants or from water treatment plants, unless agreed to by the city manager.
- (3) Water accumulated in excavations or accumulated as the result of grading, water taken from the ground by well points, or any other drainage associated with construction without prior approval by the city.
- (4) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit or exceeding any lower limit fixed by the city to prevent odor nuisance where the volume of heated discharge represents a significant portion of the flow through a particular sewer.
- (5) Any waters, pollutants or wastes having a pH lower than 5.5.

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- (6) Any waters or wastes containing grease or oil or other substances that will solidify or become discernible viscous at temperatures between 32 degrees and 150 degrees Fahrenheit, or any waters or wastes containing or possessing heat in amounts which will inhibit biological activity in the WWTW resulting in interference. In no case shall heat be allowed in such quantities that the temperature at the WWTW exceeds 104 degrees Fahrenheit.
- (7) Any waters or wastes containing fats, wax, grease, or oils whether emulsified or not, in quantities or amounts capable of causing obstructions to flow, pass through, or other interference with the proper operation of the WWTW. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- (8) Any gasoline, benzene, naphtha, fuel oil, lubricating oil or other flammable or explosive liquid, solid, gas or pollutant which may create a fire or explosion hazard, including but not limited to wastestreams with a closed cup flashpoint of less than 60 degrees Celsius or 140 degrees Fahrenheit using the test method Specified in 40 CFR Section 261.21.
- (9) Any waters or wastes that contain concentrated dye waste or other waste that is either highly colored or could become highly colored by reacting with any other waste, and which is not removable in the wastewater treatment plant processes.
- (10) Any waters or wastes containing or which result in the presence of toxic or poisonous solids, liquids, vapors, fumes or gases in sufficient quantity, either singly or by interaction with other wastes, which contaminate the sludge of any municipal system or injure or interfere with any sewage treatment process or constitute a hazard to the health or safety of humans or animals, create a public nuisance or create any hazard in the receiving waters for the wastewater treatment plant.
- (11) Any waters or wastes that contain a corrosive, noxious or malodorous gas or substance which, either singly or by reaction with other wastes, is capable of causing damage to the system or to any part thereof, of creating a public nuisance or hazard, or of preventing entry into the sewers for maintenance and repair.

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- (12) Any radioactive wastes or isotopes of such halflife or concentration as may exceed limits established by the city manager in compliance with applicable state or federal regulations.
- (13) Quantities of flow, concentrations of flow, or both, which constitute a ``slug" as defined in this article.
- (14) Any stormwater, surface water, groundwater, roof runoff, subsurface drainage, to any sanitary sewer, unless special permission is granted in writing by the City. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers.
- (15) Any pollutant, waters or wastes, including oxygen demanding pollutants, discharged at a flow rate or pollutant concentration or in such volume which will exceed the hydraulic capacity of the wastewater facilities or which will cause interference with the WWTW.
- (16) Any waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (17) Any trucked or hauled pollutants, except at discharge points designated by the WWTW personnel.
- (18) Mass Based Local limits:

The following non-domestic discharge limitations are established to protect sludge quality and prevent pass through and interference with the proper operation of the WWTW. These limits are shown in pounds per day. They reflect the total industrial contribution that can be discharged by permitted industrial users and received at the headwork's of the wastewater treatment plant. These are called maximum allowable industrial loads (maills):

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<u>POLLUTANT</u>	<u>*POUNDS PER DAY</u>
Arsenic	11.30
Cadmium	5.61
Chromium (T)	165.07
Chromium (VI)	21.76
Copper	110.48
Lead	40.13
Molybdenum	13.89
Mercury	0.098
Nickel	30.29
Selenium	22.82
Silver	37.04
Zinc	213.7

*Maximum daily industrial loadings shall be allocated through industrial user permits and the total loading to all permitted industrial users shall not exceed the limits shown.

(19) Ethylene glycol (antifreeze), small amounts are considered to be one half gallon or less. Large amounts (over one half gallon) must be held for a reclaimer, unless prior approval and instructions for discharge are obtained from the city.

(20) The following non-domestic discharge limitations are established to protect sludge quality and prevent pass through and interference with the proper operation of the WWTW. These limits are shown in maximum allowable concentrations.

(21) Cyanide 1.2 mg/l

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- (22) Benzene 50.0 µg/l
BTEX (aggregate parameter of benzene, ethyl benzene, toluene, and xylene),
750 µg/l

- (23) Fats, Oil & Grease (animal/vegetable) 200 mg/l

- (24) Total Recoverable Petroleum Hydrocarbons 50 mg/l

(25) Surcharge:—Industrial users discharging a non-toxic or non-hazardous wastewater that exceeds the level set forth in this code for BOD and/or TSS, shall be surcharged in accordance with adopted surcharge rates. Based on the actual treatment costs, permitted industrial users shall be surcharged for BOD in excess of 200 mg/l and TSS in excess of 250 mg/l. In no case shall a surcharge be allowed that may cause pass through or interference or otherwise cause a discharge of wastewater that violates any limit or prohibition specified in § 38-49.

Permitted industrial users discharging a non-toxic or non-hazardous wastewater, that is not otherwise identified in the Sewer Rate Schedule, and is in compliance with all pretreatment limits, shall be surcharged based on the actual cost to treat 1,000 gallons of industrial wastewater.

(Code 1965, § 25-33; Ord. No. 2709, § 1(25-33), 10-20-93; Ord. No. 2892, 2-21-96, Ord. No. 3045, 2-18-98)

Sec. 38-50. Same--Action of City upon discharge of waters possessing characteristics enumerated in section 38-49.

If any waters or wastes are discharged, or are proposed to be discharged, to the sanitary sewers, which waters contain the substances or possess the characteristics enumerated in section 38-49, and which, in the judgment of the city manager, may have a deleterious effect upon the wastewater treatment system, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the City may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the sanitary sewers;
- (3) Require control over the quantities and rates of discharge; and/or

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- (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 38-55.

If pretreatment or equalization of waste flows is required, the design and installation of the plants and equipment shall be subject to the review and approval of the city manager, and subject to the requirements of all applicable codes, ordinances and laws.

(Code 1965, § 25-34; Ord. No. 2892, 2-21-96)

Sec. 38-51. Same--Grease, oil and sand interceptors.

Grease, oil and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or equivalent residential units. All interceptors shall be of a type and capacity approved by the City, and shall be located so as to be readily and easily accessible for cleaning and inspection.

(Code 1965, § 25-35; Ord. No. 2892, 2-21-96)

Sec. 38-52. Same--Maintenance of preliminary treatment or flow-equalizing facilities.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(Code 1965, § 25-36)

Sec. 38-53. Same--Manholes.

When required by the City, the owner of any property serviced by a building sewer carrying industrial and/or commercial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner at his expense, and shall be maintained by the owner so as to be safe and accessible at all times.

(Code 1965, § 25-37; Ord. No. 2892, 2-21-96)

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Sec. 38-54. Same--Measurements, tests and analyses.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this article shall be performed in accordance with the latest edition of 40 CFR Part 136 at a monitoring location specified in the permit or otherwise specified by the City.

(Code 1965, § 25-38; Ord. No. 2892, 2-21-96)

Sec. 38-55. Service charges--Assessed.

(a) There shall be levied and assessed upon each lot, parcel of land, building or premises having any connection, or eligible for connection with the sewer system of the city, monthly sewer service charges or rentals computed by multiplying the EQU by the following factors, to wit:

- (1) Single-family dwelling, 1.00 EQU.
- (2) Multiple-family dwellings, 0.72 times number of single-family units.
- (3) Hotels and motels:
 - a. No restaurants or kitchen, 0.36 times number of rooms;
 - b. With kitchenette, 0.43 times number of rooms;
 - c. With restaurants, use (3)a then add rates from (4), below.
- (4) Restaurants:
 - a. Twenty-four-hour operation, 0.21 times number of seats;
 - b. Twelve-hour or less operation, 0.14 times number of seats;
 - c. Bar, no food, 0.04 times number of seats.

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- (5) Schools:
 - a. No food or showers, 0.04 times number of student capacity;
 - b. For cafeterias, add to (5)a 0.02 times number of student capacity;
 - c. For showers, add to (5)a 0.02 times number of student capacity;
 - d. Boarding schools, 0.27 times number of student capacity.
- (6) Service stations:
 - a. Without wash rack, 1.00 EQU;
 - b. With wash rack, 2.3 times number of wash racks.
- (7) Shopping centers and stores, 0.35 times number of thousands of square feet of store space.
- (8) Travel trailer parks and courts, 0.25 times number of trailer parking spaces.
- (9) Churches, assembly halls, theaters and arenas, 0.01 times number of seating capacity.
- (10) Drive-in theater, 0.02 times number of car spaces.
- (11) Factory, warehouses, shops and offices (not including industrial waste), 0.05 times number of employees.
- (12) Hospitals, 0.89 times number of bed spaces.
- (13) Institutions, nursing homes, 0.36 times number of residences.
- (14) Laundry, coin-operated, 0.90 times number of washing machines.
- (15) Mobile home parks, 0.67 times number of lots or spaces.
- (16) Car wash, 2.3 times number of bays.

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- (17) Fast food takeout (walk-up or drive-up):
 - a. Open 12 or more hours, 0.10 times number of employees;
 - b. Open less than 12 hours, 0.06 times number of employees.

Where recycling of water is used or other conditions prevail which cause the above-listed nonresidential users to produce more or less average daily sewage flow than that computed by the above formula when the EQU is multiplied by 280 gallons per day, the city manager or his appointee may establish the EQU using the formula set in the following paragraph. Where the city manager or his appointee deems necessary, the sewer service charge may be charged according to the above formula. Then, after the first 12 months of full operation have passed, where actual water use is observed, the user may be remitted down to the sewer service charge computed based on actual water use.

Sewer service charges shall be computed for nonresidential user which does not apply to the above by computing the hydraulic flow expected from the establishment. The EQU can be computed by dividing the expected flows by 280 gallons per day or by dividing the expected organic load in pounds of BOD₅ per day by 0.47 pound of BOD₅. The higher EQU obtained by the two methods shall be used in computing the sewer service charge.

- (1) Industrial waste:
 - a. Industries which discharge a nondomestic wastewater, that are not otherwise identified in this section, and are in compliance with federal, state and local limits shall be charged a rate that is equivalent to the actual cost to treat each 1,000 gallons of nondomestic wastewater discharged to the system, such charge to be in addition to the domestic user rate of 0.05 for each employee.
 - b. Industries such as food, beverage and meat processing, dairies and feed lots which exceed the established limit for BOD and TSS shall be charged at a rate calculated to represent the actual cost to treat a pound of BOD and TSS; this charge shall be in addition to the rate of 0.05 for each employee.

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c. In those instances when an industry may discharge a wastewater which exceeds the limit for BOD and TSS allowed that industry by other sections of this article, its basic rate would be calculated and an additional surcharge added to that calculated amount. Once the industry comes back into compliance, the surcharge would be dropped.

(b) Beginning with the first billings sent out January 15, 1994, the total rate per EQU will be as established by resolution of the city council and on file in the city clerk's office for all users situated within or without the boundaries of the city.

(c) No connection shall be made to the city's and county's wastewater system until a permit therefor has been obtained from the building department of the city and a fee as established by resolution of the city council and on file in the city clerk's office paid for such permit.

(d) The cost of connection to the city's and county's wastewater system shall be borne by the property owner.

(e) Tank truck operators disposing of wastewater will be assessed a treatment charge based on tank size. Loads are measured by tank size and not gallons. Acceptable water and waste for disposal shall exclude waste enumerated in section 38-49 or which is otherwise regulated by a valid permit or similar regulated guideline.

(f) Users of the wastewater facilities within the city and county shall be charged the same where the services performed for the users are the same. Where services performed are not the same, the difference in the cost of providing the services shall be determined and the users shall be charged on the basis of the services provided.

(g) The city will determine average numeric criteria for the quality and quantity of sewage collected from residential users. The city will assess a surcharge rate for nonresidential users discharging waters and wastes with quality characteristics greater than the average residential user. Such users will be assessed a surcharge sufficient to cover the costs of treating the higher strength wastes. The surcharge rate structure is subject to revision, when necessary.

(h) The pro rata cost of connection shall constitute a sewer rental charge subject to lien under section 38-58.

(Code 1965, § 25-44; Ord. No. 2719, § 1, 12-1-93; Ord. No. 2892, 2-21-96)

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Sec. 38-56. Same--New service fee.

Whenever a sewer service account is created or is changed, a new service fee in an amount as established by resolution of the city council and on file in the city clerk's office shall be charged, unless, at the same time, water service is being commenced or changed and a fee is being charged therefor.

(Code 1965, § 25-47(a))

Sec. 38-57. Same--Charge for reconnecting after disconnection for sewer service charge delinquency; penalty for unauthorized reconnections.

(a) If the sewer service is disconnected by shutting off the water supply, reconnection shall be made only upon the payment of all delinquencies plus a reconnecting charge as established by resolution of the city council.

(b) It shall be unlawful, after sewer service has been disconnected by shutting off the water supply or in any other manner, for any person to reconnect such water supply without the consent of the city, and any person violating this provision shall be deemed guilty of a misdemeanor.

(Code 1965, §§ 25-49, 25-51)

Sec. 38-58. Same--Declared lien; collection.

All sewer rental charges, including but not limited to all rates (see definition), shall constitute a lien upon any lot, land, building or premises served, and if such amounts shall not be paid when due, such service, if within the city's water system, may be disconnected by the city without further notice, by shutting off the water supply therefrom, or, in other areas of the 201 sewer service area, the city manager may certify the charge to the county treasurer to be placed upon the tax list for the current year to be collected in the manner other taxes are collected, with ten percent added thereto to defray the cost of collection; plus interest at the rate of one percent per month or as established by resolution of the city council, and all laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption of the same, shall apply.

(Code 1965, § 25-48)

State law reference(s)--Interest rate, C.R.S. § 31-35-609.

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Sec. 38-59. Billing procedure.

(a) All sewer charges shall be dated and sent out to the owner of the premises served or to whom the owner may direct at regular intervals. Such sewer service charges shall be added to and made a part of the water bill if customers receive water service from the city, or by separate billing if water service is from other than the city. Provisions of this Code relative to the payment of delinquent water bills shall also apply to delinquent sewer bills in all respects, including the discontinuance of water service for nonpayment of sewer charges as set forth in section 38-58.

(b) The owner of the premises, as well as the occupants thereof, shall have 30 days to notify the utility accounting department of any change of building structure and/or use to ensure correct monthly charges. The city will be under no obligation to credit or refund any account beyond expiration of the 30-day notification period.

(c) In the event any user of the wastewater treatment facilities neglects, fails or refuses to pay the rates, fees or charges imposed or levied by this article for the connection or use of the wastewater treatment plant or facilities, such rates, fees or charges shall constitute a lien upon the real property so served by such sewer connection. The amount due will be collected in the same manner as though it were part of the taxes. This is an additional remedy to others of the city.

(Code 1965, § 25-47(b), (c); Ord. No. 2892, 2-21-96)

Sec. 38-60. Same--Review.

The rates and charges for wastewater service are established so that each user class pays its proportionate share of the costs of wastewater treatment services, and the city manager or his designee is hereby directed to annually review the charge structure to assure that proportionality between user classes is maintained and to recommend modifications as appropriate. Each user shall be notified annually by the city of the rate and that portion of the user charges which are attributable to wastewater treatment services.

(Code 1965, § 25-54; Ord. No. 2892, 2-21-96)

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Sec. 38-61. Disposition, use of sewer revenues.

The funds received from the collection of the charges or rentals authorized by this article shall be deposited with the city manager or his designee and shall be by him deposited in a fund to be known as the ``sewer fund" and, when appropriated by the city council and county commissioners, shall be used for the maintenance, operation, extension and improvement of the wastewater system, and for interest on and discharging of principal of bonds and other obligations incurred in the acquisition, construction, improvement and extension of the wastewater system.

(Code 1965, § 25-50; Ord. No. 2892, 2-21-96)

Sec. 38-62. Pretreatment of industrial wastes--Purpose and policy.

(a) *Purpose.* Sections 38-62 through 38-70 of this article set forth uniform requirements for users of the city's and county's publicly owned wastewater treatment works (WWTW) and enables the city to comply with applicable state and federal laws, including the Clean Water Act of 1977, the federal General Pretreatment Regulations, 40 CFR Part 403, and the State Water Quality Control Act, as amended. The objectives of such sections are to:

- (1) Prevent the introduction of pollutants into the municipal wastewater system and the WWTW which will interfere with or upset the operation of the WWTW treatment plant, or contaminate treatment plant sludge with toxic or hazardous materials;
- (2) Minimize the introduction of incompatible pollutants into the municipal wastewater system and the WWTW which may pass through the system without adequate treatment and into receiving waters or the atmosphere;
- (3) Prevent water quality violations resulting from direct discharges into waters of the state, or violations of the NPDES permit for the WWTW;
- (4) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system;

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- (5) Provide for equitable distribution of the costs of the municipal wastewater system and the WWTW;
- (6) Establish and maintain a database and inspection program sufficient to determine compliance with pretreatment requirements;
- (7) Enhance the efficiency and cost effective operation of the WWTW; and
- (8) Protect the health and safety of city and county residents and WWTW workers.

(b) *Policy.* Sections 38-62 through 38-70 provide for the regulation of contributors or users of the city's and county's WWTW through the development of an industrial pretreatment program, including issuance of permits to certain nondomestic users, and through enforcement of general requirements for the other users. Such sections authorize monitoring and enforcement activities, require user reporting, protect the WWTW treatment and hydraulic capacity, improve the ability to serve existing and new customers within the service area of the WWTW, set fees for the equitable distribution of costs resulting from the program established herein, and establish penalties and remedies for violations of pretreatment requirements.

(c) *Applicability.* Sections 38-62 through 38-70 apply within the city and to persons outside the city who are, by contract or agreement with the city, connector districts, or county, users of the city's and county's WWTW. Except as otherwise provided herein, the city manager or his designee shall implement, administer, and enforce the provisions of such sections.

(Code 1965, § 25-57; Ord. No. 2701, § 1(25-57), 9-1-93; Ord. No. 2892, 2-21-96)

Sec. 38-63. Same--Definitions.

The following words, terms and phrases, when used in sections 38-62 through 38-70, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accidental discharge means the unintentional and temporary discharge to the WWTW of the prohibited waters or wastes, including those described in section 38-49 or section 38-65.

Act or the act means the Federal Water Pollution Control Act, PL 92-500, also known as the Clean Water Act, and including amendments thereto by the Clean Water Act of 1977, PL 95-217, 33 U.S.C. section 466 et seq., and as subsequently amended.

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Approval Authority is the administrator of the EPA, unless the state's industrial pretreatment program has been approved, in which case the approval authority shall be the city manager of the state department of health.

Authorized representative of an industrial user includes:

- (1) A principal executive officer of at least the level of vice-president having full actual authority to act on behalf of the corporation, if the industrial user is a corporation;
- (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively; or
- (3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of facilities from which any discharge originates.

Categorical industrial user means an industrial user discharging into the city's 201 area wastewater collection, treatment and disposal system, which is classified as a categorical industry and because of the nature of its discharge is governed by the national categorical pretreatment standards as specified in 40 CFR Chapter I, Subchapter N, Section 403.6.

Categorical standards means national categorical pretreatment standards or pretreatment standard.

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.

City manager refers to the city manager or his designee.

Discharge means the introduction of treated or untreated wastewater into the municipal wastewater system and WWTW.

Domestic waste or sanitary wastes means liquid waste(s):

- (1) From the noncommercial preparation, cooking or handling of food; or
- (2) Containing human excrement or similar matter from the sanitary conveniences of a dwelling, commercial building, industrial facility or institution.

Environmental Protection Agency or *EPA* means the U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of such agency.

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Grab sample means a sample which is 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.

Harmful contribution means an actual or threatened discharge or introduction of industrial waste to the WWTW; which presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment; or which inhibits or interferes with the physical or lawful operation of the WWTW; or which causes the city or the WWTW to be in violation of any condition of its NPDES permit.

Holding tank waste means any waste from a holding tank such as vessels, chemical toilets, campers or trailers.

Industrial means of or pertaining to industry, manufacturing, agriculture, commerce, trade or business, as distinguished from domestic or residential.

Industrial discharge permit means a document as set forth in section 38-67, which licenses and conditions the nature and amount of contribution of industrial waste into the WWTW.

Industrial user means any person or source that introduces or discharges wastewater from industrial processes into the WWTW, such as eating establishments, food processors or feed lots, and who may be subject to a user charge for excess strength or toxic waste.

Industrial user charge means an additional charge calculated either by the actual gallons of industrial or commercial wastewater discharged per 1,000 gallons or by calculating the pounds of BOD and TSS being discharged in the process wastewater. This charge is in addition to the charge determined under section 38-55(a)(11).

Industrial waste or wastewater means the liquid or water-carried waste(s) from industrial manufacturing or processing, as distinct from domestic or sanitary wastes.

Interference means the inhibition or disruption of the WWTW treatment processes or operations which causes or materially contributes to a violation of any requirement of the WWTW's NPDES permit, or of the requirements of any agency with jurisdiction over discharges by the WWTW into the receiving waters. The term also includes contamination of treatment works sludge byproducts.

National categorical pretreatment standard(s) means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Clean Water Act (33 U.S.C. section 1317) and as specified in 40 CFR Chapter I, Subchapter N, which applies to a specific category of primary industrial users.

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National pollutant discharge elimination system (NPDES) permit means a permit issued pursuant to section 402 of the act (33 U.S.C. 1342), allowing discharge of pollutants into navigable waters of the United States or waters of the state.

National pretreatment standard, pretreatment standard, or standard means any regulation containing pollutant discharge limits promulgated by EPA in accordance with 40 CFR Part 307 Section (b) and (c) which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR Part 403.5.

National prohibitive discharge standards or prohibitive discharge standard means any federal regulation developed under the authority of section 307(b) of the Clean Water Act, including the general pretreatment regulations (40 CFR 403.5).

New Source means any building, structure, facility or installation from which there is or may be a discharge of pollutants as defined in 40 CFR, Part 403.3, Section (k)(1) through (k)(3).

Pass Through means a discharge which exits the WWTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the WWTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Pollutant means any dredged soil, solid waste, incinerator residue, sewage, garbage, septic waste, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.

Pollution means the alteration of the chemical, physical, biological or radiological integrity of water by human activity.

Potential contributor means an industrial user of the city/county wastewater collection, treatment and disposal system which:

- (1) Discharges into the system more than 25,000 gallons of material per day on average;
- (2) Discharges into the system materials prohibited by section 38-49 of this article;
or
- (3) Is found by the city, state department of health or EPA to have an adverse impact, separately or in combination with other industries, on the wastewater treatment system or the beneficial reuse of sludge, or to cause a toxic pass

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through, or to interfere with the treatment process, or to have the potential, because of an accumulative effect, to cause a violation of the treatment plant's CDPS [NPDES] discharge permit. These may include users such as hospitals, laundries, auto repair shops and service stations.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants, the alteration of the rate of their introduction into the WWTW, or the alteration of the nature of pollutant properties in wastewater to a less harmful state, prior to or in lieu of discharging or otherwise introducing such pollutants into a WWTW. The reduction or alteration can be achieved by physical, chemical or biological processes, process changes, or by other means, except as prohibited by 40 CFR Part 403.6(d).

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, including national categorical pretreatment standards, imposed on an industrial user.

Significant industrial user means a permitted industrial user discharging into the city's 201 area wastewater treatment works and which may be classified as one of the following: categorical user, potential contributor or an industrial user. These include any industrial discharger subject to categorical pretreatment standards; or:

- (1) Any other industrial user that discharges an average of 25,000 gallons per day or more process wastewater to the WWTW, excluding sanitary, noncontact cooling water and boiler blowdown wastewater; or
- (2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the WWTW, whichever is less; or
- (3) Is designated as such by the WWTW on the basis that the industrial user has a reasonable potential for adversely affecting the WWTW operation or for violating any pretreatment standard or requirement.

“Significant industrial user” is subclassed as follows: categorical, potential or industrial user; or any other descriptive term necessary to readily identify any industrial waste discharge or permit classification.

Significant noncompliance. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken during a six-month

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period exceed (by any amount) the daily maximum limit for the same pollutant parameter; or

- (2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH.); or
- (3) Any other violation of a pretreatment effluent limit (daily maximum or longer term mean average) that the WWTW determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of WWTW personnel or the public; or
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the WWTW's exercise of its emergency authority to halt or prevent such a discharge; or
- (5) Failure to meet, within 90 days after the scheduled date, a compliance schedule milestone or a local control mechanism or enforcement order, for starting or completing construction or for attaining compliance; or
- (6) Failure to provide, within 30 days after the date due, a required report such as a baseline monitoring report (BMR), a 90-day compliance report, a periodic self-monitoring report or a report on compliance with compliance schedules; or
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation or group of violations which the program city manager, also known as the WWTW industrial pretreatment coordinator, or the city manager's designee, determines will adversely affect the operation or implementation of the local pretreatment program.

Source means any building, structure, facility or installation from which there may be a discharge of pollutants.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

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Toxic pollutant includes, but is not limited to, any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of section 307(a) of the act or other applicable laws.

User means any person who contributes, causes or permits the contribution or introduction of wastewater into the wastewater treatment works (WWTW).

Wastewater or sewage means the spent water of a community that enters the WWTW. The term also refers to a combination of liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water or stormwater that may be present.

Wastewater treatment plant (WWTP) is that portion of the WWTW designed to provide treatment to wastewater. The term includes the Persigo wastewater treatment plant which is owned by the county and the city and operated by the city.

Wastewater treatment works (WWTW) means wastewater treatment works as defined by section 212 of the act (33 U.S.C. section 1292) which are owned by the city and county, or which are managed and operated by the city. This term includes any sewers that convey wastewater to the WWTP from within the Persigo WWTP service area, but excludes pipes, sewers or other conveyances not directly or indirectly connected to the treatment facility. For the purposes of sections 38-62 through 38-70, "WWTW" shall also include any sewers that convey wastewaters to the WWTW from persons or sources outside the city who are, by contract or agreement with the city or connecting sanitation districts, users of the city's and county's WWTW.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(Code 1965, § 25-58; Ord. No. 2701, § 1(25-58), 9-1-93; Ord. No. 2892, 2-21-96)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 38-64. Same--Abbreviations.

The following abbreviations when used in sections 38-62 through 38-70 shall have the meanings designated in this section:

CFR: Code of Federal Regulations.

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EPA: Environmental Protection Agency.

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mg/l: Milligrams per liter.

NPDES: National pollutant discharge elimination system.

SIC: Standard industrial classification.

TSS: Total suspended solids.

U.S.C.: United States Code.

WWTP: Wastewater treatment plant.

WWTW: Wastewater treatment works.

(Code 1965, § 25-59; Ord. No. 2701, § 1(25-59), 9-1-93; Ord. No. 2892, 2-21-96)

Sec. 38-65. Same--Regulations.

(a) General discharge prohibitions.

(1) No person or user shall introduce, discharge, or cause to be discharged into the municipal wastewater system or WWTW any pollutant or wastewater which may cause Interference with the operation or performance of the WWTW, or which constitutes a harmful contribution to the WWTW, or which may pass through the WWTW so as to cause the WWTW to violate a term of its NPDES permit or other applicable laws and regulations. These general prohibitions apply to all users of the WWTW, whether or not the user is subject to national pretreatment standards or any other national, state or local pretreatment standards or requirements, including specific pollutant limitations developed pursuant to subsection (j) of this section.

(2) In addition to the prohibited waters or wastes described above or in section 38-49, a user shall not introduce or discharge the following substances into the WWTW:

a. Any wastewater containing toxic pollutants in sufficient quantity to exceed the limitation set forth in a national categorical pretreatment standard; or

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b. Any substance which may cause the WWTW's effluent or any other products such as residues, sludges, or scums to be unsuitable for reclamation or reuse.

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(3) No person or user shall discharge a pollutant into the WWTW which may cause the WWTW or its management agency to be in noncompliance with any sludge use or disposal law or regulations, including section 405 of the Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or any state criteria applicable to sludge management.

(b) *Actions of city manager.* Whenever the city manager determines through an industrial waste survey or otherwise that a user is contributing to the WWTW any of the substances referred to in section 38-49, or in this section, in such amounts as to interfere with the operation of the WWTW, or to constitute a harmful contribution to the WWTW, the city manager shall:

- (1) Advise the user of the impact of the contribution on the WWTW; and
- (2) Develop and apply specific effluent limitations and pretreatment requirements for the user to correct the interference with or harm to the WWTW; and/or
- (3) Perform the actions listed in section 38-50, as deemed necessary.
- (4) Undertake an action, where appropriate, as specified in 38-68.

(c) *Preemption by national categorical pretreatment standards.* Upon the promulgation of the national categorical pretreatment standards for a particular industrial subcategory, the national standard, if more stringent than limitations imposed under this article for sources in that subcategory, shall immediately supersede the limitations imposed under this article. The city manager shall notify all affected users of the applicable reporting requirements under 40 CFR Section 403.12. Failure to notify shall not relieve a user from any requirements under the law.

(d) *Modification of national categorical pretreatment standards.* When the WWTW has achieved consistent removal of pollutants limited by national pretreatment standards, the city may apply to the approval authority for modification of or exemption from specific limits in the national pretreatment standards.

(e) *State requirements.* State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this article.

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(f) *City's right of revision.* Notwithstanding the provisions of subsection (c) of this section the city reserves the right to establish by ordinance, resolution, or permit more stringent specific pollutant limitations or pretreatment requirements pursuant to subsection (j) of this section for discharges to the WWTW, if deemed necessary to comply with the objectives and intent of section 38-62.

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(g) *Excessive discharge.* No industrial user shall increase the use of process water or dilute industrial wastewater with tap water, unpolluted water, sanitary sewage, or other liquid dilutants as a partial or complete substitute for adequate pretreatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, or with any other pollutant-specific limitation developed by the city or state.

(h) *Accidental discharges.* Each significant industrial user shall provide adequate protection against accidental discharge of the prohibited waters or wastes described in section 38-49 or in this section, or other substances regulated by sections 38-62 through 38-70.

Facilities to prevent accidental discharge of prohibited waters or wastes shall be provided and maintained at the user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection, unless already provided, shall be submitted to the city for review and shall be approved by the city manager before construction of the accidental discharge prevention facility. All significant industrial users shall submit such a plan within 90 days after being permitted as a significant industrial user. No industrial user who commences contribution to the WWTW after the effective date of the ordinance from which this section derives shall be permitted to introduce pollutants into the system until accidental discharge procedures and facilities have been approved by the city. Review and approval of such plans and operating procedures shall not relieve the industrial user from any responsibility to pretreat as necessary to meet the industrial pretreatment requirements of sections 38-62 through 38-70.

(i) *Notice of accidental discharge.* In the case of an accidental discharge, it is the responsibility of any industrial user to immediately telephone and notify the city manager of the incident. The notification shall include the location of discharge, type of waste or wastes, concentration, volume, duration, time of episode, and corrective actions undertaken.

