

Cherry Hills Village Municipal Code

CHAPTER 7

Health, Sanitation and Animals

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ARTICLE I

Public Nuisances

Sec. 7-1-10. Purpose.

The purpose of this Article is to preserve and protect the health, safety, welfare, quality of life and quiet enjoyment of property through a uniform procedure for the identification and enforcement of nuisances within the City. (Ord. 8, 2003 §1)

Sec. 7-1-20. Definitions.

As used in this Chapter, the following words and terms shall be defined as set forth below:

Abatement means the removal, stoppage, prostration or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying or effacing it.

City Manager means the City Manager for the City or a person or persons designated by the City Manager to act on behalf of the City Manager in the administration of all or any part of this Article. The City Manager's designee may be a City employee, hearing officer or attorney.

Investigating Official means the City Manager, the City Manager's designee, a police officer or the City's code enforcement officer engaged in the investigation and determination of the existence of a nuisance.

Nuisance means any nuisance as identified or defined by this Article or any other provision of this Code.

Owner means: (1) the owner of record as evidenced by the records of the County Assessor; or (2) any person known to the City to possess a legal, financial or equitable interest in the property on which an alleged nuisance exists at the time of the violation. The term *owner* may include but not be limited to: (a) a tenant or lessee where such tenant or lessee is lawfully authorized, by written lease or other agreement with the owner, to occupy the property upon which a nuisance is alleged to exist or is maintained; or (b) a person acting on behalf of the owner as evidenced by a power of attorney or other form of fully executed and notarized form of written authorization.

Property means any real property, premises, structure or location. (Ord. 8, 2003 §1; Ord. 9 §1, 2003)

Sec. 7-1-30. Nuisances identified and declared.

Each of the following conditions, events or circumstances existing in whole or in part upon property located within the City are hereby declared nuisances:

- (1) General nuisance: It shall be a nuisance and unlawful for any person in possession or entitled to the possession of any property within the City, or any part thereof, to cause, maintain, permit or allow any fence, wall, shed, deck, house, garage, building, structure, tree, pole, smokestack, excavation, hole, pit, basement, cellar, sidewalk, dock or any lot, land, yard, premises

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or location, in its entirety or in any part thereof, to be or to remain in a condition that endangers the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one (1) or more individuals in the City, in any one (1) or more of the following particulars:

- a. By reason of being a menace, threat and/or hazard to the general health and safety of the community.
- b. By reason of being a fire hazard.
- c. By reason of being unsafe for occupancy or use on, in, upon, about or around such property.
- d. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such conditions exists.

(2) Air pollution: The emission or escape into the open air from any source of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors or any other substances or combination of substances in such manner or in such amounts as to endanger or tend to endanger the health, comfort, safety or welfare of the public, to cause unreasonable injury or damage to property or to interfere with the comfortable enjoyment of property or normal conduct of business, is declared a nuisance.

(3) Water pollution:

- a. Certain ponds or pools a nuisance: Any pond, pool, stream, ditch or deposit of water or other liquid or viscous body which is unsafe, dangerous or detrimental to the public health or safety or unwholesome or offensive in odor is declared a nuisance.
- b. Wells that overflow: Any well maintained or operated so that it overflows or waste is discharged therefrom into or over any street or other public way or place or upon or over private property