- (1) Within 15 days following an accidental discharge, the industrial user shall submit to the city manager a detailed written report describing the cause of the discharge and the measures taken or planned by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the WWTW, fish kills, or any other damage to persons or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by sections 38-62 through 38-70 or other applicable law.

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- (2) A sign shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. The industrial user shall ensure that all employees who may cause such an accidental discharge to occur are advised of the emergency notification procedure.

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(j) *Specific pollutant limitations.* No person shall discharge into the WWTW any wastewater containing pollutants generally prohibited by section 38-49 of this Code, pollutants in excess of specific pollutant limitations as established by resolution of the city council, specific limitations contained in any industrial discharge permit, or limitations imposed by national categorical pretreatment standards.

(k) *Methodology.* All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in sections 38-62 through 38-70 shall be conducted in accordance with 40 CFR Part 136.

(l) *Right of entry.*

(1) The city manager and/or his authorized representative, upon the presentation of credentials, may:

a. Enter upon premises where an effluent or potential effluent source is located or in which any records are required to be kept under the terms and conditions of sections 38-62 through 38-70;

b. At reasonable times, have access to and may copy any records required to be kept under the terms and conditions of this Code or a discharge permit and may inspect any monitoring or sampling methods being used;

c. Enter upon the premises to reasonably investigate any actual, suspected

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(2) The investigation may include, but is not limited to, the following: sampling of any discharge and/or process waters, the taking of photographs; interviewing of any person having any knowledge related to the discharge or alleged violation; and access to any and all facilities or areas within the premises that may have any effect on the discharge or alleged violation.

(Code 1965, § 25-60; Ord. No. 2701, § 1(25-60), 9-1-93; Ord. No. 2710, § 1, 10-20-93; Ord. No. 2892, 2-21-96)

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Sec. 38-66. Same--Fees.

(a) *Purpose.* The purpose of this section is to provide for the payment to the city sewer fund by industrial users of the WWTW for all costs incurred in the implementation and administration of the industrial pretreatment program. The applicable charges and fees shall be set forth in a schedule developed by the city manager.

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(b) *Charges and fees.* The city manager may adopt separate charges and fees that relate solely to the matters covered by sections 38-62 through 38-70, including fees for:

- (1) Industrial discharge permit applications;
- (2) Reimbursement of costs of setting up and operating the Industrial Pretreatment Program;
- (3) Measuring, monitoring, inspection and surveillance procedures, sampling, testing, and analyzing user wastewater;
- (4) Reviewing and approving accidental discharge procedures and facilities;
- (5) Fees as the city may deem necessary to carry out the requirements contained herein; and
- (6) Fees to cover the added cost of handling or treating any wastes not covered by existing or regular monthly sewer service charges.

The charges and fees shall be established so that the permit application fee will cover the administrative costs of processing the permit. All other costs will be reviewed annually and established as part of the regular billing for each industrial user.

(Code 1965, § 25-61; Ord. No. 2701, § 1(25-61), 9-1-93; Ord. No. 2892, 2-21-96)

Sec. 38-67. Same--Pretreatment program administration.

(a) *Unlawful discharge.* It shall be unlawful to discharge any industrial wastewater or polluted waters into any natural outlet within the city or within any area under the jurisdiction of the city, except where suitable treatment has been provided, and except as authorized by the city manager in accordance with the provisions of sections 38-62 through 38-70.

(b) *Industrial discharge permits.*

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- (1) *Permit required.* No significant industrial user shall discharge wastewater to the public sewers or WWTW without having a valid industrial discharge permit issued by the city manager. Any discharge in violation of pretreatment standards or requirements contained therein is prohibited.
- (2) *Issuance.* After evaluation of the permit application, the city manager may issue an industrial discharge permit subject to terms and conditions provided herein. In determining whether a permit shall be issued and/or what conditions

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shall be applied, the city manager shall consider all applicable national categorical and local pretreatment standards as well as those factors listed in section 38-49.

- (3) *Permit application.* Users required to obtain an industrial discharge permit shall complete and file with the city manager an application in the form prescribed by the city manager and accompanied by the permit application fee. The user shall submit, in units and terms suitable for evaluation, all information required by the permit application, and any relevant supplemental information requested by the city manager. All significant industrial users connected to or discharging to the WWTW and all other persons proposing to connect to the WWTW who are determined to be subject to industrial discharge permit requirements shall apply at least 30 days prior to commencing discharge. When a user becomes subject to a national categorical pretreatment standard and has not previously submitted an application for an industrial discharge permit, the user shall apply for an industrial discharge permit within 90 days after the promulgation of the applicable national categorical pretreatment standard.
- (4) *Categorical Pretreatment Standards.* Within six months after the promulgation of a national categorical pretreatment standard, the industrial discharge permit of users subject to such standards shall be revised to require compliance by the prescribed compliance date. In addition, any industrial user with an existing industrial discharge permit shall submit to the city manager within 180 days after the promulgation of an applicable national categorical pretreatment standard a baseline report and any information required by 40 CFR Section 403.12 and by section (E)(2) of the industrial discharge permit application.
- (5) *Permit conditions.* Industrial discharge permits and significant industrial user permittees shall be subject to all the provisions of this chapter and all other applicable city laws, user charges and fees. Permits shall contain, but shall not be limited to, the following requirements or conditions:

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- a. Unit charge or schedule of industrial user charges and fees for the wastewater to be discharged to the WWTW;
- b. Notice of the general and specific prohibitions required under sections 38-49 and 38-65 (j) of this chapter;
- c. Prohibitions on discharge of any specific materials;

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- d. Notice of applicable national categorical standards; Pretreatment Standards;
- e. Limits equal to or more stringent than the specific pollutant limitations as established pursuant to section 38-65(j) concerning average and maximum wastewater constituents, and on characteristics of either the individual industrial process wastes or combined industrial wastewater discharge;
- f. Limits on average and maximum rate and time of discharge, or requirements for flow regulations and equalization;
- g. Monitoring facilities as described in subsection (d) of this section;
- h. Monitoring programs, which may include sampling locations, frequency of sampling, number, types and standards for tests, and reporting schedules;
- i. Installation, maintenance, and cleaning of any pretreatment technology necessary to achieve compliance with the requirements of this article, including filtration, chemical treatment, grease, oil and sand traps, and other necessary equipment;
- j. Compliance schedules and any periodic progress or compliance reports required by this article or by Federal Pretreatment Regulations, including 40 CFR Section 403.12;
- k. Submission of technical reports or discharge reports, as provided in subsection (c) of this section;
- l. Maintenance and retention of plant records relating to wastewater discharge, as specified by the city manager;

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- m. Notification of the city manager of any discharge of new wastewater constituents, or of any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;
- n. Notification of any slug or accidental discharge as per section 38-65 (i)(1);

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- o. Agreement to pay additional costs of handling or treating any industrial wastewater discharges not authorized by this article or by any permit issued hereunder. Nothing herein shall be interpreted to allow discharges which include harmful contributions to the WWTW, interfere with the WWTP facilities, equipment, or receiving waters, or which may otherwise create a hazard to life or which may constitute a public nuisance;
 - p. Agreement by the industrial user: to allow access to the city manager to ensure compliance with permit conditions; to agree to perform all permit conditions; to submit to the remedy of specific performance for breach of contract; and to pay liquidated damages for violation of pretreatment standards and/or requirements where damages are not readily ascertainable; and
 - q. Other appropriate conditions, in the judgement of the city manager, necessary to ensure compliance with this article.
- (6) *Permit duration.* Industrial discharge permits are valid only for a specified time period, not to exceed 38-67 years. An industrial user shall apply for permit renewal at least 90 days prior to the expiration date of the existing permit
- (7) *Permit modifications.* The terms and conditions of any permit may be subject to modification by the city manager during the term of the permit as limitations or requirements as identified in sections 38-65 and this section are modified, or as other just cause exists. The user shall be notified of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- (8) *Permit transfer.* Industrial discharge permits are issued to a specific user for a specific operation. An industrial discharge permit is not transferable, and is voidable if reassigned, transferred, or sold to a new owner, new user, different premises, or a new or different operation without written approval by the city manager.
- (c) *Reporting requirements.*
- (1) *Compliance date report.* Within 90 days following the date for final compliance with applicable pretreatment standards or requirements, or in the case of a new source, following commencement of the introduction of wastewater into WWTW, any industrial user subject to federal, state or city

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pretreatment standards and requirements shall submit to the city manager a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by such standards and requirements. The report shall also indicate the average and maximum daily flow or predicted flow for the process units in the user facility subject to the federal, state or city standards and requirements, whether these standards are being met on a consistent basis and, if not, what additional operations, maintenance or pretreatment is or will be necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user, and shall be certified by a qualified professional engineer or a person with adequate wastewater discharge experience.

(2) *Mass limits.* The city manager may impose mass limitations in addition to concentration limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or upon other users when deemed necessary. In such cases, the reports required by subsections (b)(5)l and (c)(1) of this section shall also indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow, nature, concentration, production, and mass of pollutants which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the industrial discharge permit.

(3) *Reporting violations.* Reporting violations include failure to submit self-monitoring reports, total toxic organics compliance certifications or compliance schedule progress reports within 30 days of deadlines and/or failure to complete milestones within 90 days of deadline.

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(d) *Monitoring facilities.*

- (1) Each significant industrial user shall provide, calibrate, and operate at its expense sufficient monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and internal drainage systems. The monitoring facilities, including control manholes and continuous flow recorders, shall normally be situated on the user's premises. If such a location would be impractical or cause undue hardship on the industrial user, the city manager may allow the facility to be constructed in a public right-of-way if the facility will not be obstructed by landscaping or parked vehicles.
- (2) A sampling manhole or facility shall have sufficient room for accurate sampling and preparation of samples for analysis. The facility shall be maintained at all times in a safe and proper operating condition at the expense of the industrial user.
- (3) Whether constructed on public or private property, any sampling and monitoring facilities shall be built in accordance with city requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following receipt of a written order by the city manager to install the facility.

(e) *Inspection and sampling.* The city manager may inspect the facilities of any user to determine whether the purpose of these industrial pretreatment regulations and all applicable requirements are being complied with. Owners, employees or occupants of premises where wastewater is discharged shall allow the city manager and other city representatives or agents ready access at all reasonable times to all parts of the premises where wastewater is created or discharged, including industrial process areas, for the purposes of inspection, sampling, records examination, or performance evaluation. The city manager may set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which require proper identification and clearance before entry into such user's premises, the user shall make necessary arrangements with the security guards so that, upon presentation of suitable identification, personnel authorized by the city or from the state or EPA will be permitted to enter without delay for the purpose of performing their specific responsibilities under this article.

(f) *Pretreatment.*

- (1) Industrial users shall provide whatever wastewater pretreatment is required, in the opinion of the city manager, to comply with this article and shall comply with all national categorical pretreatment standards within the time limitations

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as specified by the federal pretreatment regulations and this article. Any facilities required to pretreat wastewater to a level of quality acceptable to the city shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city manager for review, and must be approved by the city manager before construction of the facilities. The review or approval of such plans and operating procedures shall in no way relieve a user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent change in the pretreatment facilities or method of operation shall be reported to and approved by the city manager prior to such change.

- (2) The city manager shall annually publish, in a newspaper of general circulation within the city, a list of any industrial users determined to be in significant noncompliance (SNC) with this article. The notification shall summarize the types of violations and any enforcement action taken.
- (3) All records relating to compliance with pretreatment standards or requirements shall be made available to officials of the EPA or the state department of health upon request to the city manager.

(g) Confidential information.

- (1) Information and data regarding a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or governmental agencies without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the city manager that the release of such information would divulge information entitled to protection as a trade secret of the user. In such case, restricted information shall not be made available to the public, but shall nevertheless be made available to other governmental agencies for limited purposes related to water pollution control, including judicial review or enforcement of the provisions of this article.
- (2) Wastewater constituents and characteristics will not be recognized as confidential information.
- (3) Information accepted by the city manager as confidential shall be handled in compliance with applicable state law.

(Code 1965, § 25-62; Ord. No. 2701, § 1(25-62), 9-1-93; Ord. No. 2892, 2-21-96)

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Sec. 38-68. Same--Enforcement.

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The Persigo WWTW shall develop and implement an enforcement response plan. The plan shall be reviewed as required by and for conformance with federal law and shall at a minimum contain detailed procedures indicating how the Persigo WWTW will investigate and respond to instances of industrial noncompliance. The plan shall describe how the WWTW will investigate instances of noncompliance; describe the types of escalating enforcement the WWTW will take in response to all anticipated user violations and the time periods within which such responses will occur. The plan shall identify, by title, the official(s) responsible for various responses and reflect the Persigo WWTW's primary responsibility to enforce all applicable pretreatment requirements and standards as established in this article or by other applicable standards.

(1) *Harmful contributions or Interference with the WWTW.*

- a. The city manager may cancel a user's permission to discharge wastewater into the WWTW, may reject such wastewater, may cease wastewater treatment service, and/or may suspend a user's industrial discharge permit when such suspension is necessary, in the opinion of the city manager, in order to stop or preclude a harmful contribution to the WWTW, or a discharge which interferes with or has a deleterious effect upon the WWTW.
- b. Any user notified of a suspension or cancellation of wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution or discharge. In the event of a failure by such person to comply voluntarily with the suspension order, the city manager shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the WWTW system, danger to individuals, or harm to the receiving waters. The city manager may reinstate the industrial discharge permit and/or the wastewater treatment service only upon proof of compliance with the order and all federal, state and local Pretreatment Standards and requirements, including payment of any fees or penalties. A detailed written statement submitted by the user describing the causes of the harmful contribution, and the measures actually taken to prevent any future occurrence, shall be submitted to the city within five business days from the date of occurrence.

(2) *Revocation of permit.* Any significant industrial user who violates the following conditions of this section, any provision of this article, or applicable

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state and federal laws or regulations is subject to permit revocation in accordance with the procedures of this section:

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- a. Failure to factually report wastewater constituents and characteristics;
- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal or physical obstruction of reasonable access to the user's premises for the purposes of inspection, monitoring, review of records concerning wastewater, or any purpose listed under section 38-67(e);
or
- d. Violation of conditions of the industrial discharge permit.

(3) *Notification of violation.* Whenever the city finds that any user has violated or is violating this article, an industrial discharge permit, or any prohibition, limitation, condition or requirements contained therein, the city manager shall serve upon such person a written notice stating the nature of the violation. Violation of any permit condition shall be considered to be a violation of this article. Unless required earlier by another provision of this article, within 30 days after the date of such notice the user shall submit to the city manager evidence of the satisfactory correction of the violation, or a plan to correct the violation.

(4) *Administrative Orders.* Whenever the city manager finds that any user has violated or is violating this article, or a permit or administrative order issued hereunder, the city manager may have served upon said user 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 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 article.

(5) *Administrative Appeal Procedure.* Any permit applicant, permit holder or user 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 article, or the provision of any permit or administrative order issued under this article, shall file with the city manager a written request for reconsideration

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within ten (10) working days of such decision, action, administrative order or determination, setting forth in detail the facts supporting the request, whereupon the city manager shall hold a hearing within ten (10) working days

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of such request. All requests for reconsideration shall be heard by the city manager within ten (10) working days from the date of the hearing. The decision, action, administrative order or determination shall remain in effect during the reconsideration period.

(6) *Appeal of order of city manager.*

- a. Any person entitled to appeal an order of the city manager pertaining to industrial wastewater discharge may do so by filing an appeal with the city manager within ten days from the date of the city manager's determination or order. The appeal shall contain the following items:
 1. A heading in the words "Before the Utility Hearing Board of the City of Grand Junction, Colorado" or "Before the Utility Hearing Officer of the City of Grand Junction, Colorado";
 2. A caption reading "Appeal of _____," giving the names of all participating appellants;
 3. A statement of the legal interest of the appellants in the affected facility, together with the name of the authorized representative thereof;
 4. A concise statement of the action protested, together with any material facts;
 5. Verified signatures of all appellants, together with official mailing addresses and phone numbers; and
 6. Verification by declaration under perjury of at least one appellant as to the truth of the matters stated in the appeal.
- b. Upon receipt of a properly filed appeal, the city manager shall notify the city manager, who shall convene the utility hearing board or appoint a hearing officer. The hearing shall commence no sooner than ten days, but no later than 60 days, after the appeal is filed.

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(7) *Show cause hearing.*

- a. The city manager is authorized to order any industrial user who causes, makes, or allows an unauthorized direct or indirect discharge or a harmful contribution to the WWTW to show cause why appropriate enforcement action should not be taken. In such case, a notice shall be served on the respondent user specifying the time and place of a hearing regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken.
- b. The notice of the hearing shall be served upon the user personally or by certified mail, return receipt requested, at least ten days before the hearing. Service may be made on any agent or authorized representative of a corporation or partnership.

(8) *Procedure for appeal or show cause hearing.*

- a. The city manager may appoint a hearing officer or may instead convene a utility hearing board to conduct the hearing or appeal. The board shall consist of a city council member or designee, the city manager, a county commissioner or designee, an employee of the department of public works or utilities, and a connector district representative if the appellant or respondent industrial user is located within the jurisdiction of that district.
- b. The hearing officer or utility hearing board shall have the power to:
 1. Issue in the name of the city council notices of hearings requiring the attendance and testimony of witnesses and the production of evidence.
 2. Hold a quasi-judicatory hearing, and receive relevant evidence relating to compliance with the requirements set forth in this chapter. Hearings shall be conducted informally. Rules of civil procedure and evidence shall not solely determine the conduct of the hearing or the admissibility of evidence. All testimony shall be given under oath, and a tape recording or other evidence of the verbatim content of the hearing shall be made. The burden of persuasion in either an appeal or show cause hearing shall be upon the appellant or respondent. The standard

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of proof to be utilized by the officer or board in making its findings or recommendations shall be a preponderance of the evidence.

3. Determine and find whether just cause exists for not taking the proposed enforcement actions, or whether the order or action appealed is unwarranted.

4. Transmit a report of the evidence and hearing, including transcripts, tapes, and copies of other evidence if requested by any party, together with findings and recommendations to all parties to the hearing and to the city council.

(9) *Effect of hearing.*

a. Findings and recommendations of the hearing board or officer shall be final and binding upon the city manager and parties to the hearing, provided, however, that if the city council disapproves the recommendations of the hearing board or officer within 30 days thereof, the council may conduct its own hearing, make its own findings, and issue its own orders.

b. An order consistent with findings and recommendations of the hearing board or officer, or the city council, as the case may be, shall be issued by the city manager. The order may direct that sewer service to the user responsible for the violation be discontinued unless and until adequate treatment facilities or related devices have been installed and approved within a specified period of time. The order may provide for imposition of appropriate penalty charges, and for administrative fines designed to reimburse the city for the costs of the permit enforcement action. Further orders and directives, as are necessary and appropriate to enforce industrial wastewater permits and provisions of this article, may be issued by the city manager.

(Code 1965, § 25-62; Ord. No. 2701, § 1(25-63), 9-1-93; Ord. No. 2892, 2-21-96)

Sec. 38-69. Same--Actions for violation.

(a) *Penalties.* The city shall have the authority to seek and assess civil and/or criminal penalties up to \$1,000.00 per day for each violation for noncompliance by industrial

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wastewater dischargers who fail to comply with provisions of an industrial pretreatment permit, program condition or pretreatment standard and/or requirements issued thereunder.

(b) *Remedies.* If any person violates any order of the city manager, a hearing board or officer or the council, or otherwise fails to comply with any provisions of this article or the orders, rules, regulations and permits issued hereunder, or discharges sewage, industrial wastes, or other wastes into the WWTW or into state waters contrary to the provisions of this article, federal or state pretreatment requirements, or contrary to any order of the city, the city may commence an action in a court of record for appropriate legal and equitable relief. In such action, the city may recover from the defendant reasonable attorney fees, court costs, deposition and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article shall become liable to the city for any expense, loss, or damage to the city or to the WWTW occasioned by such violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three times the amount of actual damages.

(c) *Misdemeanor.* Any person who violates or fails to comply with any provision of sections 38-62 through 38-70 or with any orders, rules, regulations, permits and permit conditions issued hereunder shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$1,000.00 or imprisonment not to exceed one year or both. Each day in which any such violation occurs or persists shall be deemed a separate and distinct offense.

(d) *Penalty for false statement and tampering.* Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan, or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$1,000.00 or imprisonment not to exceed one year or both.

(e) *Remedies cumulative.* The remedies provided for in this article, including recovery of costs, administrative fines and treble damages, shall be cumulative and in addition to any other penalties, sanctions, fines and remedies that may be imposed. Each day in which any such violation occurs, whether civil and/or criminal, shall be deemed a separate and distinct offense.

(Code 1965, § 25-64; Ord. No. 2701, § 1(25-64), 9-1-93; Ord. No. 2892, 2-21-96)
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Sec. 38-70. Same--Pretreatment authority outside of city.

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In order to achieve and maintain compliance with the Clean Water Act, federal pretreatment standards and requirements, state regulations, sewage grant conditions, and

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WWTP discharge permit requirements, the city, as manager/operator of the Persigo wastewater treatment plant, must possess and demonstrate a clear legal right to require compliance with pretreatment standards and requirements by any industrial user of the WWTW located outside of the city's territorial jurisdiction. To that end all governmental sewage connectors, including sanitation districts and the county, have been requested to adopt, and have adopted, by resolution, a regulatory pretreatment program either parallel to Ordinance No. 2169 or incorporating the provisions of Ordinance No. 2169, and requiring industrial users to comply with the city pretreatment program.

The connector districts and the county shall also be requested to approve necessary revisions to existing sewer service agreements or joint agreements granting the city the right to administer and physically enforce the connector's pretreatment program on behalf of and as agent for the connector district or county. Such supplemental or indirect regulatory authority accorded to the city shall only be used where direct contractual relationships with industrial users through the industrial discharge permit program prove insufficient to ensure compliance with the pretreatment program.

(Code 1965, § 25-65; Ord. No. 2701, § 1(25-65), 9-1-93; Ord. No. 2892, 2-21-96)

Sec. 38-71. Plant investment fees and connection procedures--Purpose of fee.

The intent of the plant investment fee shall be to recover the cost of construction of main interceptor lines and sewage treatment works as determined by the city manager in accordance with and pursuant to applicable law.

(Code 1965, § 25-70)

Sec. 38-72. Same--Payment of fee.

(a) Prior to connection of any building, premises or lot to any sewer system which utilizes the sewage treatment works or sewage transportation system of the city, the owner of that building, premises or lot shall pay a plant investment fee to the city.

(b) Plant investment fees shall be paid within 150 days prior to actual connection of the building, premises or lot to the sewer system, and no prepayment shall be allowed except with the permission of the city manager.

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(Code 1965, §§ 25-71, 25-72)

Sec. 38-73. Same--Amount of fee.

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(a) The basic plant investment fee (B.P.I.F.) shall be as adopted by resolution of the city council.

(b) The plant investment fee for any building, lot or premises other than a single-family residence shall be computed using the formula set out in this subsection; provided, that the minimum plant investment fee for any building, lot or premises shall not be less than the basic plant investment fee.

Formula for plant investment fee (P.I.F.):

The basic plant investment fee (B.P.I.F.): See paragraph (a).

$$P.I.F. = (B.P.I.F.) \times (EQU)$$

Where (EQU) = Equivalent residential units.

The equivalent residential units (EQU) is determined by using the following values as applied for the type of use in which the building, premises or lot is to be used:

	<i>EQU</i>
(1) Any single-family above	1.00
(2) Multiple-family dwellings, $0.72 \times$ number of single-family units .	EQU
(3) Hotels and motels:	
a. No restaurants or kitchens, $0.36 \times$ number of rooms	EQU
b. With kitchenettes, $0.43 \times$ number of rooms	EQU
c. With restaurants: Use above then add restaurants from below.	
(4) Restaurants:	
a. Twenty-four-hour operation, $0.21 \times$ number of seats	EQU
b. Twelve-hour or less operation, $0.14 \times$ number of seats . . .	EQU
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c. Bar, no food, $0.04 \times$ number of seats	EQU
(5) Schools:	

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- a. No food or showers, $0.04 \times$ number of student capacity. . EQU
- b. Add to (5)a for cafeterias, $0.02 \times$ number of student capacity EQU
- c. Add to (5)a for showers, $0.02 \times$ number of student capacity EQU
- d. Boarding schools, $0.27 \times$ number of student capacity EQU
- (6) Service stations:
 - Without wash rack, 1.00 EQU
 - With wash rack, 2.3 per rack EQU
- (7) Shopping centers and stores, $0.35 \times$ number of thousand square feet of store space EQU
- (8) Travel trailer park (K.O.A., etc.), $0.25 \times$ number of trailer parking spaces EQU
- (9) Churches and assembly halls, theaters and arenas, $0.01 \times$ number of seating capacity EQU
- (10) Drive-in theaters, $0.02 \times$ number of car spaces EQU
- (11) Factory, warehouses and offices (not including industrial waste), $0.05 \times$ number of employees EQU
- (12) Hospital, $0.89 \times$ number of bed spaces EQU
- (13) Institution—Nursing home, $0.36 \times$ number of residences EQU
- (14) Laundry, coin-operated, $0.90 \times$ number of washing machines . . . EQU
- (15) Mobile home parks, $0.67 \times$ number of lots or spaces EQU
- (16) Car wash, $2.3 \times$ number of bays EQU

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- (17) Fast food takeout (walk up or drive up):
 - Open 12 hours or more each day, $0.10 \times$ number of employees . . . EQU

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Open less than 12 hours per day, $0.06 \times \text{number of employees}$. . . EQU

Where recycling of water is used or other conditions prevail which cause the above-listed nonresidential users to produce more or less average daily sewage flow than that computed by the above formula when the EQU is multiplied by 280 gallons per day, the city manager or his appointee may establish the EQU using the formula set in the following paragraph. Where the city manager or his appointee deem necessary, the plant investment fee may be charged according to the above formula. Then, after the first 12 months of full operation have passed, where actual water use is observed, the plant investment fee may be revised up or down to the plant investment fee computed based on actual water use.

Plant investment fees shall be computed for nonresidential user which does not apply to the above by computing the hydraulic flow expected from the establishment. The EQU can be computed by dividing the expected flows by 280 gallons per day or by dividing the expected organic load in pounds of BOD₅ per day by 0.47 pound of BOD₅. The higher EQU obtained by the two methods shall be used in computing the plant investment fee.

(c) Sewer extension charges are as established by resolution of the city council.

(Code 1965, § 25-73)

Secs. 38-74--38-95. Reserved.

ARTICLE III. WATER SYSTEM*

***Cross reference(s)**--Cross connection regarding water supply system declared a nuisance, § 16-61.

Sec. 38-96. Kannah Creek--Territory covered.

Sections 38-96 through 38-101 shall cover an area of all territory for five miles above the point on Kannah Creek, in Mesa County, where the water is diverted by the city from such creek, such point of diversion being located as follows: At a point whence the southwest corner

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of Section 34, Township 12 South, Range 97 West, sixth principal meridian bears south 20 degrees 47 minutes, west 2,670 feet.

Sections 38-96 through 38-101 shall also cover the area within a radius of 500 feet of the settling basin or reservoir of the city on Kannah Creek located near such point of diversion.

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(Code 1965, § 31-51)

Sec. 38-97. Same--Police power of caretaker.

The person employed by the city as caretaker to look after the water system of the city of Kannah Creek is hereby given, within the area covered by this article, the power and authority held and used by a police officer of the city within its corporate limits, and such caretaker shall have the right and power to arrest any person who may violate any provisions of sections 38-96 through 38-101.

(Code 1965, § 31-52)

Sec. 38-98. Same--Contamination prohibited.

(a) No person shall construct, keep or maintain a house, tent, barn, stable, cattleyard, chickenyard, feed lot, pigpen or any grounds or premises of whatever kind within the area covered by sections 38-96 through 38-101, the drainage from which is capable of contaminating or rendering the water injurious and unwholesome, upon Kannah Creek or upon the drainage district thereof.

(b) No person within the area covered by sections 38-96 through 38-101 shall allow any offensive or unwholesome or contaminating substance to remain upon the premises in such position that such substance or the drainage therefrom may be carried by natural causes into Kannah Creek.

(Code 1965, §§ 31-53, 31-54)

Sec. 38-99. Same--Permit to live or camp near.

The utilities department may require that persons camping or living within the area covered by sections 38-96 through 38-101 first obtain a permit from it or from the caretaker to do so. Such permit shall designate the camping or living place and shall be revokable for cause by the utilities department or the caretaker.

(Code 1965, § 31-55)

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Sec. 38-100. Same--Disposal of dead animals.

The carcasses of any animals dying within the area of sections 38-96 through 38-101 shall be immediately burned and buried in accordance with the regulations of the United States Forest Service.

(Code 1965, § 31-56)

Sec. 38-101. Same--Injuring trees.

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No person shall cut or otherwise injure live trees in the area covered by sections 38-96 through 38-101, and no person shall tie horses or other animals to trees having a soft bark which are liable to be injured by such animals.

(Code 1965, § 31-57)

Sec. 38-102. Contractual nature of provisions.

The provisions of this article, so far as applicable, shall be considered as a part of the contract between the city and each property owner who is furnished with city water, and each property owner, by using city water and allowing city water to be used, shall be presumed to express his consent to be bound by all the provisions of this article, and such other regulations as the city may adopt.

(Code 1965, § 31-1)

Sec. 38-103. Application for service; liability of owners of premises; start of billing period.

(a) Application for water service to a premises shall be in the name of the owner of the premises. Although the owner may direct that the water bill be sent to another for payment, the owner of property where water is used shall be liable for the payment of rent for all water used thereon in addition to the other utility charges appearing on the water bill. Where application is for new service, charges for water service shall begin when the city is advised that usage has commenced or 120 days after the issuance of the sewer or water permit, whichever is first, unless the applicant can show that no services are being received. Water rental charges include all rates, charges, fees and costs of inspection connected with the water system.

(b) The owner of the premises, as well as the occupant or occupants thereof, shall have 30 days to notify the utility accounting department of any change of building structure and/or use to ensure correct monthly charges. The city will be under no obligation to credit or refund any account beyond expiration of the 30-day notification period.

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(Code 1965, § 31-2)

Sec. 38-104. Water rent payable monthly; charges constitute lien.

All water rent shall be due and payable monthly. All water service and water service availability (see section 38-111) charges shall constitute a lien upon any lot, land, building or premises served and if such charges shall not be paid when due, such service may be disconnected by the city without further notice, by shutting off the water supply therefrom, and the city manager may certify the charge to the county treasurer to be by him placed upon the tax list for the current year to be collected in the manner other taxes are collected, with ten percent added to defray the cost of collection and the value of attorney's fees and court costs plus interest at one percent per month or as amended by resolution of the city council, and all laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption of the same, shall apply.

(Code 1965, § 31-3)

Sec. 38-105. New service fee.

Whenever a water service account is created or is changed, a new service fee in the amount established by resolution of the city council shall be charged for the setting up of the new account.

(Code 1965, § 31-4)

Sec. 38-106. Payment of water rent; discontinuing service for nonpayment; delinquency charge.

All water rent shall be payable at the office of the city treasurer within 45 days following the date of billing, and if not paid within that time shall become delinquent, and the water may be shut off without notice. An additional charge as established by resolution of the city council shall be made for each notification of delinquency, accomplished by a doorhanger or other notice of delinquency placed on the premises.

(Code 1965, § 31-5)

Sec. 38-107. Resumption of services after discontinuance.

Whenever the water shall have been shut off for nonpayment of water rent, or nonpayment of other utility services provided by the city, the water shall not be turned on again until the back water rentals or other utility service charges have been paid, together with

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an additional charge as established by resolution of the city council and on file in the city clerk's office for the trouble and expense of shutting off and turning on the water for each delinquency.

(Code 1965, § 31-6)

Sec. 38-108. Discontinuing water service at request of consumer.

(a) Any person desirous of discontinuing the use of water must give notice to the utilities department and the utilities department shall turn off the water. No credit will be given for nonusage of water unless the water service has been shut off by the utilities department.

(b) Whenever a water user notifies the utilities department of a desire to have the water shut off at his premises because of vacancy therein, the city shall cause the water to be shut off at such premises at the curb stopbox, and a credit shall be given on the books of the city to such water user for such premises for the period of time water is so shut off. No credit shall be given to any water user for vacancy on his premises unless the water shall be shut off as provided in this section.

(Code 1965, § 31-7)

Sec. 38-109. Charge for reading meters for customer turn-off and turn-on requests.

A charge as established by resolution of the city council and on file in the city clerk's office shall be made for the turning off or turning on of water at the request of the customer. If the city, at the request of a customer, turns such customer's water meter on or off during hours other than from 8:00 a.m. to 5:00 p.m. during a normal business day, such customer shall pay to the city, in addition to all other amounts owing to the city, a sum established by resolution of the city council and on file in the city clerk's office, which amount reflects the cost to the city of overtime wages and equipment costs. Such sum shall be paid in all instances except where the request for the turn-on or the turn-off is as a consequence of a leak in the domestic water service line between the water meter and the point at which the service line enters the dwelling or structure. If the request to turn on or turn off water is as a consequence of a leak or repair within the dwelling or on a sprinkler system, then the charge established by resolution of the city council shall be imposed. Additionally, upon the third occasion when no one is present at a premises when an appointment has been made for such presence for the turning on or turning off of a water meter, a further charge as established by resolution of the city council shall be made. The same charge shall be made for each trip to the premises after the third if appointments are not kept.

(Code 1965, § 31-8)

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Sec. 38-110. Discontinuing service for violation.

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Whenever any provision of this article or any term of an agreement by which the city agrees to furnish water is violated by the consumer, the water shall be cut off from the building or place of such violation, although two or more parties may receive water through the same pipe, and shall not be cut on again except by order of the city manager, and on payment of the expense of shutting it off and turning it on again, and such other terms as the city council shall determine, and a satisfactory understanding with the party or parties that no further cause of complaint shall arise; and in case of a violation after such understanding, the city manager shall have the right to declare any payment made for the water by the person committing such violation to be forfeited.

(Code 1965, § 31-11)

Sec. 38-111. Meter rates.

Monthly rates as established by resolution of the city council and on file in the city clerk's office shall apply to all water used and measured by a water meter.

(Code 1965, § 31-12; Ord. No. 2615, § 1, 11-18-92; Ord. No. 2713, § 1, 11-17-93)

Sec. 38-112. Certificate of number of users required; additional connections.

It shall be the duty of all owners and/or operators of water service lines with more than one user to certify to the utilities department the location thereof and the number of units or users thereon. No additional connections shall be made without application and notice thereof to the utilities department.

(Code 1965, § 31-14)

Sec. 38-113. Charge when meter defective.

When a meter or indicator gets out of order and fails to register correctly, a charge shall be made according to the average quantity of water used in a similar period as shown by the meter when in order.

(Code 1965, § 31-15)

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Sec. 38-114. Charge for water sold by the tank.

Water sold by the tank by the city shall be charged for at the rates established by resolution of the city council and on file in the city clerk's office.

(Code 1965, § 31-16)

Sec. 38-115. Meters required; installation, ownership, maintenance.

(a) All water users shall be required to have a meter. All meters shall be installed, owned and maintained by the city.

(b) Owners of water meters who under previous ordinances of the city were permitted to install and own water meters which were two inches in size or more are required to regularly inspect and maintain those meters. If inspection by the city reveals that the meters are not being properly maintained, the city may cause the meters to be repaired at the expense of the owner of the meter.

(Code 1965, § 31-17)

Sec. 38-116. Unlawfully using water, tampering with facilities.

No person shall use the water from any part of the waterworks without permission having been duly issued therefor, nor shall any person, without lawful authority, open any fire plug, stopcock or valve or other fixture appertaining to such works, nor shall any person shut off or turn on water for any service pipe without lawful authority therefor.

(Code 1965, § 31-18)

Sec. 38-117. Permitting others to use water.

No consumer shall permit the owner or occupant of other premises to use water from his service except by special permission from the utilities department.

(Code 1965, § 31-19)

Sec. 38-118. Permits to tap street mains.

For any of the uses specified in this article or in the schedule of water rates established by the city council, an application shall be made to the utilities department for a permit to have tapped the street mains forming a part of the city waterworks. If granted, such permit shall set

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forth the name of the person for whose benefit such permit shall be granted, the size of the stopcock for discharging the water from the main to the service pipes, and as near as may be the point at which the tapping is to be done, the place to which the water is to be conducted, the situation of the hydrants and the contemplated use of the waters thereby. The utilities department shall keep a record of all such permits in a book kept for that purpose in its office, which record shall set forth the substance of every such permit; provided, that by virtue of such permit no more water shall be used than shall be necessary at the time of placing the service pipes and their fixtures to test the tightness of such pipes and fixtures for the flow of water; provided further, that any other legitimate use than that specified in such permit may be made of such water, the proper permit being obtained therefor.

(Code 1965, § 31-20)

Sec. 38-119. Permits for new connections; work, materials supplied by city; stopcocks.

Persons wishing water in buildings and premises not connected with the water mains must get a special permit from the utilities department for each building, residence, business, etc. The utilities department shall, except as approved by the city manager, in all cases tap the water main and put in the service pipe to a point on the inner side of the curbstone where there shall be a corporation cock and stop box. Provided, that if there shall be no sidewalks where such pipes shall be extended, such stopcocks shall be in some conspicuous and accessible place near the premises so supplied with water and on some public highway to be designated by the utilities department. Such stopcocks shall be kept in good condition, so that the utilities department shall be able to shut off the water from service pipes at any time.

(Code 1965, § 31-21)

Sec. 38-120. Requirements for service pipe.

All service pipes laid or constructed in the city for the distribution of water connected with the main in the street and extended to the stop box shall be Type K copper.

(Code 1965, § 31-22)

Sec. 38-121. Exclusive jurisdiction of water department over service pipe.

The repairing, laying or construction of service pipes for the distribution of water, connected with the main in the street and extended to the stop box inside the curblin of the street in front of property to be served, shall be performed only by the utilities department of the city, except as authorized by the city manager.

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(Code 1965, § 31-23)

Sec. 38-122. Application for service pipe; cost of installation.

Service pipes of suitable size will be furnished upon application to the city manager and the prepayment of the charges therefor as provided in this article, and the utilities department shall furnish all labor and materials necessary for such construction, including tapping of mains, installation of brass corporation cocks, brass curbcocks and connections, stop box, and such K copper pipe as may be necessary.

(Code 1965, § 31-24)

Sec. 38-123. Calculating charges for service pipe and connections.

All charges for furnishing and laying service pipe and connections shall be calculated as if the water main were laid in the center of the street in order that a uniform charge may be made to the property abutting on the opposite side.

(Code 1965, § 31-25)

Sec. 38-124. Rates for service pipes.

The rates to be charged for furnishing, constructing and laying service pipes by the utilities department shall be fixed and established by the city council by resolution. Such rates shall be subject to change by resolution of the council as it may determine. "Time and materials" may be charged if expenses exceed the normal charge.

(Code 1965, § 31-26)

Sec. 38-125. Stop boxes.

(a) All stop boxes shall be placed at a point 1 1/2 feet back from the face of the pavement curb, or if no permanent curb is in place, then at a point 1 1/2 feet back from proposed location of the face of the curb, which shall be standard for all streets according to the width of such streets, as follows:

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Width of street	Width of roadway between curbs
60 feet	30 feet
80 feet	36 feet
100 feet	56 feet

(b) When a street is paved a greater width than the above standard, all stop boxes shall be moved and the pipe extended to conform to the extra width of roadway, and such work shall be performed by and charged to the utilities department.

(Code 1965, § 31-27)

Sec. 38-126. Cost of cutting streets, sidewalks.

Where it becomes necessary to cut a pavement or cement sidewalk in order to install the service pipe and connections, the cost of such cut may be charged to the property owner at cost plus 20 percent for overhead expense.

(Code 1965, § 31-28)

Sec. 38-127. Repair, maintenance of service pipes.

The owner, lessee or agent shall maintain the service pipes from the curb stop if the meter is at the curb, or from the meter if the meter is located between the property line and the curb. It shall be his duty to keep such pipes in good repair and protected from freezing, and he shall be responsible for all damages resulting from leaks or breaks in such service pipes.

(Code 1965, § 31-29)

Sec. 38-128. Defective service pipe to be replaced or repaired.

When the service pipe shall become defective and leak, it shall be reported to the utilities department, which shall make inspection of such pipe, and if the pipe is worn out, it

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shall order it replaced with new pipe. If the pipe is in a generally good condition, the department may permit a licensed plumber to repair the leak.(Code 1965, § 31-30)

Sec. 38-129. Maintenance and repairs to service pipe.

After service pipe has been laid and constructed, the utilities department shall thereafter maintain and keep in repair all such service pipes between the main and the curbcock, and shall repair or cause to be repaired any cuts or excavations in paved or unpaved streets in laying or repairing such service connections, to the satisfaction of the city manager.

(Code 1965, § 31-31)

Sec. 38-130. Filling trench after laying service pipe.

After service pipes are laid, in refilling the opening, the earth must be laid in layers of not more than nine inches in depth, and each layer thoroughly tamped or puddled to prevent settlement, and this work, together with the replacing of sidewalks, ballast and paving, must be done so as to leave the street and sidewalk in as good condition as before it was disturbed, and to the satisfaction of the utilities department, which is required to see that such work is done as stated in this section.

(Code 1965, § 31-32)

Sec. 38-131. Time for sprinkling, irrigating.

No person shall use water from the city waterworks system for sprinkling or irrigating except between the hours and at the times which may be from time to time designated by the city manager, and any person who shall use or cause to be used or permit to be used on their premises, or premises occupied by them, any water as provided in this section, or who shall use or cause to be used or permit to be used any water on their premises occupied by them when prohibited so to do under this section or by the city manager shall be guilty of a misdemeanor.

(Code 1965, § 31-33)

Sec. 38-132. Wasting water.

The owner or lessee of any premises to which any water shall be conducted from the water mains shall keep all pipes and their fixtures from the curblin to his premises and on such premises in good repair and protected from the frost, and tight, so as to prevent waste of water. Upon any waste resulting from a breakage of such pipes or fixtures, or any imperfection

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of such pipes or fixtures, the owner or lessee shall forthwith stop such waste of water by repairing the old work or by laying new work. It shall be unlawful to use water so that it is wasted by flowing off lawns and gardens into the street gutters.

(Code 1965, § 31-34)

Sec. 38-133. City's right of entry; notice; correction of defects.

The employees of the utilities department shall be authorized to enter and have free access at all reasonable hours to premises to ascertain the location or condition of all hydrants, pipes or other fixtures attached to the water works, and in case they find that water is wasted on account of negligence or for want of repairs, and if such waste is not immediately remedied, the water leading to such premises shall be turned off. It shall be the duty of such employees in case they discover any defect in a private pipe between the meter pit and the structure to give notice in writing to be left at the premises, if occupied, and if not occupied, with the owner or his agent, and if the necessary repairs are not made within 24 hours thereafter the water shall be turned off, and shall not be turned on again until the repairs are made and a sum as established by resolution of the city council and on file in the city clerk's office has been paid to the utilities department to cover the expense of turning the water off and on. The city is responsible for repairs of services between the main pipe and the meter pit.

(Code 1965, § 31-35)

Sec. 38-134. Using water for fire protection.

If the proprietors of manufactories, lumberyards, halls, stores, elevators, warehouses, hotels or public buildings, being regular consumers of water from the waterworks, wish to lay large pipes with hydrant and hose couplings to be used only in the case of fire, they will be permitted to connect with the street mains at their own expense, upon application to the utilities department and under its direction, and will be allowed the use of water for fire purposes only, free of charge, but all such pipes must be provided with a suitable valve which must be sealed by the utilities department, and a stop and waste cock attached at the bottom or inside the building; in case the seal is broken for the extinguishment of fire, the party shall immediately give notice to the utilities department, and in case such seal shall have been broken for any other purpose or use, the party so offending shall be guilty of a misdemeanor. No standpipe will be allowed on premises where the water is taken for other than fire purposes.

(Code 1965, § 31-36)

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Sec. 38-135. Unlawfully using water; tampering with facilities.

(a) It shall be unlawful for any person to use the water from any part of the waterworks system, to open any fire hydrant, stopcock or valve or other fixture appertaining to such waterworks, or to shut off or turn on water for any service pipe without lawful authority or permission having been issued therefor.

(b) No water shall be used from fire hydrants except by the fire department or public works department for the purpose of extinguishing fires, street sprinkling, cleaning, washing or testing fire hose or other fire apparatus, or practice and experimental drill and exercise; provided, that the utilities department may let water therefrom whenever necessary for testing the condition of the waterworks, for purifying the water, or for repairing such works. The city will provide specialized fill hydrants separate from the fire systems for public works purposes.

(Code 1965, §§ 19-72, 31-37)

Sec. 38-136. Tampering with, obstructing fire plugs, water facilities.

No person shall, without lawful authority, molest or in any manner tamper with any fire plug, valve or stopcock in any of the streets, alleys or avenues of this city nor in any manner obstruct the same, nor shall any person hitch a horse or other animal thereto at any time.

(Code 1965, § 31-38)

Sec. 38-137. City may shut off water from mains.

The city council reserves the right to cause the water to be shut off from the street mains when it deems it necessary for repairing the mains or waterworks, making connections or extensions to the mains or waterworks, or for the purpose of cleaning the mains or waterworks.

(Code 1965, § 31-39)

Sec. 38-138. City not liable for interruption of water supply.

No claim shall be made against the city by reason of the breaking of any pipe or service cock, or for any other interruption of the water supply, or by reason of the breaking of any machinery, reservoir, ditch, flume, dam or any other appliances of and to the waterworks or stoppage for necessary repairs.

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(Code 1965, § 31-40)

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Secs. 38-139--38-160. Reserved.

ARTICLE IV. WATER AND WASTEWATER POLICY

Sec. 38-161. Purpose and construction of article.

This article shall be liberally construed, so as to establish the policy of the city for the construction of waterworks and wastewater systems; to provide for the upgrading of water lines to provide adequate fire protection within the city; to provide for the relocation of water and sewer lines without compensation to their owners when required by the public health, safety and welfare; to protect and preserve the public ways of the city for the users thereof; to protect the people of the city and all the persons using or relying upon the public ways of the city; and to those ends, this article shall be applicable to all public ways and waterworks and wastewater systems and all pipelines connected therewith within the city.

(Code 1965, § 31-61)

Sec. 38-162. Unlawful activity.

It shall be unlawful for any person to make, construct, reconstruct, or alter any opening, excavation, tunnel, sidewalk, curb, gutter, driveway, street or to perform any other work of any kind within the public way which will result in physical alteration thereof unless such person shall have first obtained a permit for the performance of such work, and unless such work shall be performed in conformity with: the terms and provisions of this article; any permits or franchises issued under this article; and the engineering regulations, design standards and construction testing and inspection specifications adopted by the city.

(Code 1965, § 31-62; Ord. No. 2926, 6-5-96)

Sec. 38-163. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City manager means the city manager or his authorized representative.

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District means any metropolitan, water, and/or sanitation district formed under C.R.S. title 32, art. 1, as amended, and any conservancy district formed under C.R.S. title 37, art. 45, as amended.

Permittee means the holder of a valid permit.

Person means any person, firm, partnership, district, corporation, municipal department, company or organization of any kind.

Public way means any public street, way, place, alley, sidewalk, easement, park, square, plaza and any city-owned right-of-way or any other public property owned or controlled by the city and dedicated to public use, including without limitation, easements, dedicated solely for utility purposes.

Service provider means any person other than the city providing potable water or sewer services.

Specifications means the engineering regulations, design standards, construction specifications and construction testing and inspection specifications adopted by the city by resolution.

Utility means waterworks, wastewater systems, pipelines, gas lines, electrical lines, telephone and telegraph lines, transportation systems, cable television and fiber optics systems, and any district or person providing the same for public use.

Work in the public way means, without limitation, construction, reconstruction, repair, alteration of openings, excavation, tunneling, or any other work within or under public ways, including construction, maintenance, and repair of all underground structures such as pipes, conduits, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below the surface of any public way, and installation of overhead poles used for any purpose.

(Code 1965, § 31-63; Ord. No. 2892, 2-21-96)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 38-164. Types of permits to work in the public way.

There shall be required a permit to work in the public way.

(Code 1965, § 31-64, Ord. No. 2926, 6-5-96)

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Sec. 38-165. Application for permit.

A separate written application for the work to be done under a permit shall be submitted to the director on a form available from the city. The application shall be submitted no later than five days prior to the planned start of work in the public way. Permittees may be required to increase this time up to 14 days when the work consists of more than a single spot excavation. The city manager may require submission of plans and specifications. No work shall be started until the city manager has approved the plans and specifications and permit application. The application when approved shall constitute a permit.

(Code 1965, § 31-65; Ord. No. 2892, 2-21-96; Ord. No. 2926, 6-5-96)

Sec. 38-166. Permit, inspection, and testing fees.

(a) *Permit fee.* A fee, as established by resolution of the city council and on file in the city clerk's office, shall be required to obtain each permit.

(b) *Inspection and testing fees.* An hourly fee as established by resolution of the city council and on file in the city clerk's office shall be required for inspection and testing.

(c) *Amendment of fees.* The fees established by this section may be amended by city council resolution.

(d) *Exemption.* A water conservancy district shall not be required to pay any permit fees under this section.

(Code 1965, § 31-66; Ord. No. 2926, 6-5-96)

Sec. 38-167. Performance/warranty guarantee for permits.

(1) Each permittee, before being issued a permit under this article, shall provide the city, at the permittee's expense, a performance warranty/guarantee in accordance with one of the following:

(a) The guarantee may be in the form of cash, a letter of credit or a license and permit bond, acceptable in form and content to the city, in an amount equal to one hundred (100) percent of the city manager's estimate of the cost of restoration. The cost of restoration shall include the removal of defective material, re-compaction of sub-grade and base material and construction of surface improvements. The license and permit bond or letter of credit shall run for a period of time at least one year beyond the

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anticipated acceptance date of any work done under the right of way permit(s). Such guarantee(s) shall be extended if requested by the city manager; or

(b) The guarantee may be in the form of cash, a letter of credit or a license and permit bond, acceptable to the city in form and content, in the principal sum of ten thousand dollars (\$10,000.00) Payable to the city of Grand Junction upon failure of the permittee to restore all of the right of way to a condition comparable to that which existed at any location at which work is performed by the permittee under one or more permits issued to the permittee. The cost of restoration shall include the removal of defective material, re-compaction of sub-grade and base material and construction of surface improvements.

(c) If no written refund request of a cash deposit is received, the deposit shall be carried forward and applied as the performance/warranty guarantee (in whole or in part as the fee may be established by the city council) for the following year.

(d) *Other guarantees.* In lieu of the requirements of (a) and (b) of this section, any public utility regulated by the state public utilities commission, ANY person holding a franchise from the city, a mutual water district, any governmental agency or any metropolitan water and/or sanitation district or conservancy district may provide the city with an annual letter signed by an appropriate officer guaranteeing:

(1) complete performance of the work acceptable to the city; and

(2) the correction of any defect in the work which the city discovers and for which the city gives written notice to the permittee within one year after the date when the city initially accepts the work.

If the director determines that any permittee fails to perform promptly under the conditions of this subsection (d), that permittee shall be required to post a performance/warranty guarantee meeting the requirements of subsection (b) of this section. If the director determines that the permittee then satisfactorily complies with this article for a one-year period while operating under the provisions of subsection (b) of this section, the permittee shall again be eligible to operate with the annual letter guarantee provided in this subsection (d). Notwithstanding anything to the contrary contained in this section, any contractor performing work pursuant to a contract with the city shall adhere to the performance and payment requirements set forth in the contract documents.

(Code 1965, § 31-67; Ord. No. 2892, 2-21-96; Ord. No. 2926, 6-5-96)

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Sec. 38-168. Purpose of performance/warranty guarantee.

(a) Any guarantee made under this article shall serve as security for the performance of work necessary to repair the public way if the permittee fails to make the necessary repairs or to complete the work under the permit.

(b) The permittee, by acceptance of the permit, expressly guarantees complete performance of the work acceptable to the city under this article and guarantees all work done by him for a period of one year after the date of acceptance, and agrees upon demand to maintain and to make all necessary repairs during the one-year period. This guarantee shall include all repairs and actions needed as a result of:

- (1) Defects in workmanship;
- (2) Settling of fills or excavations;
- (3) Any unauthorized deviations from the approved plans and specifications;
- (4) Failure to barricade;
- (5) Failure to clean up during and after performance of the work;
- (6) Any other violation of this article.

(c) The requirement for a performance/warranty guarantee may be waived by the city manager if, in his opinion, the cost of restoration on any single project is less than \$1,000.00 and the work is being performed by a contractor licensed by the city to perform work within the city. The waiver shall be made only on the requirement for a performance/warranty guarantee and does not relieve the contractor of any other requirement(s) stated in section 38-167 or other applicable sections of this article.

(Code 1965, § 31-68)

Sec. 38-169. Inspection and testing fees and procedures.

At the time of permit application and at such OTHER intervals as may be established by the director, all permittees under this article shall pay for the costs of inspection and testing. Costs of inspection and testing shall be in accordance with this article and the schedule of charges adopted by city council resolution.

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(1) *Process.* An initial site inspection may be conducted by the city following submittal of an application. Following issuance of a permit, inspection of the work shall be performed as determined necessary by the city to assure that the work is performed in accordance with and pursuant to the permit and any and all applicable standards and specifications.

(2) *Permitted work.* The permittee shall notify the city immediately after completion of work and acceptance will be made if all work meets city and permit standards.

Approximately 30 days prior to expiration of the one-year guarantee, the city may perform an inspection of the completed work. If the work is intact and otherwise satisfactory, the guarantee shall be returned and released less any amounts needed to complete work not performed by the permittee. A guarantee may be carried forward for future projects. At any time prior to completion of the one-year warranty, the city may notify the permittee of required repairs. The permittee shall complete such repairs within 24 hours or less if required by the director, if the defects are determined by the city to be an imminent danger to public health, safety OR welfare. The permittee shall complete all other repairs within 30 days after notice to the permittee.

(3) *Random Inspections.* The city may perform random inspections of the work described and/or permitted in or by this article and the permittee shall correct its work or procedures if ordered to do so as provided above. Failure to timely correct any work or procedure may result in revocation of the permit.

(4) *Testing.* Material(s) testing shall be performed as indicated on the permit or as otherwise required by the director. All testing shall be performed by a certified, independent testing laboratory at the sole and absolute expense of permittee.

(Code 1965, § 31-69; Ord. No. 2892, 2-21-96; Ord. No. 2926, 6-5-96)

Sec. 38-170. Time for completion.

All work covered by the permit under this article shall be completed by the date stated on the application. Permits shall be void if work has not commenced six months after issuance. Letters of credit or cash deposited as a performance/warranty guarantee for individual permits will be returned after voiding of the permit.

(Code 1965, § 31-70)

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Sec. 38-171. Insurance.

Before a public way permit is issued, the applicant shall submit to the city manager a certificate of insurance in an amount set by city council resolution. The certificate of insurance shall list the city and its officers and employees as additional named insureds. City departments, any public utility regulated by the state public utilities commission, mutual water companies, persons holding a franchise in the city, any governmental agency, and any metropolitan, water and/or sanitation district, or conservancy district shall be relieved of the obligation of submitting a certificate of insurance if the applicant carries insurance equal to an amount set by city council resolution. Upon request, the applicant shall submit a letter certifying such coverage or self-insurance. If a person other than those named above signs the permit, a certificate of insurance shall be provided.

(Code 1965, § 31-71; Ord. No. 2892, 2-21-96)

Sec. 38-172. Traffic control.

(a) No permittee under this article 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 owner of that facility. If a street closing is required, the applicant shall submit a traffic control plan and obtain approval of the city manager. It shall be the responsibility of the permittee to notify and coordinate all work in the public way with police, fire, ambulance, and transit departments.

(b) When necessary for public safety, the permittee under this article shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the city manager.

(c) Unless approved by the city manager, the permittee under this article shall not impede rush hour traffic on arterial or collector streets during the morning or evening rush hours. No construction shall be performed nor shall any traffic lane be closed to traffic during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:00 p.m. without the approval of the city manager. When it is necessary to obstruct traffic during the rush hours, a detour plan shall be submitted to the city manager prior to starting construction. No permit will be issued until the plan is approved by the city manager.

(d) Unless provided otherwise by this section, the city manager shall enforce the provisions of the American Traffic Safety Services Association (2nd ed. 1984) and the Federal Highway Administrator's Manual on Uniform Traffic Control Devices (1988), as they may be amended.

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(Code 1965, § 31-72; Ord. No. 2892, 2-21-96)

Sec. 38-173. Construction standards and responsibility for all public improvements.

The permittee under this article shall be fully responsible for the cost and actual performance of all work in the public way. The permittee shall do all work in conformance with the engineering regulations, construction specifications, and design standards adopted by the city. These standards shall apply to all work in the public way.

(Code 1965, § 31-73)

Sec. 38-174. Protection of paved surfaces from equipment damage.

Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles are not permitted on paved surface unless specific precautions are taken to protect the surface. The permittee will be responsible for any damage caused to existing pavement by the operation of such equipment and, upon order of the city manager, shall repair such surfaces. Failure to do so will result in the use of the permittee's performance/warranty guarantee by the city to repair the damage.

(Code 1965, § 31-74)

Sec. 38-175. Protection of property.

The permittee under this article shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at his own 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 way.

(Code 1965, § 31-75)

Sec. 38-176. Relocation and protection of utilities.

Before any permittee under this article begins excavation in any public way, he shall make inquiries of all irrigation companies, utility companies, districts, municipal departments and all other agencies which might have facilities in the area of work to determine possible conflicts. The permittee shall request field locations of all facilities in the area at least 48 hours in advance of work. The permittee shall support and protect all pipes, conduits, poles, wires, or other apparatus which may be affected by the work from damage during construction or settlement of trenches subsequent to construction.

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(Code 1965, § 31-76)

Sec. 38-177. Noise, dust, debris, hours of work.

Each permittee under this article shall conduct work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the work, the permittee shall take appropriate measures to reduce noise, dust, and unsightly debris. No work shall be done between the hours of 10:00 p.m. and 7:00 a.m., nor at any time on Sunday, except with the written permission of the city manager, or in case of an emergency.

(Code 1965, § 31-77)

Sec. 38-178. Cleanup.

As the work under this article progresses, all public rights-of-way 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.

(Code 1965, § 31-78)

Sec. 38-179. Emergency work.

Any person maintaining facilities in the public way 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 and sewer. The person doing the work shall apply to the city manager for a permit on the first working day after such work has commenced. All emergency work shall require prior telephone notification to the city manager.

(Code 1965, § 31-79; Ord. No. 2892, 2-21-96)

Sec. 38-180. Preservation of monuments.

The permittee under this article 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 points disturbed will be replaced at the permittee's expense.

(Code 1965, § 31-80; Ord. No. 2892, 2-21-96)

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Sec. 38-181. Boring.

Boring or other methods to prevent cutting of the pavement will be required upon request of the city manager. It is the city's intent to require boring only when necessary on arterial and major and minor collector streets with high volumes of traffic and/or serious accident potential.

(Code 1965, § 31-81; Ord. No. 2892, 2-21-96)

Sec. 38-182. Suspension or revocation of permits and stop work orders.

(a) Any permit issued under this article may be revoked or suspended by the city manager, after notice to the permittee for:

- (1) Violation of any condition of the permit or of any provision of this article;
- (2) Violation of any provision of any other ordinance of the city or state law relating to the work;
- (3) Existence of any condition or the doing of any act which does constitute or cause a condition endangering life or serious damage to property.

(b) A suspension or revocation by the city manager of the permit issued under this article, and a stop work order, shall take effect immediately upon notice to the person performing the work in the public way.

(c) A stop work order may be issued by the city manager to any person doing or causing any work to be done in the public way without a permit, or in violation of any provision of this article, or any other ordinance of the city.

(d) Any suspension or revocation of permit or stop work order may be appealed by the permittee under this article to the city manager by filing a written notice of appeal within ten days of the action.

(Code 1965, § 31-82; Ord. No. 2892, 2-21-96)

Sec. 38-183. Appeals procedure.

Any decision rendered by the city manager under this article may be appealed within ten days by the permittee to the utility hearing board in accordance with the rules and procedures established by section 38-69 of this Code.

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(Code 1965, § 31-83; Ord. No. 2892, 2-21-96)

Sec. 38-184. Penalty for violation of article.

If any person, officers and agents of a corporation or district responsible for its actions or inaction, and the partners or a partnership, firm or joint venture, shall violate or cause the violation of any of the provisions of this article, they shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, continues or is permitted and, upon conviction of any such violation, such person, firm or corporation, including but not limited to its partners or officers or agents, shall be punished pursuant to section 1-9.

(Code 1965, § 31-84)

Sec. 38-185. Actions for violation of article.

If any person violates any order of the city manager, or otherwise fails to comply with any provisions of this article or the orders, rules, regulations and permits issued under this article, the city may commence an action in a court of record for appropriate legal and equitable relief. In such action, the city may recover from the defendant reasonable attorney fees, court costs, deposition and discovery costs, expert witness fees and other expenses of investigation, enforcement action, administrative hearings and litigation, if the city prevails in the action or settles at the request of the defendant.

(Code 1965, § 31-85; Ord. No. 2892, 2-21-96)

Sec. 38-186. Relocation of water and sewer facilities--Projects coordination.

All providers of water and sewer services and the city shall, as far in advance as possible when working in public streets and drainageways, coordinate through the city manager all projects, each with the other, to minimize current and future anticipated conflicts between public ways and waterworks and wastewater facilities.

(Code 1965, § 31-86; Ord. No. 2892, 2-21-96)

Sec. 38-187. Same--Future alteration minimization.

Project planning and engineering conducted by the city and providers of water and sewer services shall consider present and future plans in order to avoid or minimize future alterations in such improvements and facility locations. In cooperation with the provider of

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water and sewer service, the city manager may indicate general location restrictions that would avoid future conflicts.

(Code 1965, § 31-87; Ord. No. 2892, 2-21-96)

Sec. 38-188. Same--Relocation cost liabilities.

When waterworks, wastewater systems, pipelines connected therewith, and utilities require relocation due to improvement, changes, or alteration of streets or drainageways, redevelopment of urban areas, construction of mass transit systems, installation of city-owned waterworks and sewer protection of the public health, safety and welfare, all costs associated with waterworks and wastewater systems relocation and restoration to the equivalent of their preimprovement condition will be included and considered as part of the total public way improvement cost, and shall be paid by the service provider.

(Code 1965, § 31-88)

Sec. 38-189. Same--Adjustment cost liabilities.

The costs of adjusting manholes and valve boxes within the public right-of-way, when such work is necessitated by pavement repair or street resurfacing will be borne by the city's street division. The costs of adjusting manholes and valve boxes not within the public right-of-way, when such work is requested by the property owner or is necessitated by repair, reconstruction or re-design by the property owner or required by the service provider, shall be borne by the property owner. All adjustments, repairs and reconstruction of manholes and valve boxes shall be performed in accordance with city standards. The city shall provide billings for such work.

(Code 1965, § 31-89)

Sec. 38-190. Same--Permit application review.

To the extent that work in the public way is regulated by other city ordinances which require that such work be done under a permit from the city, the city manager shall have the prerogative to review such permit applications for work in the public way for the purpose of requiring relocation of the proposed facility in the public way, and compliance with construction standards of the city for work in the public way.

(Code 1965, § 31-90)

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Sec. 38-191. Same--Work resulting from permit noncompliance cost liability.

Should work be performed within the public right-of-way without coordinating the project with the city or work be performed without observing proper permit procedures and/or conditions any and all general penalties provided for in this Code shall apply. In addition, the person or entity performing the work shall be liable for the cost of any relocations, reconstruction or repair which would not have been required if coordination had occurred, including coordination attendant to securing a permit, or had permit conditions been observed. Penalties provided for in this section are not exclusive. The city expressly reserves the right to file an action in law or equity and/or otherwise utilize any and all remedies provided by law.

(Code 1965, § 31-91)

Sec. 38-192. Same--Permit grant or denial.

The city manager shall timely respond to permit applications, approving or denying the application as submitted or conditioned upon specific requirements.

(Code 1965, § 31-92)

Sec. 38-193. Same--City council determination.

The city council may require the relocation, without compensation, of any waterworks, sewer system or pipelines connected therewith by ordinance declaring that the public health, safety and welfare requires such relocation.

(Code 1965, § 31-93)

Sec. 38-194. Development; upgrades of existing water lines and facilities.

(a) To ensure fire protection to users, owners, and the City, for new construction, replacements, and development which occurs after the effective date hereof, all development and water service providers in the City shall meet the following minimum standards:

- (1) Water shall be supplied at a residual hydrostatic pressure of not less than twenty pounds per square inch (20 psi), nor more than one hundred twenty five pounds per square inch (125 psi).
- (2) Hydrants shall be placed in the public right-of-way and shall not be spaced more than five hundred feet (500') from each other. In no case shall there

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be more than two hundred fifty feet (250') from any hydrant to any property frontage.

- (3) Hydrants shall provide at least five hundred (500) gallons per minute at twenty pounds per square inch (20 psi) residual pressure.
 - (4) Notwithstanding any other provision, hydrants shall provide at least the minimum amount of water required to protect the properties within the respective area in accordance with the 1980 Fire Suppression Rating Schedule published by the Insurance Services Office, 160 Water Street, New York, New York ("1980 ISO Guide").
 - (5) Hydrants shall be directly supplied by a line at least six inches (6") in diameter. A line or pipe larger than as described herein may be required based on standards adopted in this section, regulations promulgated pursuant to this section or in accordance with law otherwise applicable to water service providers. Any decision of the City manager, the Fire Chief or their designee which requires a line of greater than six inches (6") in diameter may be appealed within ten days to the utility hearing board in accordance with the rules and procedures established by Section 38-68. At an appeal hearing convened under that section, the appellant shall have the burden of proof by clear and convincing evidence.
- (b) To ensure adequate fire protection to users, owners, and the City, all existing water facilities, hydrants and lines in the City, existing as of the effective date hereof, shall also meet the minimum standards set forth in subsections (1) through (4) immediately above.
 - (c) The City manager may promulgate and enforce regulations which are more restrictive than the provisions of this section if the City manager finds such regulations to be necessary to protect the health, safety and general welfare of the citizens of the City.
 - (d) To the extent permitted by law, the provisions of this section shall apply to areas outside of existing City limits. To the extent that applicable law does not permit such extraterritorial application, the provisions of this section shall be limited to the limits of the City.
 - (e) The provisions of this section shall supersede any inconsistent provisions of an adopted fire code. Section 18-58 is not otherwise amended.

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(f) In order to bring existing water facilities, hydrants and lines that do not currently meet subsections (1) through (4) above into compliance with those sections, the following shall apply:

(1) When water service providers or water districts upgrade, repair or replace existing water transmission or water distribution lines or facilities, such provider or district shall, at that time, upgrade the existing facilities to meet the minimum line size standards outlined in paragraph (a), sub-paragraphs (1) through (5), above.

(2) When water service providers or water districts upgrade, repair or replace existing fire hydrants or facilities, such provider or district shall also, at that time, upgrade the existing hydrant and facilities to meet the standards in paragraph (a), sub-paragraphs (2) through (4), hereof.

(3) With respect to water line, hydrant and facilities which do not meet the standards outlined in paragraph (b) above, at least once each five years, each water provider and district shall provide written notice to each affected property owner and the City of such deficiency. Such water provider and district shall obtain the prior approval of the City of the form and content of such notice. Such water provider and district shall provide the Manager with a detailed list of the water, hydrants and facilities which do not meet the standards hereof, along with a list of the property owners to which the written notice was provided.

(4) When a petition, signed by more than fifty percent (50%) of the property owners in an area supplied by or adjacent to water lines and/or hydrants which do not meet the standards outlined in paragraph (b) above, is submitted to a water provider or water district requesting the water provider or water district to upgrade existing facilities to meet the minimum standards in paragraph (a), such water provider or water district shall complete the requested improvements within three (3) years of the delivery of such petition. The City may, pursuant to an agreement then negotiated with the water provider or district, agree to pay a portion of the costs of such improvements.

(Code 1965, § 31-94; Ord. No. 2627, 1-6-93; Ord. No. 2942, 9-4-96)

Sec. 38-195. Same--City council determination.

To ensure adequate fire protection to users, owners and the city, the city council shall be empowered to declare by ordinance the necessity that water lines shall be upgraded for the

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health, safety and welfare of the parties to meet the requirements of section 38-194 and the specifications of the city. The cost of upgrading water lines to meet the requirements of this section shall be the obligation of the service provider.

(Code 1965, § 31-95)

Sec. 38-196. Franchises--Generally.

No franchise giving or granting to any person the right or privilege to erect, construct, operate or maintain or use any waterworks, wastewater system or pipelines connected therewith to provide water or wastewater service to any user or consumer within the city; or to use the public ways of the city for any purpose; or to interconnect any building, structure or facility of any kind to any waterworks, wastewater system or pipelines connected therewith other than to the waterworks and wastewater systems of the city shall be given or granted unless such franchise shall be given or granted by ordinance. No such ordinance shall be considered, except for waterworks and pipelines connected therewith, until after the question of the granting of any franchise necessary for such purpose and required by law shall be submitted to and approved by a majority of the qualified, taxpaying electors of the city at an election held for such purpose at the expense of the applicant for such franchise.

(Code 1965, § 31-96)

Cross reference(s)--Franchises, app. B.

Sec. 38-197. Same--Unlawful acts.

Unless a franchise has been given or granted under the provisions of section 38-196, it shall be unlawful for any person to erect, construct, operate or maintain or use any waterworks or wastewater system or pipelines connected therewith within the city in order to provide water or wastewater service to any user or consumer within the city; or to use the public ways of the city for such purposes; or to interconnect any building, structure or facility of any kind to any waterworks or wastewater system or pipelines connected therewith other than to the waterworks and wastewater system of the city.

(Code 1965, § 31-97)

Sec. 38-198. Same--Exempted service providers.

Service providers who are providing service pursuant to agreements with the city shall not be subject to the provisions of sections 38-196 and 38-197.

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(Code 1965, § 31-98)

Sec. 38-199. Same--Condemnation and appropriation of public and private waterworks and wastewater systems.

To provide municipal water and sewer services to its users and residents, the city shall have the right and power to condemn and appropriate as much public and private property as is necessary for the construction and operation of waterworks, wastewater systems and pipelines connected therewith in such manner as may be prescribed by law; and to condemn and appropriate any publicly or privately owned waterworks, wastewater systems and pipelines connected therewith not owned by the city in such manner as may be prescribed by law for the condemnation of real estate.

(Code 1965, § 31-99)

Sec. 38-200. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this article or the Code provisions reenacted hereby should be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this article or Code provisions, which shall remain in full force and effect.

(Code 1965, § 31-100)

Chapter 39

RESERVED

Chapter 40 VEGETATION

Article I. In General

Secs. 40-1–40-25. Reserved.

Article II. Forestry Board

Sec. 40-26. Created; composition; terms; officers.

Sec. 40-27. Meetings; records; rules of procedure.

Sec. 40-28. Powers and duties.

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Article III. Trees

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Sec. 40-62. Control of Dutch elm disease.

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ARTICLE I. IN GENERAL

Secs. 40-1--40-25. Reserved.

ARTICLE II. FORESTRY BOARD*

*Cross reference(s)--Officers and employees, § 2-51 et seq.

Sec. 40-26. Created; composition; terms; officers.

(a) There is hereby created a board to be known as the forestry board. The board shall be composed of five members who shall be appointed by the city council. The board shall include three persons selected from the following categories: a professional arborist, a nursery person, a landscape designer, a pesticide applicator and a representative of the state forest service. The other two members of the board may be lay persons. Terms of service shall be three years. A chairperson and a vice-chairperson shall be elected each year and vacancies owing to death or resignation shall be filled by appointment for the unexpired term.

(b) The city manager or his designated representative shall be the secretary of the forestry board.

(Code 1965, § 20-68)

Sec. 40-27. Meetings; records; rules of procedure.

The members of the forestry board shall meet as required, the time and place thereof to be determined by such board. Minutes shall be maintained of all meetings, and the board shall adopt rules for its own organization and procedures.

(Code 1965, § 20-69)

Sec. 40-28. Powers and duties.

The forestry board shall act as a reviewing body for the purpose of determining professional qualifications and competence to engage in the business of cutting, trimming, pruning, spraying or removing trees by giving written, oral and practical license examinations. The board shall recommend to the city council adoption of rules and regulations pertaining to the tree service business in the city, and it may hear complaints from any citizen of the city, including any of its own members, relating to the tree service business. Upon receipt of a complaint and after informing the licensee of the complaint and giving the licensee a chance to

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be heard, the board may suspend a tree service license for up to 60 days or may revoke such license.

(Code 1965, § 20-70)

Sec. 40-29. Appeals.

(a) Any person aggrieved by any decision or order of the city manager may appeal such decision or order to the forestry board. Such appeal must be perfected within ten days from the date of the order. It shall be lodged in writing with the secretary of such board, and shall state the grounds for the appeal. Such appeal shall operate as a stay of the order unless the city manager certifies that a stay would cause imminent hazard to landscape plantings within the city.

(b) Any person aggrieved by any decision or order of the forestry board may appeal such decision or order to the city council. Such appeal shall be lodged with the city clerk within ten days from the date of the order or decision and shall be in writing stating grounds of appeal. The city council shall hear such appeal at any subsequent meeting and may modify, reverse or affirm such decision or order of the forestry board.

(Code 1965, § 20-71)

Secs. 40-30--40-50. Reserved.

ARTICLE III. TREES

Sec. 40-51. Trees in right-of-way.

The department of parks and recreation is hereby authorized to furnish the necessary personnel and services for the planting of trees or replacing damaged trees in the right-of-way of the city.

- (1) As a part of the service in planting of the trees as aforesaid, the department shall give advice and counsel regarding the tree varieties to be selected, the physical soil conditions involved, fertilizers needed, protective devices suggested and other information concerning the selection of the tree sizes and varieties and the planting of trees. Such advice and information regarding the selection and care of trees shall be available to any person in the city so requesting such information.
- (2) The planting and other services rendered by the department shall be upon the specific condition that all watering and care, except for spraying and trimming

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of the trees after the planting, shall be the responsibility of the person requesting the planting, and the services of the department personnel will only be for the purpose of planting the trees. No guarantee or assurance whatsoever shall be made or assumed regarding the growth or survival of the trees so planted.

- (3) The planting of trees and services by the department for such planting shall be available only during the usual spring months of each year, provided, however, that subject to the availability of personnel, plantings may be had at other times of the year upon request therefor.

(Code 1965, § 20-80)

Sec. 40-52. List of trees and plantings in public ways.

Trees, shrubs, vines and evergreens planted in public ways or parkings shall be in conformity with an official list approved by the parks and recreation department forestry board. The parks and recreation forestry board shall consider in preparing an official list the growth habits, mature size, disease resistance or other factors which minimize maintenance costs and nuisances and conform with other provisions of the ordinances of the city. Plantings not in conformity with the approved list shall be removed by the owner or agent at the request of the city manager.

(Code 1965, § 20-81(b))

Sec. 40-53. Inspection of trees.

The city manager or designated representative is hereby authorized to inspect trees, shrubs, plants, vines, logs or branches and every other type of plant material on all private and public property to ascertain the condition of such plantings in relation to disease and insects detrimental to the growth, health and life of such plantings, to discover incidence of disease, and take appropriate action to preserve and restore the growth, health and life of the plantings by spraying, removing, pruning or other remedial action. Further, the director or designated representative is hereby authorized to inspect trees, shrubs and plantings on private property for the abovementioned conditions. If such conditions are found to exist and, in the professional judgment of the city manager, such conditions are or will become injurious to other private or public plantings, the owner of the property shall be given written notice to spray, remove, prune or take any other necessary remedial action in regard to the infested plantings within a specified period of time.

(Code 1965, § 20-83(a))

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Sec. 40-54. Planting of approved species.

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It shall be the responsibility of the city manager to prepare or cause to be prepared a list of approved trees for planting in public ways and parkings along the streets and highways, and the city manager shall be available for consultation with property owners regarding such plantings.

(Code 1965, § 20-84)

Sec. 40-55. Duty to replace trees.

If a tree is removed by contractors pursuant to any work done in a city right-of-way, such tree shall be replaced by the contractor responsible for such removal. The ratio of replacement shall be as follows: For every six inches of trunk diameter removed measured four feet aboveground, one 2 1/2-inch balled and burlapped, or equivalent method, tree shall be used in replacement thereof up to a maximum of five inches in diameter, the species of which shall be determined by the city manager.

(Code 1965, § 20-85)

Sec. 40-56. Duty to trim trees.

The owner of any house, building or premises shall not permit the branches of any shade, ornamental or other tree to project over any street, avenue or sidewalk in front of or alongside of such building or premises lower than eight feet from the surface of the sidewalk and 14 feet over the surface of the alley or street. In estimating such heights, personnel of the department of parks and recreation shall take into consideration the variation of height due to normal rain, snow, sleet and foliage conditions.

(Code 1965, § 20-86)

Sec. 40-57. Removal of dead trees.

It shall be the duty of the city manager to require the owner or agent of any premises whereon are situated any dead trees or overhanging boughs dangerous to life, limb or property to remove the same within a reasonable time. If the owner or agent fails to follow the requirements of a notice to remove same, then it shall be the duty of the city manager to remove or destroy the dead trees or boughs or otherwise correct the offending condition at the expense of the owner or agent, and if the owner or agent fails to pay the expenses, the city shall recover its cost by suit or assessment, as is provided in section 16-33.

(Code 1965, § 20-87)

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Sec. 40-58. Maintenance of street parkings.

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(a) *Definition.* For the purpose of this section, a ``street parking" is defined as that area between the property line and the curblin.

(b) *Duty of owner to maintain.* It shall be the duty and obligation of every person in the city to keep and care for in the manner provided in this section the street parking fronting or adjoining the premises owned by such person. Such street parking shall be maintained in an aesthetically pleasing manner in either drought tolerant plant material, grass or other plantings, stone aggregate, decorative rocks, bark mulch, or like materials or combinations thereof, with or without plantings. Vegetation shall be watered and fertilized to provide optimum growing conditions.

(c) *Trees.* Any trees planted shall be on the approved list of trees as established by the park and recreation department. The city shall provide maintenance (spraying, trimming and removal) of trees only. Prior to any maintenance, the city shall attempt to notify any contiguous property owner but the city shall not be held liable for failure to give notice.

(d) *Hard surfacing.* In unusual situations where drainage or traffic problems exist, or in commercial zones or premises where public buildings or uses are involved, hard surfacing such as concrete, terrazzo, brick, flagstone, asphalt or other impervious substances may be authorized by written permit at the discretion of the city manager. If hard-surfacing materials are authorized in conjunction with tree plantings, proper tree wells as determined by the city manager shall be constructed by the owner.

(e) *Minimum open area around trees.* No person shall deposit or maintain, upon the parking strip in any street, stone, cement debris or other substance which impedes the free entrance of water and air to the roots of any tree in such public highway or other public place without leaving an open space or ground outside the trunk of such tree, in area not less than six square feet for a tree three inches in diameter and for every two inches of increase of such diameter there must be an increase of at least two square feet of open ground.

(f) *Compliance with other provisions.* Any shrubs or other plantings and the use of other materials shall comply with regulations concerning traffic safety and other provisions of this Code.

(g) *Appeal.* Any person aggrieved by the decision of the city manager may appeal such decision to the forestry board, and such board may affirm, reverse or modify the decision of the city manager.

(Code 1965, § 20-88)

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Sec. 40-59. Tree pruning for building movers.

(a) If, in the process of moving any building or other object along the streets, alleys or

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public ways of the city, it is necessary to trim any trees, the trimming shall be done by direction of the city manager and the cost of labor, material and equipment shall be paid by the person requiring the trimming. Branches over three inches in diameter may not be removed unless in the opinion of the city manager removal of the limb will not impair the aesthetic value or well-being of the tree. If, in the process of moving any building, machine or other object, any tree, shrub or other planting is damaged, destroyed or removed, the replacement or repair of such shall be borne by the party moving or causing to be moved such building or other object. If such work has been performed by the city, payment thereof must be made within ten days after billing has been made. The city manager may, in his discretion, require a bond, deposit or other security in advance of such moving to indemnify the payment of the aforesaid expenses.

(b) If, in the process of moving any building, machinery or other object along the streets, alleys or public ways of the city, the city manager determines that it is necessary to remove any branch over three inches in diameter or any major portion of any tree, or such branch or portion of a tree becomes broken or damaged and must be removed as a result of the moving, the person doing or requesting the moving shall pay to the city such amounts as determined by the city manager as compensation for the loss of each such branch removed plus the regular service charges for all labor and materials used in connection with the removal of the branches. All measurements to determine the size of the branches shall be made by the city. When, in the process of moving any building or other object, it is necessary to remove a tree from the streets, alleys or other public ways of the city, the value of the tree so removed shall be paid for by the person requiring its removal and the moneys received shall be used to replace as nearly as possible a planting of comparable size and value. The determination of the value of the tree shall be made by the city manager, and he shall consider in arriving at the value current nursery estimates including the age, variety and condition of the tree removed.

(Code 1965, § 20-89)

Sec. 40-60. Use of equipment.

It shall be the duty of any person using tools on trees or shrubs to properly disinfect such tools immediately after any work done on any individual tree or shrub. Failure to so disinfect such tools shall be considered to be a misdemeanor, and any person convicted of such a violation shall be punished in accordance with section 1-9.

(Code 1965, § 20-90)

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Sec. 40-61. License required.

(a) No person shall engage in the business of cutting, pruning, removing, trimming or

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spraying of trees in the city without first obtaining from the forestry board a license each year authorizing such person to engage in such business.

(b) The license required by this section shall be issued in the manner and form and subject to the conditions and regulations prescribed by article 2 of chapter 10 of this Code.

(c) The applicant receiving a license under this section shall pay an annual license fee as established by resolution of the city council and on file in the city clerk's office beginning January 1 of each year.

(d) Every license issued under this section shall show on its face the types, classification or kinds of services for which the licensee is licensed and authorized to perform. All motor vehicles and other major equipment of any person licensed under this section used in conducting the licensed business shall be clearly identified with the name of the licensee and the license number.

(e) No license shall be issued under this section until the applicant therefor has presented to the city manager a satisfactory public liability insurance policy covering all proposed operations of the applicant in such business in the city in the sum of at least \$150,000.00 for the injury or death of any one person; \$600,000.00 for the injury or death of any number of persons in any one accident; and \$75,000.00 for damage to property. Such policy may allow the first \$100.00 of liability to be deductible. Such insurance policy must be prepared for at least the term of the license and shall require at least 30 days advance notice to the city before cancellation. In the event of the cancellation or termination of any such required insurance policy during the licensed term, the license shall be terminated and the holder thereof shall surrender such license to the city manager unless the licensee presents to the city manager a substitute insurance policy meeting the requirements of this section.

(Code 1965, § 20-91)

Cross reference(s)--Businesses, ch. 10.

Sec. 40-62. Control of Dutch elm disease.

(a) It shall be unlawful to possess or transport into or within the city all or any part of trees infected with the ceratocystis ulmi fungus; provided, however, that the wood, branches and roots of such trees may be transported to a safe place for burial under a minimum of two feet of earth within ten days following discovery of such infection, or to such sites and under such conditions as are approved by the city manager for processing and subsequent elimination of the disease hazard.

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(b) Trees or parts thereof of the genus ulmus in a dead or dying condition that may serve as a breeding place for the smaller European elm bark beetle, scolytus multistratus and the native bark beetle, hylurgopinus rufipes, are hereby declared to be a threat and a hazard to all elm trees in the city. Transportation into or within the city or possession within the city of such trees or parts

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thereof, except for immediate burial or processing in a manner approved by the city manager, shall be unlawful unless the bark has been completely removed. If such trees or parts thereof are found to exist, the owner of the property shall be given a written order by the city manager to take necessary remedial action including, if necessary, the removal of such trees or parts thereof within a specified period of time.

(Code 1965, § 20-92)

Sec. 40-63. Appeals from order of city manager.

Any person aggrieved by any decision or order of the city manager regarding the condition of trees, shrubs and plantings on private property, may appeal such decision or order to the forestry board. If the decision of the forestry board is not favorable to the appellant, an appeal of the decision of the forestry board may be made to the city council. Every appeal must be perfected within ten days from the date of the order appealed from. It shall be lodged with the secretary of the forestry board and shall state the grounds for appeal. Such appeal shall operate as a stay of the order unless the city manager shall certify that a stay would cause imminent hazard to landscape plantings within the city.

(Code 1965, § 20-93)

Sec. 40-64. Failure to comply with notice; payment of costs.

(a) It shall be unlawful for the owner, agent or occupant of the premises notified that conditions exist in the trees, shrubs and plantings on their property that will or are injurious to other private or public plantings to fail to comply with the written notice provided in section 40-53.

(b) Should the owner, agent or occupant of premises fail or refuse to comply with the terms of the written notice sent by the city manager, the city manager, his employees or agents may enter upon the premises and cause to be removed, treated or otherwise cared for such diseased matter in order to eradicate or control the same, or to prevent the spreading of any threatening communicable disease or insect infestation.

(c) Payment of costs for failure to comply shall be the same as set out in section 40-65.

(Code 1965, § 20-94)

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Sec. 40-65. Statement of costs; notice of hearing.

(a) Upon the completion of the work done pursuant to this article and determination of the total cost thereof, the city manager shall prepare an itemized statement showing the cost, including

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an additional fee as established by resolution of the city council and on file in the city clerk's office for the cost of collection and other incidentals and shall serve a copy of such statement upon the owner, agent or occupant of the real property upon which the work was performed, together with a notice to such owner, agent or occupant therein specifying:

- (1) The whole cost of the work done.
- (2) That any complaints or objections which may be made in writing by the owner or agent to the city council must be made within ten days from the date of such notice, and that such will be heard and determined by the city council before the passage of any ordinance assessing the cost of such work.
- (3) The date and place for hearing of such complaints or objections.

(b) At the time and place specified in the notice provided by subsection (a) of this section, or at some adjourned time, the council shall hear and determine all complaints and objections and may thereupon make such modifications and changes as may seem equitable and just. The council shall thereupon, by ordinance, assess the cost of such work, and the passage of such ordinance shall be prima facie evidence that such assessment has been lawfully levied. More than one assessment against the same or different lots or tracts of land may be included in one ordinance.

(c) Any assessment made under the terms of this section shall be a perpetual lien against the land and shall have priority over all other liens excepting general tax liens, and shall be collected in one installment in the same manner as are other special assessments with interest at one percent from the date of passage of the assessing ordinance.

(Code 1965, §§ 20-95--20-97)

Sec. 40-66. Service and notice of assessment.

Service of any notice or assessment statement required in section 40-65 shall be made as follows:

- (1) Personally, by handing to and leaving with the owner or agent or any member of his household over the age of 18 years, a copy of such directive, statement or notice.

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- (2) Proof of service shall be made by certificate of service of the city manager or any city employee actually making such service or by the affidavit of the person serving the same, if not a city employee.

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- (3) By certified mail, by mailing such directive, statement or notice, postage prepaid, return receipt requested, to be signed by addressee only, addressed to the last known address of the owner or agent. Service by certified mail shall be complete upon the date of receipt by the addressee. Proof of service shall be made by certificate of mailing of the city manager, together with signed receipt of the addressee.
- (4) If service cannot be made personally or by certified mail, such directive, statement or notice shall be served by publishing the same for one publication in the official city newspaper. Service shall be complete five days after the date of publication. Proof of service shall be made by the certificate of mailing of the city manager, together with the publisher's affidavit of publication.

(Code 1965, § 20-98)

APPENDIX A ORDINANCES ADOPTED BY REFERENDUM OF THE PEOPLE*

***Editor's note**--Printed herein is a list of the ordinances adopted by referendum of the people. The people's ordinances codified in the Code of Ordinances are listed in the People's Ordinances Comparative Table. Copies of all other people's ordinances are available from the city clerk's office.

Charter reference(s)--Direct legislation by the people, §§ 133--143.

People's Ordinance Number	Description
1	Ratifying condemnation proceedings for Kannah Creek flowline.
2	Accepting Palmer Park.
3	Concerning irrigation ditches and canals.
4	Concerning the division of block 84 between the City of Grand Junction and County of Mesa.
5	Concerning sale of lot 16, block 125, and purchasing land for fire engineer house and city jail.
6	Electric franchise with Grand Junction Gas & Electric Manufacturing Company.
7	Concerning salaries of commissioners.
8	Providing for purchase of old fairgrounds.

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9	Providing for exchange of block 84 and block 95.
10	Providing for purchase of Orchard Mesa Cemetery.
11	Excluding Grover Packing Co. from city and vacating streets and alleys in Benton Cannon's Subdivision.
12	Vacating alley in block 9 of Richard D. Mobley's Subdivision and in Bower's Subdivision of lot 3 of Richard D. Mobley's First Subdivision.
13	Accepting Moyer Pool.
14	Providing for sale of lots.
15	Providing for purchase of land for Lincoln Park.
16	Conveying Washington Park to School District No. 1.
17	Conveying lot 32, block 47, to School District No. 1.
18	Purchase of junior college site.
19	Vacating portion of South Seventh Street.
20	Electric street light contract.
21	Conveying land to American Legion for cemetery purposes.
22	Fulton petroleum franchise.

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23	Providing for exchange of two tracts of land for airport.
24	Electric franchise with Public Service Co. of Colorado.
25	Electric and gas franchise with Fulton Petroleum Co.
26	Municipal street lighting contract with Public Service Co.
27	Providing for one mill ad valorem tax for special public improvements and for making up deficits.
28	Providing for developing airport.
29	Public Service Co. franchise.
30	Dog leash ordinance.
31	Requiring publication of receipts and expenditures; requiring publication of semiannual financial statement of said city and providing a penalty for violation thereof.
32	Public Service Co. franchise.
33	City shall not order the construction of any improvement where assessments are to be levied against property owners as provided under C.R.S. § 31-25-503 except after approval by a majority of the property owners to be assessed within the improvement district to be created.
34	Imposing a lodgers' tax for the city; setting forth purposes, definitions; providing for exemptions

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	and enforcement procedures; establishing administrative procedures; and providing for an effective date.
35	Public Service Company of Colorado, gas and electric franchise and Grand Valley Rural Power Lines, Inc., franchise.

APPENDIX B FRANCHISES*

***Charter reference(s)**--Franchises and public utilities, art. XIV; procedures for adoption of franchises, § 105 et seq.

Cross reference(s)--Franchise for operating water and wastewater systems in the city, § 38-196.

Chapter I. Public Service Company of Colorado

Article 1. Definitions

Sec. 1.0. [Definitions.]

Article 2. Grant of Franchise

Sec. 2.1. Grant of franchise.

Sec. 2.2. Street lighting service.

Sec. 2.3. Term of franchise.

Article 3. Franchise Fee

Sec. 3.1. Franchise fee.

Sec. 3.2. Payment schedule.

Sec. 3.3. Change of franchise fee and other franchise terms.

Sec. 3.4. Franchise fee payment in lieu of other fees.

Sec. 3.5. Contract obligation.

Article 4. Supply, Construction and Design

Sec. 4.1. Supply of gas and electricity.

Sec. 4.2. Restoration of service.

Sec. 4.3. Obligations regarding company facilities.

Sec. 4.4. Excavation and construction.

Sec. 4.5. Relocation of company facilities.

Sec. 4.6. Service to new areas.

Sec. 4.7. City not required to advance funds.

Sec. 4.8. Technological improvements.

Article 5. Compliance

Sec. 5.1. City regulation.

Sec. 5.2. Compliance with city requirements.

Sec. 5.3. City review of construction and design.

Sec. 5.4. Compliance with regulations.

Sec. 5.5. Compliance with air and water pollution laws.

Sec. 5.6. Inspection.

Article 6. Public Utilities Commission

Sec. 6.1. Public utilities commission regulation.

Article 7. Reports to City

Sec. 7.1. Reports on company operations.

Sec. 7.2. Copies of tariffs.

Sec. 7.3. Bills.

Article 8. City Use of Company Facilities

Sec. 8.1. City use.

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Sec. 8.2. Underground conduit.

Sec. 8.3. Annexation to the city.

Sec. 8.4. Right of first purchase.

Article 9. Indemnification of the City

Sec. 9.1. City held harmless.

Sec. 9.2. Payment of expenses incurred by city in relation to ordinance.

Sec. 9.3. Financial responsibility.

Sec. 9.4. Breach of contract.

Article 10. Underground Construction and Overhead Conversion

Sec. 10.1. Underground electrical distribution lines in new areas.

Sec. 10.2. Overhead conversion at expense of company.

Sec. 10.3. Review of undergrounding program.

Sec. 10.4. Cooperation with other utilities.

Article 11. Transfer of Franchise

Sec. 11.1. Consent of city required.

Sec. 11.2. Transfer fee.

Article 12. Purchase or Condemnation

Sec. 12.1. City's right to purchase or condemn.

Sec. 12.2. Continued cooperation by company.

Article 13. Removal of Company Facilities at End of Franchise

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Sec. 13.1. Limitations on company removal.

Article 14. Transportation of Gas

Sec. 14.1. Transportation of gas.

Article 15. Small Power Production and Cogeneration

Sec. 15.1. Company to purchase.

Article 16. Forfeiture

Sec. 16.1. Forfeiture.

Sec. 16.2. Judicial review.

Sec. 16.3. Other legal remedies.

Sec. 16.4. Continued obligations.

Article 17. Amendments

Sec. 17.1. Amendments to franchise.

Article 18. Miscellaneous

Sec. 18.1. Successors and assigns.

Sec. 18.2. Third parties.

Sec. 18.3. Representatives.

Sec. 18.4. Severability.

Sec. 18.5. Entire agreement.

Article 19. Approval

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Sec. 19.1. Council approval.

Sec. 19.2. Company approval.

Sec. 19.3. Voter's approval.

Sec. 19.4. Termination of prior franchise.

Chapter II. Grand Valley Rural Power Lines, Inc.

Article 1. Definitions

Sec. 1.0. [Definitions.]

Article 2. Grant of Franchise

Sec. 2.1. Grant of franchise.

Sec. 2.2. Street lighting service.

Sec. 2.3. Term of franchise.

Article 3. Franchise Fee

Sec. 3.1. Franchise fee.

Sec. 3.2. Payment schedule.

Sec. 3.3. Change of franchise fee and other franchise terms.

Sec. 3.4. Franchise fee payment in lieu of other fees.

Sec. 3.5. Contract obligation.

Article 4. Supply, Construction and Design

Sec. 4.1. Supply of electricity.

Sec. 4.2. Restoration of service.

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Sec. 4.3. Obligations regarding company facilities.

Sec. 4.4. Excavation and construction.

Sec. 4.5. Relocation of company facilities.

Sec. 4.6. Service to new areas.

Sec. 4.7. City not required to advance funds.

Sec. 4.8. Technological improvements.

Article 5. Compliance

Sec. 5.1. City regulation.

Sec. 5.2. Compliance with city requirements.

Sec. 5.3. City review of construction and design.

Sec. 5.4. Compliance with REA and PUC regulations.

Sec. 5.5. Compliance with air and water pollution laws.

Sec. 5.6. Inspection.

Article 6. Public Utilities Commission

Sec. 6.1. Public utilities commission and REA regulations.

Article 7. Reports to City

Sec. 7.1. Reports on company operations.

Sec. 7.2. Copies of tariffs.

Sec. 7.3. Bills.

Article 8. City Use of Company Facilities

Sec. 8.1. City use.

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Sec. 12.1. City's right to purchase or condemn.

Sec. 12.2. Continued cooperation by company.

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Article 13. Removal of Company Facilities at End of Franchise

Sec. 13.1. Limitations on company removal.

Article 14. [Reserved]

Article 15. Small Power Production and Cogeneration

Sec. 15.1. Company to purchase.

Article 16. Forfeiture

Sec. 16.1. Forfeiture.

Sec. 16.2. Judicial review.

Sec. 16.3. Other legal remedies.

Sec. 16.4. Continued obligations.

Article 17. Amendments

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Sec. 18.1. Successors and assigns.

Sec. 18.2. Third parties.

Sec. 18.3. Representatives.

Sec. 18.4. Severability.

Sec. 18.5. Entire agreement.

Sec. 18.6. Attorneys' fees.

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Article 19. Approval

Sec. 19.1. Council approval.

Sec. 19.2. Company approval.

Sec. 19.3. Voter's approval.

CHAPTER III. WENTRONICS, INC. (1966); T.C.I. AS ASSIGNEE

Sec. 1.0. Revokable Permit dated March 16, 1966. [Agreement]

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Sec. 1.0

CHAPTER I. PUBLIC SERVICE COMPANY OF COLORADO*

***Editor's note**--Printed herein is a franchise granted to Public Service Company of Colorado, as set out in People's Ordinance No. 35 which was adopted on November 4, 1992, and approved by the registered electors of the City on December 8, 1992. Amendments to the franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

PEOPLE'S ORDINANCE NO. 35

An Ordinance Granting a Franchise By the City of Grand Junction To Public Service Company of Colorado, Its Successors and Assigns, the Right To Furnish, Sell and Distribute Gas and Electricity To the City and To All Persons, Businesses, and Industry Within the City and the Right To Acquire, Construct, Install, Locate, Maintain, Operate and Extend Into, Within and Through Said City All Facilities Reasonably Necessary To Furnish, Sell and Distribute Gas and Electricity Within the City and the Right To Make Reasonable Use of All Streets and Other Public Places and Public Easements As Herein Defined, As May Be Necessary; and Fixing the Terms and Conditions Thereof.

Be It Ordained By the City Council of the City of Grand Junction, Colorado:

ARTICLE 1. DEFINITIONS

Sec. 1.0. [Definitions.]

For the purposes of this franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common ordinary meaning.

- 1.1 *City* refers to and is the municipal corporation designated as the City of Grand Junction, Mesa County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the City of Grand Junction.

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Sec. 1.2

1.2 *Company* refers to and is Public Service Company of Colorado, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

1.3 *Council* or *city council* refers to and is the legislative body of the city.

1.4 *Distribution facilities* refers to and is only that portion of the company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system, as well as that portion of the company's gas system which delivers gas from the down side of the regulator station to the point-of-delivery of the customer, including all devices connected to that system.

1.5 *Facilities* refer to and are all facilities reasonably necessary to provide gas and electricity into, within and through the city and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, wires, cables and poles.

1.6 *Gas* or *natural gas* refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

1.7 *Public easements* refer to and are public and dedicated easements created and available for use by public utilities for their facilities.

1.8 *Public utilities commission* or *PUC* refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the public utilities commission.

1.9 *Residents* refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereafter located, in whole or in part, within the territorial boundaries of the city.

1.10 *Revenues* refer to and are those amounts of money which the company receives from its customers within the city for the sale and transportation of gas and the sale of electricity and use of its facilities by others within the city, as adjusted for refunds, the net writeoff of uncollectible accounts, corrections or other regulatory adjustments.

1.11 *Streets and other public places* refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way and public easements in

Sec. 3.1

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said city.

ARTICLE 2. GRANT OF FRANCHISE

Sec. 2.1. Grant of franchise.

The City of Grand Junction hereby grants to Public Service Company, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute gas and electricity to the city and to all residents of the city. Subject to the conditions, terms and provisions contained in this franchise, the city also hereby grants to the company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the city all facilities reasonably necessary to furnish, sell and distribute gas and electricity within and through the city and a nonexclusive right to make reasonable use of the streets and other public places as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the city as it is now constituted and to additional areas as the city may increase in size by annexation or otherwise. The city reserves the right to itself make or grant a similar use in the said public ways.

Sec. 2.2. Street lighting service.

The rights granted in this franchise encompass the nonexclusive franchise to provide street lighting service to the city and the provisions of this franchise apply with full and equal force to the street lighting service provided by the company. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include company-owned street lighting facilities, equipment, system and plant.

Sec. 2.3. Term of franchise.

This franchise shall take effect on January 1, 1993. The term of this franchise shall be for 20 years, beginning with said effective date of this franchise and expiring on December 31, 2012.

ARTICLE 3. FRANCHISE FEE

Sec. 3.1. Franchise fee.

In consideration for the grant of this franchise, the company shall pay the city a sum

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equal to three percent of the first \$10,000.00 of all revenue received monthly from the sale of

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electric power and from the sale and transportation of natural gas within the city, to each customer at any one location and a sum equal to two percent of all revenue received monthly from the sale of electric power and from the sale and transportation of natural gas within the city in excess of \$10,000.00 to each customer for each such service at any one location; provided, however, there shall be excluded from all of such revenue all amounts paid to the company by the city for electric service and gas furnished to the city.

Sec. 3.2. Payment schedule.

For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in monthly installments not more than 30 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 ordinance. All payments shall be made to the city finance director or other person designated by the city. The city finance director, or other authorized representatives, shall have access to the books of the company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

In the event an error by the company results in an overpayment of the franchise fee to the city and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over an equal period of time for which the error was undiscovered. If the overpayment is \$5,000.00 or less, credit shall be taken against the next payment(s).

Sec. 3.3. Change of franchise fee and other franchise terms.

Once during each calendar year of the franchise term the city council, upon giving 30 days' notice to the company of its intention so to do, may review and change the consideration the city may be entitled to receive as a part of the franchise; provided, however, the council may only change the consideration to be received by the city under the terms of this franchise to the equivalent of the consideration paid by the company to any city or town in the State of Colorado in which the company supplies gas and/or electric service under franchise.

The company shall, upon request, report to the city within 60 days of the execution of a subsequent franchise or of any change of franchise in other municipalities under which a city receives greater consideration than is provided herein from the company to the city hereunder. If the city council decides the consideration shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the company; and provided, further, that the consideration is not higher than the highest consideration paid by the company to any municipality, including the City and County of Denver, within the State of Colorado. For purposes of this section, consideration means the franchise fee established in article 3, section 1; the

Sec. 4.3

undergrounding program established in article 10, section 2; and also includes any other provision which is of similar significant financial benefit to the city.

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Sec. 3.4. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the company is accepted by the city in lieu of any occupancy tax, license tax, or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the company from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof except the city may impose and company shall pay road cut permits, inspection fees and permits, and other similar costs and fees uniformly applied throughout the city and does not exempt the company from payment of head taxes or other fees or taxes assessed generally upon businesses.

Sec. 3.5. Contract obligation.

This franchise ordinance constitutes a valid and binding contract between the company and the city. In the event that the franchise fee specified in this ordinance is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the company will be contractually bound to pay an occupation tax to the city that would be, as near as practicable, equivalent to the amount which would have been paid by the company as a franchise fee hereunder.

ARTICLE 4. SUPPLY, CONSTRUCTION AND DESIGN

Sec. 4.1. Supply of gas and electricity.

The company shall take all reasonable and necessary steps to provide an adequate supply of gas and electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of gas and electricity to its customers should be interrupted, the company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

Sec. 4.2. Restoration of service.

In the event the company's gas and/or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

Sec. 4.3. Obligations regarding company facilities.

The company shall install, maintain, repair, renovate and replace its facilities with

Sec. 4.3

due diligence in a good and workmanlike manner and the company's facilities will be of sufficient quality and durability to provide adequate and efficient gas and electric service to the city and its residents. Company facilities shall not interfere with the city's water mains, sewer mains or other municipal use of streets and other public places. The company shall erect and maintain its facilities

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in such a way so as to minimize interference with trees and other natural features. Company facilities shall be installed in public easements so as to cause a minimal amount of interference with such property.

Sec. 4.4. Excavation and construction.

All excavation and construction work done by the company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property whose use conforms to restrictions in public easements disturbed by company excavation or construction activities shall be restored by the company at its expense to substantially its former condition. The city reserves the right to determine compliance; provided, however, nothing herein shall limit the company's ability to challenge the city's determination of compliance before any authority having jurisdiction. If, after reasonable notice to the company and the company's failure to restore same, and if such failure poses a threat to the health, safety and welfare of the public, the city may take remedial steps as necessary. In such event, the company shall reimburse the city fully for its costs therefor.

Sec. 4.5. Relocation of company facilities.

Within the city, if at any time the city requests the company to relocate any facility in the city installed or maintained in streets, alleys, public rights-of-way or public easements, pursuant to this franchise or previous franchises, in order to permit the city to make any public use of rights-of-way, easements or streets to construct any public improvement, or to build any public project, or for any municipal purpose in which the city has a financial or ownership interest, such relocation shall be made by the company at its expense. Such relocation shall be completed within a reasonable time from the date when the city makes its request; provided, however, the company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control and provided further that the company proceed with due diligence at all times. Following relocation, all property shall be restored to its former condition by the company at its expense. Nothing herein contained shall be construed to impose any obligation upon the city to make any payment for any relocation of company's facilities whether located within, or without, said designated areas.

Relocated underground facilities shall be underground. Relocated aboveground facilities shall be aboveground unless the city either agrees to pay the additional cost of moving them underground or requests that such additional cost be paid out of available funds under section 10.2.

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Sec. 4.6. Service to new areas.

If the boundaries of the city are expanded within the company's certificated service area during the term of this franchise, the company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the company's extension policy. Service to

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the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

Sec. 4.7. City not required to advance funds.

Upon receipt of the city's authorization for billing and construction, the company shall extend its facilities to provide gas and electric service to the city for municipal uses within the city limits or for any major municipal facility outside the city limits, and within the company certificated service area, without requiring the city to advance funds prior to construction.

Sec. 4.8. Technological improvements.

The company shall generally introduce and install, as soon as practicable, electrical energy technological advances in its equipment and service within the city when such advances are technically and economically feasible and are safe and beneficial to the city and its residents. The company shall report in advance to the city any plans to include technological advances relating to communications systems such as fiber optics which may utilize gas and electric facilities already in place for the transmission of communication signals, which facilities may be installed by the company for its use, the use of the city, or for use of others as the company may license. The city may use said facilities for its own use without cost, except such additional expense which may be incurred by the company as a result of the city's use. The city shall not use said facilities for commercial purposes unless it reaches prior agreement with the company regarding consideration for the use of said facilities. In no event shall the city's use impair the company's use of its own facilities. Upon request of the city, the company will provide a detailed report for the use of such communications systems subject to protecting confidential information. Nothing contained herein shall be construed to authorize the company to engage in communications activities for sale or lease, nor shall this ordinance be construed as a franchise for said telecommunications activities within the city.

ARTICLE 5. COMPLIANCE

Sec. 5.1. City regulation.

The city expressly reserves, and the company expressly recognizes, the city's right and duty to adopt, from time to time, in addition to the provisions herein contained, such

Sec. 5.1

Charter provisions, ordinances and rules and regulations as may by the city be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

Sec. 5.2. Compliance with city requirements.

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The company will comply with all city requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the city, the company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance. Except for emergencies, the city may require that all installations be coordinated with the city's street improvement programs. The director of public works shall be the city's agent for inspection and for compliance with city ordinances and regulations on any such project.

Sec. 5.3. City review of construction and design.

Prior to construction of any significant facilities for electrical energy, any transmission lines or generating plant, building, substation, or similar structure within the city, the company shall furnish to the city the plans for such facilities. In addition, the company shall assess and report on the impact of such proposed construction on the city environment. Such plans and reports may be reviewed by the city to ascertain, inter alia, (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.

Sec. 5.4. Compliance with regulations.

The gas and electrical energy which the company distributes shall conform with the standards promulgated by the public utilities commission, and with the tariff provisions of the company setting standards, as the same may be amended from time to time.

Sec. 5.5. Compliance with air and water pollution laws.

The company shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal, state and city air and water pollution laws; provided, however, that nothing herein shall limit the company's right to challenge the validity or applicability of any such laws or standards. Upon the city's request, the company will provide the city with a status report of such measures.

Sec. 5.6. Inspection.

The city shall have the right to inspect at all reasonable times any portion of the

Sec. 7.3

company's system used to serve the city and its residents. The city shall also have access to company records for the purpose of determining company compliance with this franchise. The company agrees to cooperate with the city in conducting the inspection and to correct any discrepancies affecting the city's interest in a prompt and efficient manner.

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ARTICLE 6. PUBLIC UTILITIES COMMISSION

Sec. 6.1. Public utilities commission regulation.

The city and the company recognize that the lawful provisions of the company's tariffs on file and in effect with the public utilities commission which are consistent with the restrictions and limitations of article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the company, no provision of this franchise is inconsistent with any of the currently effective provisions of the company's tariffs.

ARTICLE 7. REPORTS TO CITY

Sec. 7.1. Reports on company operations.

The company shall submit reasonable and necessary reports containing or based on information readily obtainable from the company's books and records as the city may request with respect to the operations of the company under this franchise and provide the city with a list of real property within the city which is owned by the company.

Sec. 7.2. Copies of tariffs.

The company shall keep on file in a local company office, all tariffs, rules, regulations and policies approved by the public utilities commission relating to service by the company to the city and its residents.

Sec. 7.3. Bills.

On request by the city, the company shall at no cost provide a list of account numbers and items metered and shall specify the type of account for which charges are made, i.e., gas service, street lighting, traffic signal, general office, spot lighting, etc., and the company shall provide the city every two years with a complete listing of all the city's accounts.

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ARTICLE 8. CITY USE OF COMPANY FACILITIES

Sec. 8.1. City use.

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The city shall have the right to use, for the purpose of stringing wires, all poles and suitable overhead structures constructed by the company within the city, which use shall not include the distribution or transmission of electricity. Such use by the city will be without cost. The company will allow others holding a franchise, except for electric service, from the city to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the company and such holder of a franchise from the city; provided, however, that nothing herein contained shall limit or restrict company from, in its sole discretion, authorizing such joint use by holders of an electric franchise from the city and, provided, further, that the company shall assume no liability nor shall it be put to any additional expense in connection therewith and the use of said poles and structures by the city or others holding a franchise from the city shall be in such a manner as not to constitute a safety hazard or to interfere unreasonably with the company's use of same.

Sec. 8.2. Underground conduit.

If the company installs new electric underground conduit or opens a trench or replaces such conduit, the company shall provide adequate advance notice to permit additional installation of similar conduit and pull wire for the city. If the city wants additional similar conduit and pull wire installed, it will so notify the company and provide similar conduit and pull wire at its expense to the company which will install it without further expense to the city provided that such action by the city will not unreasonably interfere with the company's facilities or delay the accomplishment of the project.

Sec. 8.3. Annexation to the city.

When any property owned by the company becomes eligible for voluntary annexation to the city and is not simultaneously eligible for voluntary annexation to another municipal corporation, the company shall petition to annex the same upon request made by the city, provided that no condition of such annexation shall impair the company's ownership or then existing use of its property and water or water rights for public utility purposes. Except as herein provided, the company agrees to meet all terms and conditions imposed upon the annexation by the city that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the city. The company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this section to the extent that the land being annexed is committed, dedicated or being utilized by facilities directly involved in generating, transmitting or distributing electric energy or gas service(s) under this ordinance, and provided further that said exemption from public donation shall not extend to any

Sec. 9.1

unimproved land or land not so directly committed, dedicated and currently used.

Sec. 8.4. Right of first purchase.

In the event the company at any time during the term of this franchise proposes to sell or dispose of any of its real property located within the city, it shall grant to the city the right of first

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purchase of same. The company shall supply a qualified appraisal on any such property to the city which shall have 60 days in which to exercise the right of first purchase by giving written notice to the company. Should the city not provide the required written notice, the company may proceed to negotiate with others for the sale of such property provided that the company may not sell such property for an amount less than 95 percent of the appraised value without first providing the city an opportunity to purchase such property at such lesser price, in which event the city must notify the company in writing within 30 days if it wishes to purchase such property. It is understood that nothing in this paragraph shall preclude the company from transferring real property to a subsidiary or affiliate without first affording the city the rights referred to above, provided that if the transferee proposes to sell or dispose of such property within one year, it shall not do so without first affording the city the rights referred to above.

ARTICLE 9. INDEMNIFICATION OF THE CITY

Sec. 9.1. City held harmless.

The company shall save the city harmless and indemnify the city from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the city for all its reasonable expenses, arising out of the operations of the company within the city and the securing of and the exercise by the company of the franchise rights granted in this ordinance, including any third party claims, administrative hearings and litigation. The company shall not be obligated to pay that part of any judgment which arises out of the negligent act or failure to act of the city or its officers or employees. The city will provide prompt written notice to the company of the pendency of any claim or action against the city arising out of the exercise by the company of its franchise rights. The company will be permitted, at its own expense, to appear and to defend or to assist in defense of such claim. None of the city expenses reimbursed by the company under this section shall be surcharged. In the event the city institutes litigation against the company for a breach of this ordinance or for an interpretation of the ordinance, and the city is the prevailing party, the company shall reimburse the city for all costs related thereto, including reasonable expert and attorneys' fees. The right of the company to seek contribution from the city for its negligence, as provided by the Colorado statutes, is hereby expressly reserved.

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Sec. 9.2. Payment of expenses incurred by city in relation to ordinance.

At the city's option, the company shall pay in advance or reimburse the city for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise, including the costs of election.

Sec. 9.3. Financial responsibility.

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At the time of the execution of this ordinance, and from time to time at the city's request, not more frequently than annually, the company shall submit to the city attorney as a confidential document proof of its ability to meet its obligations under this ordinance, including its ability to indemnify the city as required by this article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The company shall supply the city with a list of its insurance companies with the types of coverage, but not levels of insurance. Said list shall be kept current by annual revisions as of January 1 during the term of the franchise. The city may require, from time to time, and the company agrees to provide, additional reasonable funding of the company's indemnification obligations as a self-insured, if company is acting as a self-insurer.

Sec. 9.4. Breach of contract.

In the event the company fails to fulfill a substantial obligation under this ordinance, the city will have a breach of contract claim against the company, in addition to any other remedy provided by law.

ARTICLE 10. UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

Sec. 10.1. Underground electrical distribution lines in new areas.

The company will place newly constructed electrical distribution lines underground to serve new residential subdivision areas in accordance with the company's tariffs and city subdivision regulations.

Sec. 10.2. Overhead conversion at expense of company.

A. As and when requested by the city, the company will spend one percent of the preceding calendar year's electric revenues to move electric distribution facilities located in streets and other public places in the city underground, provided that the undergrounding shall extend for a minimum distance of one block or 750 feet, or as may be mutually agreed to by the parties.

Sec. 10.4

B. Any unexpended portion of the one percent of electric revenue may be carried over to succeeding years and, in addition, upon request by the city, the company shall anticipate amounts to be available for up to three years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the company is required to expend pursuant to section 4.5 shall be charged to this allocation.

C. Funds to be expended pursuant to this section shall not be used in any project or situation for which and to the extent that the city has received federal or state funds for the purpose

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of undergrounding utilities. Funds to be expended pursuant to this section may be used for ``matching" purposes with state or federal monies.

D. If the public utilities commission authorizes a systemwide program or programs of undergrounding electric distribution facilities, the company will allocate to the program of undergrounding in the city such amount as is authorized by the public utilities commission, but in no case less than one percent of annual electric revenues.

E. In addition to the provisions of this section, the city may require additional facilities to be moved underground at the city's expense.

F. The city acknowledges that the establishment of this undergrounding fund creates no vested right in the city to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes.

Sec. 10.3. Review of undergrounding program.

Representatives of both the city and the company shall meet periodically to review the company's undergrounding program. This review shall include:

- (a) Undergrounding programs, including conversions and replacements which have been accomplished or are underway by the company, together with the company's plans for additional undergrounding;
- (b) Undergrounding projects anticipated by the city.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the city.

Sec. 10.4. Cooperation with other utilities.

When undertaking a project of undergrounding, the city and the company shall work with other utilities or companies which have their lines overhead to attempt to have all lines

Sec. 10.4

undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the company shall cooperate with these utilities and companies and undertake to underground company facilities as part of the same project where feasible. The company shall not be required to pay the costs of any other utility in connection with work under this section.

ARTICLE 11. TRANSFER OF FRANCHISE

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Sec. 11.1. Consent of city required.

The company shall not transfer or assign any rights under this franchise to a third party excepting only corporate reorganizations of the company not including a third party, unless the city council shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

Sec. 11.2. Transfer fee.

In order that the city may share in the value this franchise adds to the company's operation, any such transfer or assignment of rights under this franchise requiring the approval of the city council shall be subject to the conditions that the transferee shall promptly pay to the City of Grand Junction a pro rata share of \$1,000,000.00, which pro rata amount of \$1,000,000.00 shall be calculated by multiplying \$1,000,000.00 times a fraction of which the then population of the City of Grand Junction which is served by the company is the numerator and the then population of the City and County of Denver is the denominator. Such transfer fee shall not be recovered from the city or from the city residents or property owners through electric rates or gas rates of customers in the City of Grand Junction or by surcharge by the transferee or the company.

ARTICLE 12. PURCHASE OR CONDEMNATION

Sec. 12.1. City's right to purchase or condemn.

The right of the city to construct, purchase or condemn any public utility works or ways, and the rights of the company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

Sec. 12.2. Continued cooperation by company.

In the event the city exercises its option to purchase or condemn, the company agrees that, at the city's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions

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negotiated for such continued operation. At city's request, company shall supply electric power for use by the city in the city system. No value shall be given to the franchise or to public rights-of-way. Company shall cooperate with the city by making available then existing pertinent company records which are not privileged to enable the city to evaluate the feasibility of acquisition by the city of company facilities.

ARTICLE 13. REMOVAL OF COMPANY FACILITIES AT END OF FRANCHISE

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Sec. 13.1. Limitations on company removal.

In the event this franchise is not renewed at the expiration of its term or the company terminates any service provided herein for any reason whatsoever, and the city has not purchased or condemned the system and has not provided for alternative gas or electrical service, or if the franchise is forfeited, the company shall have no right to remove said system pending resolution of the disposition of the system. The company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the city stating that the city has adequate alternative electrical energy sources to provide for the people of the city shall the company be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE 14. TRANSPORTATION OF GAS

Sec. 14.1. Transportation of gas.

The city expressly reserves the right to obtain or produce gas. The company shall transport natural gas purchased by the city for use in city facilities pursuant to separate contracts with the city. The company agrees to transport gas made available for sale on terms and conditions comparable to other contracts entered into contemporaneously by the company with similarly situated customers.

ARTICLE 15. SMALL POWER PRODUCTION AND COGENERATION

Sec. 15.1. Company to purchase.

The city expressly reserves the right to engage in the production of electricity. The company agrees to purchase said city-generated power pursuant to its tariffs. Payment for generated power and energy actually purchased shall be guaranteed over the term of the purchase contract. The company agrees to purchase said city-generated power pursuant to

Sec. 15.1

separate contracts negotiated with the city.

ARTICLE 16. FORFEITURE

Sec. 16.1. Forfeiture.

Both the company and the city recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond

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the company's control. In those instances, the company shall use its best efforts to comply in a timely manner and to the extent possible. If the company fails to perform any of the terms and conditions of this franchise and such failure is within the company's control, the city, acting by and through its council, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the company shall have a reasonable time in which to remedy the violations. If during said reasonable time corrective actions have not been successfully taken, the city, acting by and through its council, shall determine whether any or all rights and privileges granted the company under this ordinance shall be forfeited. This shall not limit or restrict any other rights or remedies available to the city and the company in law or equity.

Sec. 16.2. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law.

Sec. 16.3. Other legal remedies.

Nothing herein contained shall limit or restrict any legal rights that the city or the company may possess arising from any alleged violation of this franchise.

Sec. 16.4. Continued obligations.

Upon forfeiture, the company shall continue to provide service to the city and its residents in accordance with the terms hereof until the city makes alternative arrangements for such service. If the company fails to provide continued service, it shall be liable for damages to the city.

ARTICLE 17. AMENDMENTS

Sec. 17.1. Amendments to franchise.

At any time during the term of this franchise, the city, through its city council, or

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the company may propose amendments to this franchise by giving 30 days' written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s). The word "amendment" as used in this section does not include a change authorized in section 3.3.

ARTICLE 18. MISCELLANEOUS

Sec. 18.1. Successors and assigns.

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The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Public Service Company, its successors and assigns.

Sec. 18.2. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties.

Sec. 18.3. Representatives.

Both parties shall designate from time to time in writing representatives for the company and the city who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons or addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the city and to the company's western division manager. Currently the addresses are as follows:

For the city: City Manager, City of Grand Junction

250 N. 5th Street

Grand Junction, Colorado 81501-2668

For the company: Western Division Manager

Public Service Company

Post Office Box 849

Grand Junction, Colorado 81502

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Sec. 18.4. Severability.

Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

Sec. 18.5. Entire agreement.

This franchise constitutes the entire agreement of the parties. There have been no

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representations made other than those contained in this franchise.

ARTICLE 19. APPROVAL

Sec. 19.1. Council approval.

This grant of franchise shall not become effective unless approved by a majority vote of the city council.

Sec. 19.2. Company approval.

The company shall file with the city clerk its written acceptance of this franchise and of all of its terms and provisions within ten days after the adoption of this franchise by the city council. The acceptance shall be in form and content approved by the city attorney. If the company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void.

Sec. 19.3. Voter's approval.

This grant of franchise shall not become effective unless approved by a majority vote of the qualified electors of the city voting thereon at a special election to be held on a date to be hereafter established by the city council.

Sec. 19.4. Termination of prior franchise.

Upon the effective date of this franchise, the franchise granted to the company by the city as set forth in Ordinance No. 32, Series of 1977 of the city, shall be terminated and of no further force and effect.

Sec. 1.0

CHAPTER II. GRAND VALLEY RURAL POWER LINES, INC.*

***Editor's note**--Printed herein is a franchise granted to Grand Valley Rural Power Lines, Inc., as set out in People's Ordinance Number 35 which was adopted on November 4, 1992, and approved by the registered electors of the City on December 8, 1992. Amendments to the franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious

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misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

PEOPLE'S ORDINANCE NUMBER 35

An Ordinance Granting a Franchise By the City of Grand Junction to Grand Valley Rural Power Lines, Inc., Its Successors and Assigns, the Right to Furnish, Sell and Distribute Electricity to the City and To All Persons, Businesses, and Industry Within the City and the Right To Acquire, Construct, Install, Locate, Maintain, Operate and Extend Into, Within and Through Said City All Facilities Reasonably Necessary To Furnish, Sell and Distribute Electricity Within the City and the Right To Make Reasonable Use of All Streets and Other Public Places and Public Easements As Herein Defined, As May Be Necessary; and Fixing the Terms and Conditions Thereof.

Be It Ordained By the City Council of the City of Grand Junction, Colorado:

ARTICLE 1. DEFINITIONS

Sec. 1.0. [Definitions.]

For the purposes of this franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common ordinary meaning.

- 1.1 *City* refers to and is the municipal corporation designated as the City of Grand Junction, Mesa County, Colorado and includes the territory as currently is or may in the future be included within the boundaries of the City of Grand Junction.

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- 1.2 *Company* refers to and is Grand Valley Rural Power Lines, Inc. (Grand Valley Power), and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.
- 1.3 *Council* or *city council* refers to and is the legislative body of the city.
- 1.4 *Distribution facilities* refers to and is only that portion of the company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system.

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- 1.5 *Facilities* refer to and are all facilities reasonably necessary to provide electricity into, within and through the city and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, conduit, transformers, underground lines, meters, wires, cables and poles.
- 1.6 *Public easements* refer to and are public and dedicated easements created and available for use by public utilities for their facilities.
- 1.7 *Public utilities commission* or *PUC* refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the public utilities commission.
- 1.8 *REA* refers to and is the Rural Electrification Administration, United States Department of Agriculture.
- 1.9 *Residents* refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereafter located, in whole or in part, within the territorial boundaries of the city.
- 1.10 *Revenues* refer to and are those amounts of money which the company receives from its customers within the city for the sale of electricity and use of its facilities by others, as adjusted for refunds, the net writeoff of uncollectible accounts, corrections or other approved adjustments.
- 1.11 *Streets and other public places* refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in said city.

ARTICLE 2. GRANT OF FRANCHISE

Sec. 2.1. Grant of franchise.

The City of Grand Junction hereby grants to Grand Valley Power, for the period

Sec. 3.1

specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute electricity to the city and to all residents of the city. Subject to the conditions, terms and provisions contained in this franchise, the city also hereby grants to the company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the city all facilities reasonably necessary to furnish, sell and distribute electricity within and through the city and a nonexclusive right to make reasonable use of the streets and other public rights of way and public easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the city as it is now constituted and to additional areas as the city may increase in size by annexation or otherwise. The city reserves the

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right to itself make or grant a similar use in the said public ways.

Sec. 2.2. Street lighting service.

The rights granted in this franchise encompass the nonexclusive franchise to provide street lighting service to the city and the provisions of this franchise apply with full and equal force to the street lighting service provided by the company. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include company-owned street lighting facilities, equipment, system and plant.

Sec. 2.3. Term of franchise.

This franchise shall take effect on January 1, 1993. The term of this franchise shall be for 20 years, beginning with said effective date of this franchise and expiring on December 31, 2012.

ARTICLE 3. FRANCHISE FEE

Sec. 3.1. Franchise fee.

In consideration for the grant of this franchise, the company shall pay the city a sum equal to three percent of the first \$10,000.00 of all revenue received monthly from the sale of electric power within the city to each customer at any one location, and a sum equal to two percent of all revenue received monthly from the sale of electric power in excess of \$10,000.00 to each customer for each such service at any one location; provided, however, there shall be excluded from all of such revenue all amounts paid to the company by the city for electric service furnished to the city.

Sec. 3.2

Sec. 3.2. Payment schedule.

For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in monthly installments not more than 30 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 ordinance. All payments shall be made to the city finance director or other person designated by the city. The city finance director, or other authorized representatives, shall have access to the books of the company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

In the event an error by the company results in an overpayment of the franchise fee to the

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city and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over an equal period of time for which the error was undiscovered. If the overpayment is \$5,000.00 or less, credit shall be taken against the next payment(s).

Sec. 3.3. Change of franchise fee and other franchise terms.

Once during each calendar year of the franchise term the city council, upon giving 30 days' notice to the company of its intention so to do, may review and change the consideration the city may be entitled to receive as a part of the franchise; provided, however, the council may only change the consideration to be received by the city under the terms of this franchise to the equivalent of the consideration paid by the company to any city or town in the State of Colorado in which the company supplies electric service under franchise.

The company shall, upon request, report to the city within 60 days of the execution of a subsequent franchise or of any change of franchise in other municipalities under which a city receives greater consideration than is provided herein from the company to the city hereunder. If the city council decides the consideration shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the company; and provided, further, that the consideration is not higher than the highest consideration paid by the company to any municipality or city and county within the State of Colorado. For purposes of this section, consideration means the franchise fee established in article 3, section 1; the undergrounding program established in article 10, section 2; and also includes any other provision which is of similar significant financial benefit to the city.

Sec. 3.4. Franchise fee payment in lieu of other fees.

Payment of the franchise fee by the company is accepted by the city in lieu of any occupancy tax, license tax, or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the company from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof,

Sec. 4.3

except the city may impose and company shall pay road cut permits, inspection fees and permits, and other similar costs and fees uniformly applied throughout the city and does not exempt the company from payment of head taxes or other fees or taxes assessed generally upon businesses.

Sec. 3.5. Contract obligation.

This franchise ordinance constitutes a valid and binding contract between the company and the city. In the event that the franchise fee specified in this ordinance is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the company will be contractually bound to pay an occupation tax to the city that would be, as near as practicable, equivalent to the amount which would have been paid by the company as a franchise fee hereunder.

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ARTICLE 4. SUPPLY, CONSTRUCTION AND DESIGN

Sec. 4.1. Supply of electricity.

The company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers should be interrupted, the company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

Sec. 4.2. Restoration of service.

In the event the company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. The city reserves the right to determine compliance. The company shall promptly perform reasonable remedial action required by the city pursuant to said inspection.

Sec. 4.3. Obligations regarding company facilities.

The company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner and the company's facilities will be of sufficient quality and durability to provide adequate and efficient electric service to the city and its residents. Company facilities shall not interfere with the city's water mains, sewer mains or other municipal use of streets and other public places. The company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. Company facilities shall be installed in public easements so as to cause a minimal amount of interference with such property.

Sec. 4.4

Sec. 4.4. Excavation and construction.

All excavation and construction work done by the company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property whose use conforms to restrictions in public easements disturbed by company excavation or construction activities shall be restored by the company at its expense to substantially its former condition. The city reserves the right to determine compliance; provided, however, nothing herein shall limit the company's ability to challenge the city's determination of compliance before any authority having jurisdiction of the premises. If, after reasonable notice to the company and the company's failure to restore same, and if such failure poses a threat to the health, safety and welfare of the public, the city may take remedial steps as necessary. In such event, the company shall reimburse the city fully for its costs therefor.

Sec. 4.5. Relocation of company facilities.

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Within the city, if at any time the city requests the company to relocate any facility in the city installed or maintained in streets, alleys, public rights-of-way or public easements, pursuant to this franchise or previous franchises, in order to permit the city to make any public use of rights-of-way, easements or streets, to construct any public improvement, or to build any public project, or for any municipal purpose in which the city has a financial or ownership interest, such relocation shall be made by the company at its expense. Such relocation shall be completed within a reasonable time from the date when the city makes its request; provided, however, the company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control and provided further that the company proceed with due diligence at all times. Following relocation, all property shall be restored to its former condition by the company at its expense. Nothing herein contained shall be construed to impose any obligation upon the city to make any payment for any relocation of company's facilities whether located within, or without, said designated areas.

Relocated underground facilities shall be underground. Relocated aboveground facilities shall be aboveground unless the city either agrees to pay the additional cost of moving them underground or requests that such additional cost be paid out of available funds under section 10.2.

Sec. 4.6. Service to new areas.

If the boundaries of the city are expanded within the company's certificated service area during the term of this franchise, the company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

Sec. 5.2

Sec. 4.7. City not required to advance funds.

Upon receipt of the city's authorization for billing and construction, the company shall extend its facilities to provide electric service to the city for municipal uses within the city limits or for any major municipal facility outside the city limits, and within the company certificated service area, without requiring the city to advance funds prior to construction.

Sec. 4.8. Technological improvements.

The company shall generally introduce and install, as soon as practicable, electrical energy technological advances in its equipment and service within the city when such advances are technically and economically feasible and are safe and beneficial to the city and its residents. The company shall report in advance to the city any plans to include technological advances relating to communications systems such as fiber optics which may utilize electric facilities already in place for the transmission of communication signals, which facilities may be installed by the company for

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its use, the use of the city, or for use of others as the company may license. The city may use said facilities for its own use without cost, except such additional expense which may be incurred by the company as a result of the city's use. The city shall not use said facilities for commercial purposes unless it reaches prior agreement with the company regarding consideration for the use of said facilities. In no event shall the city's use impair the company's ability to use its own facilities. Upon request of the city, the company will provide a detailed report for the use of such communications systems subject to protecting confidential information. Nothing contained herein shall be construed to authorize the company to engage in communications activities for sale or lease, nor shall this ordinance be construed as a franchise for said telecommunications activities within the city.

ARTICLE 5. COMPLIANCE

Sec. 5.1. City regulation.

The city expressly reserves, and the company expressly recognizes, the city's right and duty to adopt, from time to time, in addition to the provisions herein contained, such Charter provisions, ordinances and rules and regulations as may by the city be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

Sec. 5.2. Compliance with city requirements.

The company will comply with all city requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the city, the company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance. Except for emergencies, the city may require that all installations

Sec. 5.2

be coordinated with the city's street improvement programs. The director of public works shall be the city's agent for inspection and for compliance with city ordinances and regulations on any such project.

Sec. 5.3. City review of construction and design.

Prior to construction of any significant facilities for electrical energy, any transmission lines or generating plant, building, substation, or similar structure within the city, if requested by the city, the company shall furnish to the city the plans for such facilities. In addition, the company shall assess and report on the impact of such proposed construction on the city environment. Such plans and reports may be reviewed by the city to ascertain, inter alia, (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized. The company shall submit reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts,

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excavation, digging and related construction activities. Except for emergencies, the city will require that all installations be coordinated with the city's street improvement programs. The city director of public works shall be the city agent for inspection and for compliance with city ordinances and regulations on any such projects.

Sec. 5.4. Compliance with REA and PUC regulations.

The electrical energy which the company distributes shall conform with the standards promulgated by the REA or the public utilities commission, depending upon which body has oversight jurisdiction over the issue in question, and with the tariff provisions of the company setting standards, as the same may be amended from time to time.

Sec. 5.5. Compliance with air and water pollution laws.

The company shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal, state and city air and water pollution laws; provided, however, that nothing herein shall limit the company's right to challenge the validity or applicability of any such laws. Upon the city's request, the company will provide the city with a status report of such measures.

Sec. 5.6. Inspection.

The city shall have the right to inspect at all reasonable times any portion of the company's system used to serve the city and its residents. The city shall also have access to company records for the purpose of determining company compliance with this franchise. The company agrees to cooperate with the city in conducting the inspection and to correct any discrepancies affecting the city's interest in a prompt and efficient manner.

Sec. 8.1

ARTICLE 6. PUBLIC UTILITIES COMMISSION

Sec. 6.1. Public utilities commission and REA regulations.

The company has exempted itself from public utilities commission regulation pursuant to C.R.S. title 40, art. 9.5, part 1. Nevertheless, the PUC retains jurisdiction over the company for certain matters as set forth under Colorado law. In addition, the company is subject to regulation by the REA.

ARTICLE 7. REPORTS TO CITY

Sec. 7.1. Reports on company operations.

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The company shall submit reasonable and necessary reports containing or based on information readily obtainable from the company's books and records as the city may request with respect to the operations of the company under this franchise and provide the city with a list of real property within the city which is owned by the company.

Sec. 7.2. Copies of tariffs.

The company shall keep on file, in a local company office, all tariffs, rules, regulations and policies approved by the board of directors relating to service by the company to the city and its residents.

Sec. 7.3. Bills.

On request by the city, the company shall at no cost provide a list of account numbers and items metered and shall specify the type of account for which charges are made, i.e., street lighting, traffic signal, general office, spotlighting, etc., and the company shall provide the city every two years with a complete listing of all the city's accounts.

ARTICLE 8. CITY USE OF COMPANY FACILITIES

Sec. 8.1. City use.

The city shall have the right to use, for the purpose of stringing wires, all poles and suitable overhead structures constructed by the company within the city, which use shall not include the distribution or transmission of electricity. Such use by the city will be without cost. The company will allow others holding a franchise, except for electric service, from the city to so utilize such poles and suitable overhead structures upon reasonable terms and conditions

Sec. 8.1

to be agreed upon by the company and such holder of a franchise from the city; provided, however, that nothing herein contained shall limit or restrict company from, in its sole discretion, authorizing such joint use by holders of an electric franchise from the city and, provided, further, that the company shall assume no liability nor shall it be put to any additional expense in connection therewith and the use of said poles and structures by the city or others holding a franchise from the city shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the company's use of same.

Sec. 8.2. Underground conduit.

If the company installs new electric underground conduit or opens a trench or replaces such conduit, the company shall provide adequate advance notice to permit additional installation of similar conduit and pull wire for the city. If the city wants additional similar conduit and pull wire

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installed, it will so notify the company and provide similar conduit and pull wire at its expense to the company which will install it without further expense to the city, provided that such action by the city will not unnecessarily interfere with the company's facilities or delay the accomplishment of the project.

Sec. 8.3. Annexation to the city.

When any property owned by the company becomes eligible for voluntary annexation to the city, the company shall petition to annex the same upon request made by the city, provided that no condition of such annexation shall impair the company's ownership or then existing use of its property and water or water rights for public utility purposes. Except as herein provided, the company agrees to meet all terms and conditions imposed upon the annexation by the city that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the city. The company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this section to the extent that the land being annexed is committed, dedicated or being utilized by facilities directly involved in generating, transmitting or distributing electric energy service under this ordinance, and provided further that said exemption from public donation shall not extend to any unimproved land or land not so directly committed, dedicated and currently used.

Sec. 8.4. Right of first purchase.

In the event the company at any time during the term of this franchise proposes to sell or dispose of any of its real property located within the Clean Water Act 201 Planning Area for Mesa County and those portions of Mesa County lying south of the Highline Canal, west of 34 Road and north of the Gunnison River, it shall grant to the city the right of first purchase of same. The company shall supply a qualified appraisal on any such property to the city which shall have 60 days in which to exercise the right of first purchase by giving written notice to the company. Should the city not provide the required written notice, the company may proceed to negotiate with others for the sale of such property provided that the company may not sell

Sec. 9.3

such property for an amount less than 95 percent of the appraised value without first providing the city an opportunity to purchase such property at such lesser price, in which event the city must notify the company in writing within 30 days if it wishes to purchase such property. It is understood that nothing in this paragraph shall preclude the company from transferring real property to a subsidiary or affiliate without first affording the city the rights referred to above, provided that if the transferee proposes to sell or dispose of such property within one year, it shall not do so without first affording the city the rights referred to above.

ARTICLE 9. INDEMNIFICATION OF THE CITY

Sec. 9.1. City held harmless.

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The company shall save the city harmless and indemnify the city from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the city for all its reasonable expenses, arising out of the operations of the company within the city and the securing of and the exercise by the company of the franchise rights granted in this ordinance, including any third party claims, administrative hearings and litigation. The company shall not be obligated to pay any judgment which arises out of the negligent act or failure to act of the city or its officers or employees. None of the city expenses reimbursed by the company under this section shall be surcharged. In the event the city institutes litigation against the company for a breach of this ordinance or for an interpretation of the ordinance, and the city is the prevailing party, the company shall reimburse the city for all costs related thereto, including reasonable expert and attorneys' fees. The right of the company to seek contribution from the city for its negligence, as provided by the Colorado statutes, is hereby expressly reserved.

Sec. 9.2. Payment of expenses incurred by city in relation to ordinance.

At the city's option, the company shall pay in advance or reimburse the city for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise, including the costs of election.

Sec. 9.3. Financial responsibility.

At the time of the execution of this ordinance, and from time to time, at the city's request, not more frequently than annually, the company shall submit to the city attorney as a confidential document proof of its ability to meet its obligations under this ordinance, including its ability to indemnify the city as required by this article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The company shall supply the city with a list of its insurance companies with the types of coverage, but not levels of insurance. Said list shall be kept current by annual revisions as of January 1 during the term of the franchise. The city may require, from time to time, and the company

Sec. 9.3

agrees to provide, additional reasonable funding of the company's indemnification obligations as a self-insured, if company is acting as a self-insurer.

Sec. 9.4. Breach of contract.

In the event the company fails to fulfill a substantial obligation under this ordinance, the city will have a breach of contract claim against the company, in addition to any other remedy provided by law.

ARTICLE 10. UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

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Sec. 10.1. Underground electrical distribution lines in new areas.

The company will place newly constructed electrical distribution lines underground to serve new residential subdivision areas in accordance with the company's tariffs and city subdivision regulations.

Sec. 10.2. Overhead conversion at expense of company.

A. As and when requested by the city, the company will spend one percent of the preceding calendar year's electric revenues to move electric distribution facilities located in streets and other public places in the city underground, provided that the undergrounding shall extend for a minimum distance of one block or 750 feet, or as may be mutually agreed to by the parties.

B. Any unexpended portion of the one percent of electric revenue may be carried over to succeeding years and, in addition, upon request by the city, the company shall anticipate amounts to be available for up to three years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the company is required to expend pursuant to section 4.5 shall be charged to this allocation.

C. Funds to be expended pursuant to this section shall not be used in any project or situation for which and to the extent that the city has received federal or state funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this section may be used for "matching" purposes with state or federal monies.

D. If the public utilities commission or the REA, depending upon which body has oversight jurisdiction, authorizes a systemwide program or programs of undergrounding electric distribution facilities, the company will allocate to the program of undergrounding in the city such amount as is authorized by the public utilities commission or the REA, but in no case less

Sec. 10.4

than one percent of annual electric revenues.

E. In addition to the provisions of this section, the city may require additional facilities to be moved underground at the city's expense.

F. The city acknowledges that the establishment of this undergrounding fund creates no vested right in the city to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes.

G. Within the city, the company will use its best efforts to landscape existing substations and other facilities. All new facilities shall be landscaped within one year of the time that the facilities are placed into operation. "Landscaping" means according to plans approved by the city

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community development department.

Sec. 10.3. Review of undergrounding program.

Representatives of both the city and the company shall meet periodically to review the company's undergrounding program. This review shall include:

- (a) Undergrounding programs, including conversions and replacements which have been accomplished or are underway by the company, together with the company's plans for additional undergrounding;
- (b) Undergrounding projects anticipated by the city.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the city.

Sec. 10.4. Cooperation with other utilities.

When undertaking a project of undergrounding, the city and the company shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the company shall cooperate with these utilities and companies and undertake to underground company facilities as part of the same project where feasible. The company shall not be required to pay the costs of any other utility in connection with work under this section.

Sec. 11.1

ARTICLE 11. TRANSFER OF FRANCHISE

Sec. 11.1. Consent of city required.

The company shall not transfer or assign any rights under this franchise to a third party excepting only corporate reorganizations of the company not including a third party, unless the city council shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

Sec. 11.2. Transfer fee.

In order that the city may share in the value this franchise adds to the company's operation,

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any such transfer or assignment of rights under this franchise requiring the approval of the city council shall be subject to the conditions that the transferee shall promptly pay to the City of Grand Junction a pro rata share of \$1,000,000.00, which pro rata amount of \$1,000,000.00 shall be calculated by multiplying \$1,000,000.00 times a fraction of which the then population of the City of Grand Junction which is served by the company is the numerator and the then population of the City and County of Denver is the denominator. Such transfer fee shall not be recovered from the city or from the city residents or property owners through electric rates of customers in the City of Grand Junction or by surcharge by the transferee or the company.

ARTICLE 12. PURCHASE OR CONDEMNATION

Sec. 12.1. City's right to purchase or condemn.

The right of the city to construct, purchase or condemn any public utility works or ways, and the rights of the company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

Sec. 12.2. Continued cooperation by company.

In the event the city exercises its option to purchase or condemn, the company agrees that, at the city's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation. At city's request, company shall supply electric power for use by the city in the city system. No value shall be given to the franchise or to rights-of-way. Company shall cooperate with the city by making available then existing pertinent company records which are not privileged to enable the city to evaluate the feasibility of acquisition by the city of company facilities.

Sec. 16.1

ARTICLE 13. REMOVAL OF COMPANY FACILITIES AT END OF FRANCHISE

Sec. 13.1. Limitations on company removal.

In the event this franchise is not renewed at the expiration of its term or the company terminates any service provided herein for any reason whatsoever, and the city has not purchased or condemned the system and has not provided for alternative electrical service, or if the franchise is forfeited, the company shall have no right to remove said system pending resolution of the disposition of the system. The company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the city stating that the city has adequate alternative electrical energy sources to provide for the people of the city shall the company be

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entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE 14. [RESERVED]

This article is reserved.

ARTICLE 15. SMALL POWER PRODUCTION AND COGENERATION

Sec. 15.1. Company to purchase.

The city expressly reserves the right to engage in the production of electricity. The company agrees to purchase city-generated power pursuant to its tariffs. Payment for generated power and energy actually purchased shall be guaranteed over the term of the purchase contract. The company agrees to purchase the city-generated power in accordance with its tariffs and applicable public utilities commission rules and regulations.

ARTICLE 16. FORFEITURE

Sec. 16.1. Forfeiture.

Both the company and the city recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the company's control. In those instances, the company shall use its best efforts to comply in a timely manner and to the extent possible. If the company fails to perform any of the terms and conditions of this franchise and such failure is within the company's

Sec. 16.1

control, the city, acting by and through its council, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the company shall have a reasonable time in which to remedy the violations. If during said reasonable time corrective actions have not been successfully taken, the city, acting by and through its council, shall determine whether any or all rights and privileges granted the company under this ordinance shall be forfeited. This shall not limit or restrict any other rights or remedies available to the city and the company in law or equity.

Sec. 16.2. Judicial review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law.

Sec. 16.3. Other legal remedies.

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Nothing herein contained shall limit or restrict any legal rights that the city or the company may possess arising from any alleged violation of this franchise.

Sec. 16.4. Continued obligations.

Upon forfeiture, the company shall continue to provide service to the city and its residents in accordance with the terms hereof until the city makes alternative arrangements for such service. If the company fails to provide continued service, it shall be liable for damages to the city.

ARTICLE 17. AMENDMENTS

Sec. 17.1. Amendments to franchise.

At any time during the term of this franchise, the city, through its city council, or the company may propose amendments to this franchise by giving 30 days' written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s). The word "amendment" as used in this section does not include a change authorized in section 3.3.

ARTICLE 18. MISCELLANEOUS

Sec. 18.1. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Grand Valley Power, its successors and

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assigns.

Sec. 18.2. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties.

Sec. 18.3. Representatives.

Both parties shall designate from time to time in writing representatives for the company and the city who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons or addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the city and to the company's general manager. Currently the addresses are as follows:

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For the city:	City Manager, City of Grand Junction
	250 N. 5th Street
	Grand Junction, Colorado 81501-2668
For the company:	General Manager
	Grand Valley Power Company
	Post Office Box 190
	Grand Junction, Colorado 81502

Sec. 18.4. Severability.

Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

Sec. 18.5. Entire agreement.

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

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Sec. 18.6. Attorneys' fees.

In the event the city institutes litigation against the company for a breach of this ordinance or for an interpretation of the ordinance, and the city is the prevailing party, the company shall reimburse the city for all costs related thereto, including reasonable attorney's fees.

ARTICLE 19. APPROVAL

Sec. 19.1. Council approval.

This grant of franchise shall not become effective unless approved by a majority vote of the city council.

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Sec. 19.2. Company approval.

The company shall file with the city clerk its written acceptance of this franchise and of all of its terms and provisions within ten days after the adoption of this franchise by the city council. The acceptance shall be in form and content approved by the city attorney. If the company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void.

Sec. 19.3. Voter's approval.

This grant of franchise shall not become effective unless approved by a majority vote of the qualified electors of the city voting thereon at a special election to be held on a date to be hereafter established by the city council.

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CHAPTER III. WENTRONICS, INC. (1966); T.C.I. AS ASSIGNEE*

***Editor's note**--Printed herein is a revokable permit submitted to the electorate of the City of Grand Junction in a special election held March 15, 1966, and approved by the registered electors of the City. Amendments to the permit are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original permit. Obvious misspellings and punctuation errors have been corrected without notation. Additions made for clarity are indicated by brackets.

REVOKABLE PERMIT

WHEREAS, Wentronics, Inc., a Colorado corporation, has petitioned the City Council of the City of Grand Junction for a revokable permit to install and maintain cables and necessary appurtenances thereto to transmit television signals throughout the City of Grand Junction, using the streets, alleys and other public places of the City of Grand Junction for the purpose of constructing, operating, reconstructing, erecting, locating, relocating, repairing, removing, rebuilding along, over and across, through and under the said streets, alleys and other public places of said city, together with the right to trim trees in protection of its cables so installed, and including the right to secure compensation in advance for the raising or removal of cables for the moving of buildings by private movers of such; and

WHEREAS, such matter has been submitted to the electorate of the City of Grand Junction in special election held March 15, 1966; and

WHEREAS, the electorate have approved the granting of such revokable permit on the condition that Wentronics shall pay unto the City 2.5% of its gross revenues derived from the services it renders hereunder, but excluding connection charges in the computation of gross revenues;

NOW, THEREFORE, in accordance with the action of the City Council of the City of Grand Junction, there is hereby granted to Wentronics, Inc., a Colorado corporation, a revokable permit for the purposes above stated; provided, however, by accepting such permit, Wentronics, Inc. agrees that it shall:

Sec. 1.0. [Agreement.]

1. Save and hold the City harmless of and from any claim or demands of any kind and nature arising out of the exercise by Wentronics, Inc. of the rights herein granted.

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2. Agree that all construction shall be under the control and supervision of the City Engineer and in accordance with his specifications;

3. Agree that any time the City shall lawfully elect to alter or change the grade of any street or alley, Wentronics, Inc., upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables or other fixture at its own expense.

4. Post with the City of Grand Junction a bond or cash in the sum of \$20,000.00 for the purpose of indemnifying any customers of Wentronics who shall pay any connection charges within twelve months from the granting of this permit, if, within said twelve months period, Wentronics shall cease to do business in the City of Grand Junction, so much of said bond or cash shall be forfeited in order that the City may reimburse any such customer for such connection charge.

5. Pay unto the City within sixty days following the expiration of each semi-annual period (the first semi-annual period ending July 1, 1966 and the second semi-annual period ending December 31, 1966) two and one-half per cent (2.5%) of its gross revenues derived from the services Wentronics renders under the terms of said revokable permit, but excluding connection charges in the computation of gross revenues.

6. Accompany such payment of fees to the City of Grand Junction with a statement showing the gross revenues for the period for which payment is being made and the computation of fees payable to the City thereunder. In connection with the payment of such fees, Wentronics, Inc. hereby grants to the City of Grand Junction the right at reasonable times and places to examine the books of said company for the purpose of determining the accuracy of reports and payments made to the City hereunder. All such examinations to be made at the cost and expense of the City of Grand Junction.

Dated this 16th day of March, 1966.

(city seal)

/s/ Jim Lacy
City Manager

/s/ Helen Tomlinson
City Clerk

Agreed and accepted this 16th day of March, 1966.

WENTRONICS, INC.

/s/ Edward E. Drake

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President

APPENDIX C REGULATIONS FOR THE RIVERFRONT TRAILS*

***Editor's note**--Printed herein are the riverfront trails regulations recommended by the parks and recreation board and adopted as provided in section 26-76 et seq. of the Code by ordinance number 2606. Amendments to the riverfront trails regulations are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original adoption in ordinance number 2606. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

1. Purpose.
2. Exemptions.
3. Violation-Penalty.
4. Regulations relating to riverfront trails, lands and waters.

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RIVERFRONT TRAILS REGULATIONS

Sec. 4

1. Purpose: The purposes of these regulations are to:

- A. Enact formal policies and regulations for the use of and conduct of the users of the Riverfront trails;
- B. Protect the public by assuring that regulations are in place for the safety of trail users;
- C. Protect the public from unsafe and unsanitary activities occurring on the trails;
- D. Allow for the orderly and lawful operation of the trail system;
- E. Preserve the public investment in the trail system.

2. Exemptions:

- A. These regulations shall not apply to maintenance or emergency vehicles and such activities conducted on the trails or in the vicinity of trails, which are approved by the Parks and Recreation Director or his designee.
- B. Section 4.B.9. of these regulations shall not apply to the discharge of firearms or weapons by any certified peace officer in the course of his/her official duty or to the discharge of weapons or firearms by participants in authorized classes or activities conducted under the supervision of the Parks and Recreation Department Director or his designee.

3. Violation-Penalty:

- A. The adopted regulations shall have the force and effect of law with respect to all users of, or visitors to, the riverfront trails. Any person 18 years of age or older or any partnership, firm or corporation who violates any provision of the adopted regulations shall be subject to a fine up to \$1,000.00 and/or up to 90 days in jail or any combination thereof. Any person under 18 years of age who violates any provision of this ordinance or the regulations promulgated hereunder shall be subject to a fine up to \$1,000.00 and/or be required to perform useful public service not to exceed 48 hours or any combination thereof.

4. Regulations relating to riverfront trails, lands and waters:

- A. Riverfront trails, lands and waters shall mean all trails, surfaced or un-surfaced, lands and waters which are under the administration, ownership or control of the City of Grand Junction Parks and Recreation Department

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and/or the trails, lands and waters of the Riverfront Commission which lie within the City of Grand Junction.

B. No person shall:

1. Operate any motor vehicle on any of the riverfront trails or lands of the riverfront except as may be authorized by the City or by signs or except for motorized wheelchairs, maintenance or emergency vehicles. Motor vehicle shall be as defined in C.R.S. § 42-1-101 et seq.
2. Operate any motorboat, motorized vessel or gasoline or electric motor powered craft on any of waters owned and/or controlled by the City. All as defined in C.R.S. § 33-13-102.
3. Enter, use or occupy the lands or trails of the riverfront between the period from 10:00 p.m. to 5:00 a.m.
4. Carry or possess any glassware or serve or consume food or beverages from glass containers on riverfront lands or trails.
5. Carry, possess, serve or consume any malt, vinous or spirituous liquor on riverfront lands or trails. Fermented malt beverages containing no more than three and two-tenths percent alcohol by weight which are served or consumed from nonglass containers are allowed.
6. Allow any dog or other animal on riverfront lands or trails unless the animal is under control by means of a leash not exceeding six feet in length. Animal(s) shall likewise be subject to all animal control ordinances and regulations of the City of Grand Junction.
7. Camp, park a motor vehicle, trailer or camper on riverfront lands or trails, with the intention or for the purpose of camping, unless such is by the authority of a camping permit issued by the Department of Parks and Recreation of the City of Grand Junction. Possession of a valid camping permit shall authorize the use of the riverfront lands and trails subject to the terms and conditions imposed thereon by the director or his designee. "Camp" means the use of camping equipment or facilities such as tents, tarpaulins or temporary shelters or the use of temporary cooking and bedding facilities such as open fires, camp stoves and cots, bedrolls, hammocks or sleeping bags.

RIVERFRONT TRAILS REGULATIONS

Sec. 4

8. Vend, sell or otherwise engage in a commercial or business operation on riverfront land or trails unless such is by the authority of a vending permit issued by the Department of Parks and Recreation of the City of Grand Junction. Possession of a valid vending permit shall authorize the use of the riverfront lands and trails subject to the terms and conditions imposed thereon by the director or his designee.
9. Fire, shoot, or discharge any cannon, gun, pistol or other firearm of any description or any BB or pellet gun or any explosive device or any bow, crossbow or other dangerous weapon or device.

The foregoing regulations having been duly promulgated and the public having had opportunity to comment on the propriety of said regulations, said regulations are hereby adopted this 21st day of October 1992.

APPENDIX D WASTEWATER REGULATIONS FOR THE PERSIGO WASTEWATER TREATMENT PLANT AND FACILITIES*

***Editor's note**--Printed herein are the regulations for the Persigo Wastewater Treatment Plant and Facilities, as adopted by Resolution Number 87-93 on December 1, 1993. Amendments to Resolution Number 87-93 are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original resolution. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

Sec. 1. [Purpose, adoption and amendment.]

Sec. 2. Definitions.

Sec. 3. Financial requirements and accounting.

Sec. 4. System expansion; policies and rules for system expansion and financing.

Sec. 5. Reserved.

Sec. 6. Collection system operations and treatment service provisions.

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Section 1. [Purpose, adoption and amendment.]

(a) *Purpose.* The purpose of these regulations is to:

- (1) Establish standards for operations and maintenance of the Persigo Wastewater Treatment Plant, and appurtenant facilities including interceptors, trunk lines, collectors, lift stations, and other connecting pipes, easements and rights-of-way therefor, and interconnecting systems and pipes whether or not owned or controlled by the city or the county ("the system").
- (2) Implement the agreements between Mesa County and the City of Grand Junction, *i.e.*, the October 17, 1979 agreement, the May 1, 1980 agreement (which together constitute "the Agreement"). Since the Agreement does not address many issues concerning the system, its use or operation, conditions and requirements for connection, and others, the City adopts these regulations to direct and allow the manager to exercise, to the fullest extent possible, its discretion and power, except to the extent limited by applicable law.
- (3) Establish financial planning requirements, describe types and restrictions on the use of the funds of the system, and adopt the accounting and reporting standards applicable to the revenues and expenditures of the system. Through such implementation, and pursuant to the general grant of both power and duty to the utility director, acting as the manager of the system, and the city council operate, plan for, extend, and maintain the system in the manner deemed appropriate by such manager so long as not contrary to the terms of the agreement, with regard to the assets and resources of the system:
 - a. Accounting and financial guidelines;
 - b. Establishment of fund balance requirements;
 - c. Lending rules, limitations and procedures;
 - d. Ten-year capital and operating plans based on assumptions and projections deemed reasonable by the manager;
 - e. Billing and collection rules and rates;
 - f. Pay scales and positions for employees of the system;
 - g. Administrative overhead services provided to the system by the manager and charges and expenses for such services rendered;

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- h. Surcharges to residents within special districts which provide sanitation services, unless prohibited by federal law or the terms of any EPA grants; and
 - i. Allocation of revenues received by system customers to the various capital reserve accounts.
- (4) Facilitate the implementation of the annexation policies of the city.
- (5) Control and plan any system expansion in the 201 planning area and expansion of the 201 area.
- (6) Not by way of limitation, these regulations are intended to provide for the fullest exercise of: a home-rule city's powers, acting through the manager, derived from Colorado's Constitution, article XX, section 6; the authority obtained by virtue of the county's delegation pursuant to C.R.S. § 29-1-203, the powers stated or implied in C.R.S. § 31-35-101 et seq.; and other applicable law.
- (7) To provide a written resource to guide not only the manager over time, but also the county as a co-owner of the plant and other interested parties.

(b) *Process to adopt existing and new regulations.* The regulations adopted this date [December 1, 1993] describe, in part, existing procedures and rules, i.e. administrative and not legislative which apply to the system and which have been implemented by the manager since May of 1980. From time to time, the manager may propose to the city council supplements or changes to these administrative procedures and rules with additional existing administrative procedures, rules, and policies which have been implemented by the manager since May of 1980.

From time to time the manager may propose changes to existing procedures, rules and policies which are legislative in nature. With respect to such new or additional changes to existing legislative procedures, rules, and policies, the following process should be followed:

- [(1)] The manager shall publish, in a newspaper of general circulation in the city, the text of the proposed amendment and notice of a meeting at which the text shall be considered for adoption by the city council. The city council shall, at such meeting provide an opportunity to interested parties to make comment and to suggest changes. The city council shall determine whether the text is adopted or is changed in whole or in part.

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- [(2)] The manager may immediately implement a new or modified procedure, rule or decision concerning administrative matters if the manager determines such change to be in the best interests of the system or the manager may delay the implementation of any such new administrative procedure, rule or decision until after an appropriate comment period.

(Res. No. 80-95, §2, 9-20-95)

Section 2. Definitions.

In the construction of these regulations, unless the context otherwise requires, the following terms and phrases shall have the meanings set forth:

Agreement. Joint Sewerage Service Agreement dated October 17, 1979 between the City of Grand Junction and Mesa County, as amended and the May 1, 1980 Agreement between the City and Mesa County.

Arix Study. A study done by Arix Engineering in 1985 entitled "Grand Junction/Mesa County 201 Wastewater Facility Planning Update." The study deals with areas within the 201 planning area that are not practical to serve with the present facilities.

Backbone system. The plant and its appurtenances and all of the principal sewer lines including interceptor sewer lines and trunk sewer lines as shown on City of Grand Junction drawing #02-826, dated December 15, 1993. The drawing, as amended from time to time, is on file with the City of Grand Junction public works and utilities department.

Banner study. A report done by Banner Associates, Inc., in 1987 entitled "Report on Preliminary Study of Sanitary Sewer Line Extensions Within 201 Planning Area for City of Grand Junction, Colorado." The report investigates the cost and engineering feasibility of extending sanitary sewer service to some areas in the 201 planning area.

Basin study. A study done by HDR Engineering, Inc., in 1993 entitled "Comprehensive Wastewater Basin Study." The study analyzes and predicts current and future sewer flows in the 201 Planning Area, delineates drainage basins requiring future trunk extensions and provides cost estimates for the future extensions.

Board. The Board of County Commissioners of Mesa County or, as the context may require, the utility director or the city council of the city pursuant to the agreement.

Bonds. Securities issued by the city and the county entitled "Mesa County, Colorado, Sewer Refunding Revenues Bonds, Series 1992." The bonds were issued for the purpose of refunding outstanding "County Sewer Improvement Revenue Bonds, Series 1980A" and "County Sewer Refunding Revenue Bonds, Series 1980B."

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CH2M-Hill study. A rate study done by CH2M-Hill in 1992 entitled "Wastewater Utility Rate and Cost Allocation Study." The study reviews the financing of the sewer system. A methodology is presented which results in rates for sewer service that are adequate to meet the financial needs of the utility and are equitable among the various users of the system.

City. The City of Grand Junction, a home rule city.

Code. The city Code of Ordinances, as amended from time to time.

Collection sewer lines or collection lines. All sewer lines, with the exception of private service lines, which collect sewage from residences, businesses, and other uses, and convey sewage to a trunk or interceptor sewer line.

Collection system. All collection lines, trunk lines, pump stations and other appurtenances, which collect and convey sewage from private service lines to an interceptor sewer line.

Combined sewer. A sewer intended to receive and convey wastewater and storm or surface water.

Council. The city council of the City of Grand Junction. The city council is the governing body of the city for purposes of C.R.S. § 31-35-701 et seq. and has legislative and other powers.

County. The County of Mesa, a statutorily created body politic of the State of Colorado.

District. A body politic which obtains sewage conveyance and treatment service pursuant to a contract with the city. Each district is authorized by and acts pursuant to C.R.S. title 32.

EQU. An "equivalent residential unit" as defined in section 38-26 of the Code.

Facilities plan or 201 facilities plan. The "Facilities Plan, City of Grand Junction." Prepared by NHPQ, September 2, 1975, as amended in the "Summary Update of 201 Facilities Plan and Pre-Design" report prepared by HDR, June 28, 1977, and by ARIX in the "201 Wastewater Facility Planning Update," May, 1985, and by HDR in the "Comprehensive Wastewater Basin Study," February 4, 1993.

Fund. City of Grand Junction/Mesa County Joint Sewer System Fund.

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HDR predesign study. A report done by Henningson, Durham & Richardson, Inc., of Colorado in 1977 entitled "Predesign Report for Wastewater Treatment Facilities and Interceptor

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Sewers.” The report updated the 201 Facility Plan for interceptor sewers and wastewater treatment facilities serving the designated Grand Junction and Mesa County planning area. The report provides a recommended plan and an evaluation of several wastewater management techniques.

Improvement district. An assessment district established pursuant to chapter 28 of the Code or applicable state statute.

Industrial pretreatment. “Pretreatment” as defined in section 38-63 of the Code.

Industrial pretreatment program. Administration of uniform requirements to prevent the introduction of pollutants into the system pursuant to article X [II], sections 25-57 [38-62] through 65 [38-70], of the Code.

Infiltration. The total extraneous flow entering a sewer system, or portions thereof, excluding sanitary sewage, because of poor construction, corrosion of the pipe from the inside or outside, ground movement or structural failure through joints, porous walls or breaks.

Inflow. The extraneous flow which enters a sanitary sewer from sources other than infiltration, such as roof leaders, basement drains, land drains, and manhole covers.

Interceptor sewer lines or interceptor lines. The principal sewer lines which collect and convey sewage from trunk sewer lines and collection sewer lines to the Persigo Wash Wastewater Treatment Plant. Interceptor sewer lines are shown on figure 2-3 of the basin study.

Manager. Public works and utility director of the city or the city manager or the city council, as the context may require.

Permit. “National Pollutant Discharge Elimination System Permit” (NPDES permit CO-0040053), issued pursuant to section 402 of the Federal Water Pollution Control Act, also known as the Clean Water Act, allowing discharge of pollutants into navigable waters of the United States or waters of the State of Colorado.

Persigo Wash Wastewater Treatment Plant or plant. The facility described in the current NPDES permit numbered CO-0040053.

Plant investment fee. A fee paid to the city to recover costs of construction of the system as outlined in article II, sections 38-71 through 38-73, of the Code, which article describes payment, amount, and formula for computing the fee.

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Sanitary sewer. A pipeline (also “line”) that conveys liquid and waterborne wastes from residences, commercial and other buildings, industrial plants and institutions, and other uses, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

Series 1980A bonds. “Mesa County, Colorado Sewer Improvement Revenues Bonds” originally issued by the city and county in the aggregate principal amount of \$7,420,000.

Series 1980B bonds. “Mesa County, Colorado Sewer Refunding Revenue Bonds” originally issued by the city and county in the aggregate amount of \$805,000.

Service charge. Monthly sewer service charge or rental on each lot, parcel of land, building or premise having any connection to the system as set forth in Article II, sections 38-55 through 38-61, of the Code which article describes such charges, their computation, and administration.

Service line. The line from the building drain to the sanitary sewer.

System or sewer system. City of Grand Junction/Mesa County, Colorado, Joint Sewer System including all real, personal, mixed and other property, now a part of or hereafter acquired by the system through purchase, construction or otherwise and used in connection with the system. “System” includes the plant including interceptor lines, trunk lines, collection lines, lift stations, and other connecting pipes, easements and rights-of-way therefor, and interconnecting systems, lines, and pipes whether or not owned or controlled by the city or the county, and used in connection with the system. Ownership of the System is determined by the agreement.

Trunk sewer lines. Sewer lines that serve a specific drainage basin which collect sewage from tributary sewer collection lines and convey sewage to an interceptor sewer. Trunk sewer lines are shown on City of Grand Junction drawing #02-826, dated December 15, 1993, which drawing is on file with the City of Grand Junction public works and utilities department.

201 planning area. The 201 planning area boundary described in the “Comprehensive Wastewater Basin Study” prepared by HDR, February 3, 1993.

208 plan. Region 11 Water Quality Management Plan, adopted by the Colorado Water Quality Control Commission in December 1980, assessing water quality, identifying treatment works, prioritizing water quality problems, and identifying agencies to implement recommendations outlined in the plan.

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Utility coordinating committee. A committee consisting of representatives of service providers within the 201 area, e.g. city, county, Ute Water Conservancy District, Public Service Company of Colorado, which meets regularly to review development submittals and coordinate regulation of construction activities.

Wastewater. Spent or used water which contains dissolved and suspended matter, as defined in section 38-26 of the Code.

(Res. No. 94-93, § 1, 12-15-93, Res. No. 80-95, §2, 9-29-95)

Section 3. Financial requirements and accounting.

(a) *Report of independent certified public accountants (audit).* An audit of the system's financial statements shall be completed once each year. Each audit shall be conducted by independent certified public accountants who shall deliver a copy of the audit to both the city and to the county. The auditor will express an opinion as to the financial position and results of operation of the system and whether or not the manager is operating the system in conformity with generally accepted accounting principles. The auditors will, from time to time, provide additional opinions upon instruction from the manager and will annually certify in the audit as to compliance with sewer revenue bond requirements. The manager shall select the auditor. The auditor for the system may be the same auditor who audits for the city.

(b) *Basis of accounting.* The system shall be accounted for as a proprietary enterprise fund. The name of the fund shall be the "joint sewer system fund." The financial statements shall be prepared on the accrual basis of accounting. A summary of significant accounting policies shall be outlined in the footnotes of each audit.

All of the funds and accounts described infra shall be maintained as book accounts in the "joint sewer system fund," shall be kept separate from all other funds of the city, and shall be accounted for and used solely for system purposes.

(c) *Budget and ten year financial plan.* A two year budget of the joint sewer system fund (hereinafter "fund") shall be used. Such a budgeting and accounting system complies with the requirements outlined in the county resolution MCM 92-160. County resolution MCM 92-160 authorizes the sale of sewer refunding revenue bonds dated January 21, 1993. County resolution MCM 92-190 replaced county resolution MCM 80-179 which authorized the sale of sewer revenue bonds dated November 1, 1980. To effectuate the sale of the bonds, the city adopted analogous ordinances numbered 2626 and 1922.

The manager shall continue to prepare a ten year operating and capital financial plan for the fund, which includes the two year budget. The ten year plan shall be a rolling ten-year plan which is reviewed and changed annually, by the manager, to reflect changing operational and capital needs and economic conditions of the fund.

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The ten year financial plan shall be based on the manager's estimates of system revenues, operation and maintenance expenses, debt service requirements, bond fund reserves, operation and maintenance expense reserves, minimum working capital reserves, planned capital improvements, and capital improvement reserves.

The ten year plan shall incorporate bond covenant revenue requirement ratios, current expense-to-current revenue ratios, and the manager's anticipated rate changes during the ten year period to insure that all requirements of the bond covenants, and the requirements of the manager, are met and balanced over each "rolling" ten year period.

(d) *Budget submittal.* Prior to October 1 of each year, the manager shall submit to the county and to the city council its anticipated budget for the following year, including the manager's recommended user charges, tap fees, and plant investment fees. The county shall adopt such user charges, tap fees, and plant investment fees.

It is the practice of the manager to begin preparation of the fund budget well in advance of October 1. Submission of each draft budget in late September typically reflects all changes to date. Additional review and changes occur after October 1. Such a process is approved. The manager shall endeavor to communicate all changes in a timely fashion to the city council and county.

Review and final adoption of the budget and proposed rates may occur in the following sequence:

- [(1)] Submission of the proposed budget and proposed rates to the city council and the county commissioners.
- [(2)] First reading of the city ordinance adopting the rates. The practice of the manager is to adopt rates to be effective January 1 of the following year. To this end any rate change may be adopted separately from an appropriation ordinance.
- [(3)] Resolution of the county commissioners adopting the rates.
- [(4)] Second and final reading of the city's ordinance adopting the rates.

(e) *System revenue funds.* The manager shall continue to establish and maintain revenue accounts within the fund, coded by number, for each type of system revenue. A current copy of the account description and account numbers will be available for inspection at the administrative services department of the city. From time to time, as system revenues are received, the manager shall credit them to the appropriate accounts. The manager shall maintain a summary of each revenue account within the fund. As revenue types change, the manager may create, modify or delete appropriate accounts.

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The manager shall, as a part of the biennial budget process, estimate system revenues by account. Such estimates will be submitted to and reviewed by the city council and submitted to the county.

(f) *System facilities operation and maintenance expenditures.* The manager shall continue its practice of creation and setting aside, in separate accounts, funds sufficient to pay operations and maintenance expenses as they become due and payable. Such funds shall be the first charge against system revenues. These accounts will be known as the “sewer system facilities operation and maintenance funds.”

The manager shall provide, within the fund, separate expenditure accounts for all system operations and maintenance expenses.

A description of system operation and maintenance expenditure accounts will be kept on file in the administrative services department of the city. From time to time as expenses are paid, these shall be charged to the appropriate expense accounts. Summaries will be maintained on each expenditure account within the fund accounting system.

The manager shall make annual estimates of system operation and maintenance expenditures by account as a part of the preparation of the biennial fund budget. These estimates will be submitted to and reviewed by the city council and submitted to the county commissioners.

(g) *Bond retirement.* On January 21, 1993, the outstanding bonds of the system were advance refunded by the issuance of \$8,200,000.00 of Mesa County, Colorado Sewer Refunding Bonds, Series 1992, issued by the city and the county.

The bonds and interest on the refunded bonds are payable solely from net system revenues, after payment of the costs of facility operation and maintenance.

The manager shall, as a part of the biennial budget process, provide for bond payments and expenses, in a separate account within the fund in a manner consistent with generally accepted accounting principles and in a manner that meets applicable requirements of the bond covenants.

The bonds require that gross revenues of the system be sufficient to “pay the annual operation and maintenance expenses and an amount equal to 120 percent of both the principal of and interest on the refunded bonds payable.” This calculation will be made as part of the annual audit and will be described in the audit footnotes as to the sufficiency of gross revenues.

(h) *Bond reserve fund.* The bond reserve fund was created in 1980 and partially funded from the reserve fund moneys on hand deposited in connection with the 1978 sewer bonds of the city and from proceeds of the Series 1980A Bonds. Subsequent required deposits have been made semiannually from system revenues.

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The 1992 bond documents require a bond reserve of “. . . not less than the average annual principal and interest requirements.” This reserve was established at the issuance of the 1992 bonds from the prior bond reserve fund as a reservation of cash and investments, and as a reservation of fund balance within the fund.

Each audit will provide the auditor's opinion concerning the sufficiency of the bond reserve fund and whether bond reserve requirements have been met.

(i) *Capital reserve accounts.* The manager shall continue to maintain expenditure accounts within the fund for system capital improvements. These expenditures will be budgeted and made after operation and maintenance expenditures, debt retirement, and required reserve fund deposits are made. These capital expenditures are designated as “backbone capital” and “collection system capital.”

System customers, as part of their monthly service fees, pay for specific sewer services. These services are described as “backbone operation and maintenance,” “backbone capital,” “collection system operation and maintenance,” and “collection system capital.” Such terms are defined in the definitions section of these regulations. The monthly service fees shall continue to be calculated based on the various service fee components provided to each customer. The components of the monthly service fee collected for backbone capital and for collection system capital shall continue to be credited as revenues to special reserve accounts set aside for planned capital expenditures in these areas.

The establishment of these capital reserve accounts was ratified by resolution 98-92 of the city council on December 16, 1992, which directs that the manager reserve all current and future fund balances of the fund, after all required credits are made and reserves funded, for future capital improvements and system replacements.

(j) *Operation and maintenance expense reserve.* The manager shall continue, within the fund, an “unallocated fund balance” the amount of which the manager shall determine each year as part of the two year budget process. This unallocated fund balance, which shall be considered in the ten-year plan, represents the amount of money remaining in the fund after all expenditures and designations for operations and maintenance, debt retirement, current capital, bond reserves, and future capital reserves are made. The unallocated fund balance is and shall continue to be designated as the “operation and maintenance expense reserve.”

The manager shall continue the established minimum balance to be maintained in the operation and maintenance expense reserve. This minimum balance is, and shall be, known as “minimum working capital.”

The manager may use such reserve to pay for or offset any deficiencies in system revenues required to defray operating and maintenance expenses, bond retirement expenses, or bond reserve fund shortfalls.

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(k) *Rate setting.* The manager shall establish rates, fees, and charges sufficient to generate annual revenues to meet the requirements of the bonds and to fulfill the policies and decisions as evidenced in the ten-year plan. The manager will submit to the city council for its review, approval, modification or denial, and shall submit to the county commissioners, its recommended user charges, tap and plant investment fees to be charged within the system. The user charges and fees will be uniform for those similarly situated within the system as determined by the city council.

The amount of plant investment fees is intended to recover the cost of construction of interceptor lines and sewage treatment works as described in the Grand Junction and Mesa County predesign report for waste water treatment facilities and interceptor sewers dated August 1977 (section 25-70 [38-71], city Code of Ordinances).

Rates and fees sufficient to meet the obligations and financial requirements of the bonds and capital improvement needs of the system are projected in the ten-year plan. Rates shall be amended from time to time as deemed necessary by the manager having considered the policy that annual incremental rate increases are preferred over larger increases implemented less frequently.*

***Editor's note--**In 1987 it was the policy of the city and the county to schedule rate adjustments once every three years. Rates were amended in 1987. In 1990 rates were amended. The scheduled rate increase for 1993 was postponed until 1994 as a result of the better than projected financial condition of the fund.

The manager shall, in addition to the independent periodic rate analyses outlined below, annually review and recommend rates to meet system and bond requirements.

As outlined in Mesa County Resolution MCM 92-160, if the city or the county deem necessary, the manager, not less than once every five years, will cause an independent professional engineer to prepare an analysis of the rates and fees. A rate analysis was completed in June of 1985 by Arix Engineering. In May of 1991 another was completed by CH2M-Hill Engineers.

Sewer use charges and plant investment fees shall be charged on the basis of EQU's. An EQU is an "equivalent residential unit" as defined in the city Code.

Section 38-55 and Section 38-71, *et seq.* of the Code of Ordinances of the city shall govern rate administration.

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(l) *Interfund transfers.* The agreement, section 1[(a), (2)], paragraph 2, allows the manager to include in its anticipated budget a line item specifying the amount of money needed to reimburse the city for expenses incurred by the manager and other departments of the city for services provided to the system.

Each budget shall include such a line item, which may be amended from time to time.

(m) *Utility billing.* The manager, unless specifically prohibited by contract, shall bill all sewer customers for services received whether those customers are served directly by the system or another entity, including a special district. The existing arrangement is approved whereby Fruitvale Sanitation District bills customers who are not in the city limits.*

***Editor's note**--The manager bills Fruitvale customers who are then located in the city.

There shall be included on each bill, and identified as such, any additional charges made to a customer by any other entity which provides sewer service.

(Res. No. 80-95, §1, 9-20-95)

Section 4. System expansion; policies and rules for system expansion and financing.

The city has a duty, as the manager of the system and a co-owner, to plan for, control and restrict, if necessary, future users of the system so that the needs of the system, including capital, are met.

The manager's policy is to require that all development within the 201 is served by and connected with the system. This policy promotes the public health, welfare and safety by facilitating the annexation of urban and urbanizing lands to the city and by reducing the use of septic systems, package plants and other treatment systems and by, overall, reducing the costs of sanitary sewer.

(a) *Sewer capacity and availability.* There is a finite limit to the capacity of the system. Such capacity was established in the original planning efforts. When the 201 plan was adopted it determined what capacity was needed. Persigo was sized to meet that need. The capacity was calculated based on land use assumptions for a defined area. That area is called the 201 service area. Requests for service outside the 201 service area have occurred. These regulations establish policies and rules to decide such requests for service inside and outside of the 201 service area. Rules may or may not be designated as such.

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(1) *Facts.*

The design capacity of the plant is 25 million gallons per day. Source: Predesign Report for Wastewater Treatment Facilities, HDR, 1977.

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The adopted per dwelling use per day is 263 gallons. Source: Basin Study, 1993.

The total population equivalent which can be served by the ultimate design capacity of the Persigo plant per day is 237,650.

The total population equivalent which is presently being served by the Persigo plant per day is 72,337.

Based on present land use approvals and zoning, the total population equivalent which are "approved" (this includes all potential future development) is 260,380. Source Basin Study, 1993.

(2) *Policy.*

The manager finds it to be in the best interests of the citizens of the community, and in the interest of the public health and welfare of the public in the city and in the 201 service area, that growth be directed, both in the city limits and in the other areas of the 201 service area. As indicated in the adopted annexation plans of the city, it is expected that, over time, the city's limits will be coterminous with the boundaries of the 201 service area.

To meet those goals, sewer availability shall be managed, controlled and allocated throughout the 201 service area. The method selected to allocate such availability (which means the plant capacity) as to a particular parcel or lot is described in the basin study completed in 1993.

(3) *Rule 4.1.* Upon adoption of this regulation, no development shall be approved which requires sewer service within the 201 service area until the manager finds that the proposed development (as that term is defined in the zoning and development code of the city) can be served by the existing infrastructure, after having duly considered the residual capacity of the existing lines, the Persigo plant and the system. To determine if the development can be served by the existing infrastructure, the manager shall examine the sub-basin (as defined in the basin study) within which the development is located.

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(4) *Rule 4.2.* The manager shall maintain a compilation of the allocated sewer approvals which have been given. At such time as the calculated allocation of the plant's ultimate design capacity has reached 55 percent, and each fifth percentile thereafter, the manager may give notice of such calculation to the public.

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(5) *Rule 4.3.* If any person requests that the manager modify the boundary of one or more sub-basins which have been established (in the 1993 basin study), or the allocations of density that have been established for each such sub-basin, such person shall deliver such data and studies as the manager may require in order to decide such a request. The manager may require that such person pay a fee calculated to reimburse the manager for the costs and expenses, including personnel costs, incurred in such review.

(6) *Rule 4.4.* The manager may modify the capacity allocated to any sub-basin based on other available infrastructure (such as water, streets, schools, and the like) and based on the council's willingness to provide urban level of services.

(7) *Rule 4.5.* The principle of "first come, first serve" shall apply when determining if capacity is available.

(b) *Types of system expansion.* System expansion can occur by providing sewer service to developing areas, sub-basins, and basins and to developed, unsewered areas, sub-basins, and basins. Each requires different rules and considerations, and financing mechanisms or charges.

(1) *Developing areas.* Typically, system expansion in developing areas occurs at the time of subdivision or development approval: the developer pays the costs needed to extend/expand the system to serve the subdivision or development. This system expansion occurs when lines are installed within a development or through trunk lines extensions to a development. The latter circumstance is outlined in rule 4.8.

Sewer reimbursement policy. The manager determines that if a developer extends the system to the benefit of other property near or adjacent to the extension, the developer should be allowed to recoup some of the costs of system expansion from the benefited property when that property receives the benefit of the expanded system. Additional system expansion which further extends an extension will not be required to reimburse for the costs of a previous extension. The extent of property benefited by the system expansion shall be determined by the manager.

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Rule 4.6. The manager, at present, chooses the method of sewer reimbursement agreement to provide a mechanism to allow a developer to recoup some of the costs described above. A copy of a standard form sewer reimbursement agreement is attached as appendix X [which is on file in the city clerk's office]. The manager may negotiate different terms as circumstances may require.

The term of such agreements shall not exceed ten years. The rate at which interest shall accrue on the developer's costs of extension shall be established by the manager based on then current conditions.

(2) *Developed areas.*

Policy. Some areas have already developed as individual lots and uses without sewer service. Circumstances where sewer needs to be provided to such lots and uses include:

- a. A residential unit served by an ISDS (septic system) which fails and the unit is within 400 feet of a sewer, or
- b. An existing nonresidential use the owner of which wishes to expand or redevelop the property.

Providing sewer service to such areas means that the property owners must pay the costs of sewer extensions and service facilities. The manager finds that the system should not pay for such costs, except as provided for herein. The costs of retrofitting an area for sewer service is typically much higher than if done at the time of development and many times means that the costs attributable to each lot, especially residential lots or parcels, is high. The manager finds that some form of financing may be required, under certain circumstances, to promote the public health by providing sewer service in some areas of the 201 service area.

- c. An improvement district is a useful financing tool which allows for payments over time of the costs of retrofitting an area. The manager endorses and approves the use of improvement district(s).

Typically, an improvement district is used when a neighborhood or other identifiable area needs sewer service and the owners in the area can garner sufficient owner consent to form a district. For areas within the city limits, the city improvement district process is available. For areas not wholly within the city limits, other improvement districts, requiring the oversight and consent of the county commissioners, may be available.

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- d. In an area where insufficient owners consent to form a district, other mechanisms

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are needed to allow the continuing use of a property which does not have sewer service available, but for which sewer service is required. Such a situation may arise in an area generally served by ISDS where one septic system fails or does not meet current standards.

Rule 4.7. In the case of 2a. and 2b., if a developer/property owner demonstrates to the satisfaction of the manager that the following two conditions exist: (1) the construction of a sewer line is impracticable and (2) adequate disposal and treatment facilities exist, or that a failed ISDS can be repaired; the manager may authorize, at or prior to review of development plans or septic system approval, that the approval or permit be issued based on the following conditions which shall be specifically agreed upon by the developer pursuant to a written agreement:

- (a) The developer/property owner shall deliver an executed power of attorney for formation of a future sewer improvement district; and
- (b) The developer/property owner shall pay that amount of money which the manager calculates to be the proportionate share of the sewer line construction costs, as defined by the manager, attributable to the development or property, plus an administrative charge of six percent of the principal amount of such proportionate share (the "payment"); and
- (c) The manager may authorize the payment, described in rule 4.7(b), above, over a term of years, not to exceed ten, upon the execution and delivery by the developer of a promissory note and mortgage or deed of trust sufficient, in the judgment of the manager, to reasonably ensure that the payment will be timely made; and
- (d) Interest shall accrue on the payment at a rate established by the city council, by resolution, or in the absence of such a resolution, at a rate which is equal to the rate of return on city investments obtained by the finance director of the city on the city's long-term investments; and
- (e) The obligation to pay the payment, in addition to the mortgage or deed of trust, shall constitute a lien upon the property and shall be equivalent to the lien provided for in the City Code establishing a water lien, presently sec. 38-104. All remedies available pursuant to such sec. 38-104 shall equally apply to the lien described and created herein; and

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- (f) In the event that an improvement district is formed and some or all of the payment has been paid, the assessment which would otherwise be payable

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shall be reduced by the amount of principal of the construction cost which has been paid; and

- (g) The developer shall dedicate, at no cost to the city, such right-of-way or easements as the manager shall deem necessary to construct, operate, and maintain the system, in accordance with city specifications and standards. In the event that insufficient information is available to determine the legal description of the required rights-of-way or easements at the time of approval or permit issuance, the developer shall promise and covenant to make such a conveyance or grant at such time in the future as the manager shall require.

If adequate disposal and treatment facilities do not exist or a failed ISDS can not be repaired so that such a system can adequately service a property during an interim period before sewer lines are constructed, the property shall be abandoned or vacated until adequate treatment or disposal is available. Adequate disposal may include regular and periodic pumping and disposal of accumulated waste at the Plant.

(c) Sewer trunk line extensions in developed or developing areas.

In some circumstances, the extension of a trunk sewer or interceptor to serve one or more sub-basins is in the public interest. Resolution 47-93, as amended from time to time, establishes the applicable policy and requirements for sewer trunk line extensions.

In the past, certain developments outside the city were approved which were not connected to the system; in some of such cases, "dry lines" were constructed with the expectation that such "dry lines" would be later connected to the system when a trunk or other line was built. However, no provision was made for payment by the developer or the lot owner of the costs of extension of such trunk and the costs of interconnection. The manager finds that such approvals are not in the public interest.

Rule 4.8.

No development within a basin or sub-basin in the 201 service area for which inadequate or no lines exist, as determined by the manager, shall be permitted to proceed to final plat or other final approval, whichever is earlier, until the developer thereof has paid to the manager, for retention by it within an appropriate fund, the trunk line fee established pursuant to city Resolution 47-93. Nothing contained herein shall limit the obligation of the developer to pay

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for additional costs required to provide sewer service to the development, such as but not limited to the costs of collection lines.

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The manager shall collect such amount from each such developer in accordance with Resolution 47-93.

Should the developer desire to extend a trunk line before the manager is prepared to build such trunk line, the developer may request approval from the manager to do so at the expense of the developer. Upon completion and acceptance by the manager of the extension, the developer may apply to the manager to be reimbursed for the cost of the extension (less any trunk extension fees required of the developer). Any such reimbursement by the system shall apply only to a trunk extension which the manager has planned, as approved in the current two-year budget, to construct within twenty-four months of the developer's completion of such work. The developer would then, with approval of the manager, be reimbursed from the trunk line extension fund. Interest on the cost of construction would not be included as a part of the reimbursement.

(d) *Development and infrastructure standards.* Those standards adopted by the Manager concerning development and infrastructure shall apply throughout the system.

(e) *Sewer service outside the 201 service area.*

Rule 4.10.

Sewer service outside the 201 service area is prohibited, unless the manager determines, by resolution of the city council:

- a. That the area proposed to be served is urban or urbanizing, i.e., the city is willing to provide urban services to such area, in the reasonable future; and
- b. The manager determines that sufficient capacity to serve such area is available; and
- c. The manager determines that other necessary infrastructure to provide urban services is reasonably available.
- d. The manager has evaluated the probability of including the area proposed to be served pursuant to rule 4.11 and has found that such inclusion is reasonably likely to occur in the reasonable future. The manager shall seasonably initiate the process to cause such area to be included within the 201 service area.

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(f) *Limits of the 201 area.*

Rule 4.11.

Any person desiring that the boundary of the 201 service area be modified, including a political subdivision, shall begin by making application to the manager. The application shall include such information as the manager shall require in order to evaluate the effect of such modification on the plant capacity, the ability of the city to serve such included area, and the ability of the city to control the infrastructure standards which shall apply, and to ensure continued compliance with applicable federal and state law.

The manager may initiate such a modification.

Upon the determination by the manager that the information supplied is sufficient to make an informed decision on the request for modification, the manager shall schedule a public hearing thereon with prior notice of such hearing to be published at least twice, 30 days prior to such hearing.

The decision on the question of modification shall be made by the city council, and if required by applicable law, shall be forwarded to other agencies whose decision is required.

The manager may require that such person pay for the costs incurred, including personnel costs, in evaluating and deciding such a request.

(g) *Utility agreements.*

Background and policy.

The importance of the use of the availability of sewer service to obtain annexation of properties to the city cannot be understated. The city annexes: to control the location, quality and density of development; to ensure that the development standards of the city are complied with; to control the impacts on city streets and other city infrastructure; to prevent a decaying core city by adding to the city newly developing areas, and already developed areas which are urban or urbanizing; and to provide planning and fiscal responsibility.

For decades, the city has required powers of attorney to be delivered to the city at the time that permission to physically connect to the system has been granted. At times, this has occurred when the plant investment fee has been paid and a planning clearance issued. Where the only approval is a building permit, this method has an inherent weakness: because the annexation process requires

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significant lead time and procedural steps, development can occur faster than annexations can be completed. Thus, a developer can obtain permission to install infrastructure for subdivisions/developments without city inspection and without city specifications being met. Additionally, because at times in the past some county-adopted standards have been waived, the city finds that it must to protect its taxpayers from bearing the burden of upgrading deficient infrastructure upon annexation, implement a supplementary method of obtaining control over the infrastructure which is installed.

A second inherent weakness in the method used in the past is that the discretionary planning and land use decisions are made by entities other than the city for lands which the city annexes shortly thereafter. The city finds that its citizens are best served, and the public welfare is best served, if the land use review process occurs under the city's jurisdiction. Earlier acquisition of powers of attorney facilitates that important public policy decision.

The following rule will assist in promoting the city's annexation policies and is therefore adopted.

Rule 4.12.

The manager requires, prior to its review or approval of construction drawings for sanitary sewer and prior to approval of sewer service related to any plat or other development approval, whichever occurs first, that the manager receive an approved executed power of attorney (POA) for annexation. POAs shall be provided using the forms furnished by the city, and shall include a full legal description of the entire parcel(s) and property intended to be developed, or which are subject to review.

To implement rule 4.12, the city has requested the assistance of the county planning department to:

- a. At the time of the county preapplication conference, make developers aware of the city POA requirement and inform them that the manager requires an executed POA before it will review or approve any sewer construction plans, preliminary or final plat and in any event prior to connection to the system;
- b. Provide the manager with a full legal description of the entire parcel(s) (not just the portion being final platted) at the time the county refers development proposals in the 201 service area to the manager for review, comment and/or approval.

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- c. The manager will not begin the review of, nor approve preliminary or final sewer constructing plans, or preliminary or final plat approval or other development approval, without first having obtained a proper and completed POA. Should preliminary plans be submitted without the signed POA, the manager may inform the property owner/developer that no further review will occur, nor approval be given, nor connection allowed, until the manager's requirements for a signed POA are satisfied.

(h) Plant investment fee.

The present plant investment fee, \$750.00, is not intended to pay for the expansion of the sewer plant; rather it is intended only to pay part of the payments due on the 1992 bonds on the existing plant and infrastructure. Based on the number of current and projected users, it is insufficient to pay for completing the infrastructure that is needed to utilize the existing plant capacity and other system expansion. Source: city audits, the bond documents, et al. The manager has analyzed the financial requirements of plant and system expansion(s).

The manager's philosophy, which is adopted herein, is that current users should pay only for current capacity and current operations. When the capacity is used up, the system should borrow to expand the system and future users should pay for such bonds and the then current operational costs.

The city finds that it would be improper to require the present users of the system to subsidize future system expansion(s) – such expansion should be paid for by those future users which necessitate such expansion. Hence, the manager's policy, hereby adopted, is that there should not be a charge, paid by present users of the system, to be used to pay for system or plant expansion.

(Res. No. 41-94, 6-1-94; Res. No. 62-94, 7-20-94, Res. No. 80-95, §2, 9-20-95)

Section 5. Reserved.

(Res. No. 80-95, §2, 9-20-95)

Section 6. Collection system operations and treatment service operations.

This section of the sewer Rules and Regulations describes rules and regulations for entities, organizations, special sanitation districts or homeowners associations which discharge sewage to the 201 Joint Sewer System. In this section, "person" includes individuals, contracting entities and permittees, unless the context requires otherwise.

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(a) *Application.* These Rules and Regulations apply to and govern each person or entity who obtains treatment at the Persigo plant and/or receives any sewage services from the City, including the owners and/or operators of a collection system¹.

(b) *Authorization.* No person shall cause any sewage to be transmitted to or treated by the System unless during all times pertinent thereto: (a) a written agreement is in effect signed by the Manager and the person ("contracting entity"); or (b) such person has obtained a current permit from the Manager ("permittee") which permit is issued by the Manager in compliance with these regulations.

(c) *Written approval; descriptions of connections.*

- (1) No person shall connect to the System at any point or location unless previously approved in writing by the Manager. Connections which have been previously authorized by the Manager and which exist as of the date of adoption of this Section Six are approved.
- (2) Each contracting entity and each permittee shall within sixty days of connection to the System or notice from the Manager notify the Manager of the location(s), size and type of each such connection to the System, along with a description sufficient to distinguish each connection from another and the location, size and type of all lines and facilities which constitute the collection system of such person.

(d) *Confirmation of connections; annexation agreement.*

- (1) No connection, line or facility other than described and approved as provided in 6-3, above, to the System shall occur until the Manager has approved the location and specifications. Each contracting entity and permittee shall pay such costs and expenses which are required to comply with the requirements of Section 6-3. Each contracting entity and permittee shall pay to the Manager the expenses, costs and charges established by the Manager to confirm connections to, or disconnections from, the System. For the purposes of this provision, "expenses, costs and charges" means the time of the Manager's employees, the fees and charges of any or other experts required, value of the use of equipment and materials, and the costs of mapping, copying and the like. All expenses of connection, or disconnection, shall be borne by the contracting entity or permittee.

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- (2) No connection to the System nor to any facilities connected to the System shall be made or authorized until each property served by the collector system of such

¹This section is not intended to apply to individual service lines.

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person is annexed to the City or until the City has received an annexation agreement (*e.g.*, power of attorney for annexation).

(e) *Specifications; expenses.* No person shall install, or authorize to be installed, any collection sewage lines which are designed to connect to the System unless the prior written approval of the Manager is obtained; the Manager shall not grant such approval unless the improvements conform with the several requirements of the Manager, including size and technical standards for sewer construction. During the period of construction, and with regard to each enlargement, extension, or replacement, such person shall pay the expenses of the Manager's construction inspector, or other professional as is deemed necessary by the Manager, which inspector shall have complete access to the construction and the work.

(f) *Maps; as-builts.* Within thirty (30) days of any replacement, enlargement, extension or connection to the System (other than permitted pursuant to 6-3), each contracting entity or permittee shall provide the Manager with maps, as-built drawings and other documentary information from which the Manager may determine the type, date, and specification(s) of each such replacement, enlargement, extension and individual sewer connection to the collection system of such person.

(g) *Fees, charges; hook-up permit.* Each applicant for connection to the collection system of any person shall pay directly to the Manager a tap fee (if applicable), the applicable plant investment fee, and shall execute a hookup permit (including a power of attorney for annexation) at the Grand Junction City Hall. No person or entity shall issue any approval or clearance for connection to the collection system of such person or entity until, and after, the Manager has evidenced its approval by the issuance of a hookup permit. The present form of the hookup permit is attached as [Exhibit] 6-A.

(h) *Tap permits.* Prior to connection an applicant shall either (a) agree to pay the Manager for the time and materials incurred in making the connection; or (b) obtain a permit issued by the Manager to an approved contractor who shall make the connection or (c) have agreed to pay a district which controls a collection system.

The Manager may also require all excavations in public rights-of-way or utility easements to be done by System personnel and equipment with excavation piping and valves in these areas to be provided by the Manager and paid for by the contracting entity or permittee.

(i) *Building permit.* No building permit (but excluding foundation only permits and building permits for a structure not requiring sewer service) shall be issued by the Mesa County Building Department until the applicant has obtained a hookup permit from the Manager at City Hall.

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(j) *Operation/maintenance services.* The Manager will not provide operation and maintenance services, *e.g.*, flushing or jetting of the system of a collecting entity or permittee,

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unless provided for by a written agreement with the Manager.

(k) *Connector's duties.* Any failure of a part of the collection system of a contracting entity or permittee, such as repair or replacement of a lift station, or blockage due to slippage or cave-in, whether by reason of faulty installation, age or otherwise, which requires excavation and/or replacement of pipe materials, shall be at the sole expense of the contracting entity or permittee. If the contracting entity or permittee fails to make such repairs or replacement in a timely manner, the Manager may elect to make the repair and replacement, and in such event the contracting entity or permittee shall reimburse the Manager for labor (direct and indirect), equipment costs, materials, plus ten percent (10%) of such labor, equipment and material costs for the costs of administration.

(l) *Inspection.* During the period of construction, and with regard to each extension of the contracting entity or permittee's collection system, the contracting entity or permittee shall pay the expenses of a construction inspector, or other professional as is deemed necessary by the Manager, which inspector shall have complete access to the construction and the work.

(m) *Billing.* No contracting entity or permittee shall collect from, or bill, any charge or fee, including any monthly fee or charge from a permittee or other user of the System or other person connected to the system, except as may be specifically provided otherwise in an agreement with the Manager. The Manager is authorized to enter into agreements with a contracting entity or permittee to bill and collect such additional amounts as may be agreed upon, such as a district surcharge for connecting district operations and maintenance. If the Manager bills and collects the contracting entity's portion of monthly or other charges or fees, the Manager may, pursuant to such agreement, account to a contracting entity for the revenues collected upon a regular monthly basis.

(n) *Written Agreements.* The Manager is authorized to enter into written agreements with a contracting entity whereby the Manager collects from individual users who are connected to the contracting entity's collection system such additional tap or other fee the contracting entity shall determine. The contracting entity shall notify the Manager in writing of the amount of said additional tap or other fee(s) and shall indemnify and hold harmless the System, and the Manager and its employees and officers from any claims from any person that such fees or charges are improper or uncollectible.

(o) *Property Served.* Except as provided in these Rules and Regulations, service or connection to the System will be furnished only to persons whose property is subject to these Rules and Regulations.

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(p) *Infiltration and Inflow.*

- (1) No contracting entity nor permittee shall permit infiltration or inflow into the System except as provided herein. Each such contracting entity and permittee

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shall, at its own expense and at no expense to the City or the System, rebuild such of its lines and other facilities, and remove any illegal or improper connections according to the plans, as to specifications and the time for performance, as approved by the Manager in order to reduce excess infiltration and inflow as required. Each such contracting entity or permittee shall perform such work immediately following the giving of notice by the Manager.

- (2) The total of infiltration and inflow, shall not exceed a rate of more than 200 gallons per inch diameter per day per mile of line and any amounts over such rate are "excess." Inflow from existing combined sanitary and storm sewers, which the Manager has approved, shall not be considered as "excess."
- (3) During any period in which any contracting entity or permittee permits excess infiltration and/or inflow, the Manager may require such entity or permittee to pay a surcharge equal to the additional costs incurred by the Manager in conveying and treating the excess infiltration. The Manager's calculation of such surcharge shall include the costs of the consumption of capacity of the System.
- (4) The Manager shall calculate any infiltration/inflow rate by comparing peak flow during wet weather to peak flow during dry weather (especially summer months with irrigation activity v. winter months with no irrigation activity). Dry weather flow is measured during dry weather during the non-irrigation season (December - March). Each contracting entity and permittee shall provide the Manager with such information and data as the Manager may require to perform such calculation such as all pipe length and the size of each such pipe, age, material and conditions of all such pipe, and location of all connections and results of any infiltration and/or inflow studies and data.
- (5) Infiltration and/or inflow shall be measured using calibrated equipment specifically designed to measure flow in sanitary sewers. Flow should be measured over an extended period of time (more than 3 months) and should be correlated to rainfall data for the drainage basin where the sanitary sewer flow is being measured. Flow from each contracting entity and permittee shall be measured at the points of connection with the City of Grand Junction sewer system. Each contracting entity or permittee shall perform such flow measurement as the Manager deems necessary to accurately establish the infiltration and/or inflow.

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(q) *Charges.* Each contracting entity and permittee shall timely pay all Manager adopted charges and fees within thirty days of billing by the Manager. Any such charges and fees not timely paid shall accrue interest thereon at a rate of fifteen percent (15%) per annum.

(r) *Pretreatment.* Each contracting entity and permittee shall comply with the requirements

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of the Manager concerning industrial pretreatment, including but not limited to obtaining a permit therefor prior to discharge into or connection with the System. *See*, Chapter 38 of Code of Ordinances of the City of Grand Junction which is incorporated herein by this reference.

(s) *Maintenance Program.* Each contracting entity and permittee shall adopt and implement a comprehensive collection system maintenance program. Such a program shall be developed to comply with the standards and methods provided in EXISTING SEWER EVALUATION AND REHABILITATION (ESER), published by Water Environment Federation Manual of Practice FD-6 and American Society of Civil Engineers Manuals and Reports on Engineering Practice No. 62 Second Edition, 1994 which is incorporated herein by this reference.² include: routine cleaning and television inspection and replacement and repair of all portions of the collection system as required. The Manager may require additions or changes to such a program.

(Res. No. 80-95, §1, 9-20-95)

². ESER may be obtained by contacting Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314-1994, (703)684-2400.

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SEWER HOOKUP PERMIT

OWNER(S): _____
ADDRESS OF PROPERTY: _____
TAX PARCEL NUMBER: _____
LEGAL DESCRIPTION OF PROPERTY: _____
JAL DISTRICT: _____
☐ OMSD ☐ CGV ☐ FRUITVALE ☐ OTHER _____
☐ OUTSIDE OF SPECIAL DISTRICTS

AGREEMENT AND POWER OF ATTORNEY FOR ANNEXATION

OWNER(S):

WITNESS my hand and official seal:

My commission expires:

**APPENDIX E RULES AND REGULATIONS PERTAINING TO THE
DELIVERY OF UNTREATED WATER TO WATER PROVIDERS
AND INDIVIDUAL USERS***

***Editors's note**--Printed herein are the rules and regulations for the delivery of untreated water, as adopted by Resolution Number 126-96 on December 18, 1996. Amendments to Resolution Number 126-96 are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original resolution. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

Sec. 1. [Policy; purpose.]

Sec. 2. Rules applying to water providers.

Sec. 3. Rules applying to individual water users.

Sec. 4. Rules applying to all water providers and individual water users.

Sec. 5. Schedule of authorized taps.

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UNTREATED WATER REGULATIONS

Sec. 1

Section 1. [Policy; purpose.]

It has long been the policy of the City of Grand Junction to not provide untreated water from City flowlines or from City canals and ditches for domestic drinking water purposes; federal and state laws are based on the same policy considerations. Several water providers and numerous water users have been allowed to tap onto the City raw water flowlines to obtain livestock water. Such users were subsequently allowed to continue to receive untreated water when it was determined they were using the water for human consumption, but only if the raw water was properly treated. It is the policy of the City to remove users from these raw water flowlines when other treated domestic water became available.

These Rules and Regulations are made to regulate water providers, individual water users, and the delivery of water to individuals who receive untreated water from the City of Grand Junction's raw water flowlines or ditches. Current water providers and individual water users to whom raw water is available are listed on the attached schedule.

Entities or persons acting as water providers (collectively referred to herein as "Water Providers"), and/or others who provide water for drinking or other domestic use (collectively referred to herein as "Individual Users"), have the duty to provide clean and safe water if it is to be used for domestic purposes. Such Water Providers and Individual Users must comply with State and Federal treatment requirements. The purpose of those requirements is to assure that any water delivered to any person which is intended for domestic or drinking purposes is properly treated and thus is safe for human consumption.

Historically, enforcement of such regulations and requirements has, at least in western Colorado, been less than rigorous by state and federal authorities. The State Department of Public Health and Environment ("State Health") is the agency with primary enforcement responsibility. For various reasons including staffing levels and recognition that smaller systems are frequently undercapitalized, State Health officials have extended deadlines or have not enforced applicable State and Federal requirements. Such failure to rigorously enforce, however, may mean that the end-user, who likely has no knowledge of the requirements or the failure of the Water Provider to comply with all requirements, is at risk of receiving water for domestic consumption which may not comply with minimum treatment standards. In the absence of rigorous State or Federal enforcement efforts, the City's interests, and that of the public, is promoted by requiring that any Water Provider or Individual User receiving water from City supplies comply with applicable State and Federal requirements. These rules and requirements are implemented to such ends.

In addition, the City's provision of untreated water to Water Providers and Individual Users is properly subject to business rules such as setting of rates, water meter requirements, and other standards similar, as determined applicable by the City, to those which apply to the City's municipal domestic water supply system. The City's water supply treatment and distribution system is regulated by provisions of the City Code, and regulations issued pursuant to the City Code. Rules and requirements which control the in-city water supply, treatment and distribution should apply equally to Water Providers and Individual Users, receiving water from the City except where existing Code provisions, and implementing rules, clearly do not apply.

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(Res. No. 126-96, 12-18-96)

Section 2. Rules applying to water providers.

Therefore, the following rules and requirements apply to all Water Providers receiving untreated water from the City for distribution to others. These rules and regulations shall be effective immediately upon adoption by the City Council.

1. Each Water Provider shall install and maintain, in accordance with City specifications, a meter at a location designated by the City. The City will read each meter and the Water Provider will pay, based on such reading, monthly for the water used, based on the meter readings (including water flowing through the meter due to breaks).
2. Each Water Provider shall pay to the City, in arrears, except as provided below, based on the following rate:
 - (a) \$14.62/month minimum on the first active tap serviced for a minimum monthly usage of 3000 gallons.
 - (b) \$3.44/1000 gallons for all usage over 3,000 gallons serviced/month to 10,000 gallons;
\$3.32/1000 gallons for all usage over 10,000 gallons serviced/month to 20,000 gallons; and
\$3.22/1000 gallons for all usage over 20,000 gallons serviced/month (in the aggregate for the water provider).
 - (c) The monthly charge will change as the minimum rate changes on existing in-City residential rates; such changes shall be effective in accordance with the City's resolutions without the need for reference or change in these regulations.
 - (d) All rates will change periodically; the City will notify the Water Provider when such changes are effective.
 - (e) In the event the Water Provider does not timely pay all amounts billed to it, the Utility Manager may require that, for all months following notice, the Water Provider pay in advance of water delivery, based on prior usage.
 - (f) All amounts not timely paid by a Water Provider shall accrue interest thereon at a rate of twelve percent (12%) per annum.
3. In addition to monthly water usage charges, each Water Provider shall pay for any necessary maintenance on the tap and meter, as required by the City. No person shall make any changes to any tap connected with any City pipe or facility or to any meter required by these regulations without the prior consent of the City.

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4. Each Water Provider shall maintain in good order all of its distribution system. The City is not responsible for, or liable for, any pipeline maintenance or repairs on any

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water provider's lines or facilities which are on the downstream side of a tap onto any City pipe or facility.

5. Each Water Provider shall restrict and limit the number of its individual taps and users to those in place as of the effective date of these rules and regulations. These limitations are listed in the attached schedule. The Utility Manager of the City shall notify each water provider of the number of individual taps which are authorized. Each Water Provider shall take such actions as are necessary to limit or remove additional taps, over the number authorized by the Utility Manager.
6. No Water Provider shall allow any person to receive water delivered by the City to the Water Provider (hereafter "City water"), unless prior thereto such Water Provider has notified the City, in writing, and the City has, in writing, given its consent. In addition, each time a new user receives City water from a Water Provider, such Water Provider shall inform the City of each user's full name, address, and property being served. Each Water Provider shall, at least once each calendar year, deliver to the City's Utility Manager a map clearly showing the name and address of each Water user and the property to which City water is available.
7. At least once each calendar year, each Water Provider shall provide to each person receiving City water: notice concerning these Rules; a summary of applicable State and Federal requirements; and the status of the Water Provider's treatment of the water supplied to such users.
8. Each Water Provider shall certify, in writing, to the City on or before April 1 of each year that the supply treatment and City water for human consumption meets all State, Federal, and Local requirements.
9. Each Water Provider shall, on a monthly basis, provide the City copies of all water quality reports about sampling, and violations of which it is aware, including those submitted to the State of Colorado.
10. The City may inspect the water facilities of each Water Provider without notice at any time during the hours of 8:00 a.m. to 5:00 p.m. on any Monday through Friday and each Water Provider shall cooperate in any such inspection by the City.
11. Each Water Provider shall supply City water to any City property which is presently served by such Water Provider at the same rates and under the same conditions as such Water Provider supplies City water to its other users.

(Res. No. 126-96, 12-18-96)

Sec. 3

Section 3. Rules applying to individual water users.

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The following rules and requirements apply to all Individual Users receiving untreated water from the City. These rules and regulations shall be effective immediately upon adoption by the City Council.

1. Each Individual User shall have, in accordance with City specifications, a meter at a location designated by the City. The City will read each meter and the Individual User shall pay, based on such reading, monthly for the water used, based on the meter readings (including water flowing through the meter due to breaks).
2. Each Individual User shall pay to the City, in arrears, except as provided below, based on the following rate:
 - (a) \$24.26/month minimum on each active tap based on a minimum monthly per tap usage of 3000 gallons.
 - (b) \$3.44/1000 gallons for all usage over 3,000 gallons/month per active tap up to 10,000 gallons/month;
\$3.31/1000 gallons for all usage over 10,000 gallons/month per active tap up to 20,000 gallons/month;
\$3.21/1000 gallons for all usage over 20,000 gallons/month per active tap (in the aggregate for the Water Provider).
 - (c) The minimum monthly charge set forth above shall change as the minimum rate changes on existing in-City residential rates; such changes shall be effective in accordance with the City's ordinance(s) or resolution(s) without the need for reference or change in these regulations.
 - (d) All rates will change periodically; the City will notify the Individual User when such changes are effective.
 - (e) In the event the Individual User does not timely pay all amounts billed to it, the Utility Manager may require that, for the month following notice, the Individual User pay in advance of water delivery, based on prior usage.
 - (f) All amounts not timely paid by a Individual User shall accrue interest thereon at a rate of twelve percent (12%) per annum.
3. The City will provide the necessary maintenance on the tap and meter, as required. No person shall make any changes to any tap connected with any City pipe or facility or to any meter required by these regulations without the prior consent of the City.
4. Each Individual User shall maintain in good order all of its service line(s). The City is not responsible for, or liable for, any pipeline maintenance or repairs on any user's lines or facilities which are on the downstream side of a tap onto any City pipe or facility.

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5. Each Individual User shall be limited to the tap existing as of the effective date of these rules. These limitations are listed in the attached schedule. Each Individual User shall take such actions as are necessary to limit or remove any additional taps, over the

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number authorized by the Utility Manager on the attached schedule, as amended from time-to-time.

6. No Individual User shall allow City water to be delivered to any other property (other than as shown on the approved schedule) unless prior thereto such Individual User has notified the City, in writing, and the City has, in writing, given its consent.
7. By accepting any City water each Individual User agrees and understands that the City does not treat any water passing through the meter in any way and the quality of the water delivered to the user does not, and will not, meet present or future water quality standards as set by any regulatory agency for a domestic water supply. The Individual User recognizes and agrees to purchase and install, per manufacturers' recommendations, State Health approved Culligan "point of use" treatment system if the water supplied by the City is to be used for domestic purposes, *i.e.*, piped into the residence. No other system shall be used or installed.
8. Each Individual User shall upgrade or replace any treatment system, as required by the City, when such system fails to provide treated water that meets Federal and State Safe Drinking Water standards.
9. Each Individual User shall provide access to the City for purposes of water quality sampling and system maintenance, as required by State and Federal regulations.
10. System maintenance by the City shall be limited to replacing ultraviolet bulbs on a yearly basis and changing the one (1) micron filter as needed. Other system maintenance repairs or replacement as recommended by the manufacturer shall be performed by the Individual User.
11. Each Individual User shall notify the City when the one (1) micron filter is due for replacement.

Section 4. Rules applying to all water providers and individual water users.

1. In the event there is planned maintenance on the flowline or the delivery structures which would likely result in an interruption of flow to the Water Providers or Individual Users, the City will attempt to give at least 72 hours notice by telephone. In the event of an emergency, as determined solely by the City, no notice will be provided. If the emergency will result in the line being out of service for a lengthy period of time, then notice will be given as soon as practicable. In any event, the City is not liable to provide notice, and these rules shall not be construed to be a basis for any claim for any loss or injury.
2. In the event a flowline(s) is moved from its existing location, is replaced or is otherwise not available to supply water to any Water Provider or Individual User, the

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City will attempt to give one year's notice thereof, unless circumstances otherwise dictate.

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3. Any Water Provider or Individual User, or any other person who accepts City water or the delivery of City water, or allowing any physical connection to any delivery system which is connected to City water, including any tap, constitutes such Water Provider's, Individual User's or person's irrevocable promise and warranty to hold the City, its officers, employees and agents, harmless from, and shall indemnify the City, its officers, agents, and employees with respect to, all claims, causes of action, damages, costs, losses, or injury to persons or property arising out of the providing of water, the failure to supply water or the failure to treat or properly treat water. In addition such promise and warranty to hold harmless and indemnify shall include any claims however stated made by any person receiving City water, whether or not treated, from a Water Provider pursuant to these rules and regulations.
4. Each Water Provider and each Individual User shall take such steps as are necessary in order that City water is not available to any person for human consumption, except as provided by state or federal law and as provided herein.
5. No lease, sale, donation, transfer, or other disposition of any City water shall be made without the prior written approval of the authorized representative of the City of Grand Junction.
6. By accepting any City water, or delivery of any City water, or by allowing any physical connection which is directly or indirectly connected to any City water supply, each Water Provider and each Individual User irrevocably promises, warrants and agrees that it will, at its sole cost and expense, continuously, whether required by the State or Federal governments or not, meet the standards set for public water systems by the Safe Drinking Water Act, as amended, and any other applicable law or regulation.
7. These rules and regulations may be amended from time to time by the City. Notice of any such amendment will be provided similarly to notice of the adoption of any other resolution of the City Council of the City.
8. In the event of non-compliance with any of the foregoing regulations, the City may disconnect such Water Provider or Individual User from all City water.
9. By accepting any City water, or delivery of any City water, or by allowing any physical connection which is directly or indirectly connected to any City water supply, each Water Provider and each Individual User grants and conveys, during all periods when such Water Provider or Individual User is connect to any facility which is connected, directly or indirectly, to any City facility, or is receiving City water, the right to the City to enter upon the property of such Water Provider or Individual User so that the City may disconnect any tap, pipe or other facility.

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10. There shall be no assignment or transfer of this tap or any rights or duties created herein.
11. A memorandum of these rules may be recorded to provide notice hereof to the owners of affected properties.

UNTREATED WATER REGULATIONS

12. In the event the City engages an attorney, or uses its attorneys to enforce the provision(s) of these rules, with respect to a Water Provider or Individual User, each such Water Provider and each Individual User agrees to pay the City's reasonable attorneys fees and costs incurred in such effort(s).

Section 5. Schedule of authorized taps.

(A) <u>WATER PROVIDERS</u> <u>AUTHORIZED USES</u>		<u>PIPELINE</u>	<u>AUTHORIZED TAPS</u>	
1.	Reeder Mesa Livestock Water Co.	KC	33	33 Households
2.	Cross Bar Cross Livestock Water Co.	KC	7	7 Households
3.	Purdy Mesa Livestock. Water Co	KC	75	75 Households

(B) <u>INDIVIDUAL USERS</u> <u>AUTHORIZED USE</u>		<u>PIPELINE</u>	<u>AUTHORIZED TAP</u>	
1.	Intake House (City)	KC	1	1 Household
2.	Click Ranch (City)	KC	1	1 Stockwater
3.	Esther Mash	KC	1	2 Households
4.	Matt Dalton	KC	1	1 Household
5.	Kniffen	KC	1	1 Household
6.	Oscar Massey	KC	1	2 Households
7.	Oscar Massey	KC	1	1 Stockwater
8.	Oscar Massey	PM	1	1 Stockwater
9.	Jack Murray	KC	1	1 Stockwater
10.	Roy Anderson	KC	1	2 Households
11.	Nina Brouse	KC	1	1 Household
12.	Gene Alexander	KC	1	1 Household
13.	Anderson Ranch (City)	KC	1	1 Household
14.	Anderson Ranch (City)	KC	3	3 Stockwater
15.	Mike Anderson	KC	1	1 Household
16.	Steve Wood	KC	1	1 Household
17.	Don Snidow	KC	1	1 Household
18.	Bill Blair	PM	1	1 Household
19.	L. Hicks (Whiskey Flats)	PM	1	1 Household
20.	J. Cooper (Whiskey Flats)	PM	1	1 Household
21.	Rickard Strachan (Whiskey Flats)	PM	1	1 Household

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<u>INDIVIDUAL USERS</u> <u>AUTHORIZED USE</u>		<u>PIPELINE</u>	<u>AUTHORIZED TAP</u>	
22.	John Curtis/Mary Ross (Whiskey Flats)	PM	1	1 Household
23.	Mary Ross (Whiskey Flats)	PM	1	1 Household
24.	Paul Kinsler	KC	1	1 Household

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25. North Fork Diversion (City) NF 1 1 Stockwater

(Res. No. 126-96, 12-18-96)

**CODE COMPARATIVE TABLE
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This table gives the location within this Code of those sections of the 1965 Code, as updated through February 5, 1992, which are included herein. Sections of the 1965 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

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This is a numerical listing of the people's ordinances of the city used in this Code. People's ordinances not codified and any omitted materials are not reflected in this table, but are printed in appendix A of the Code.

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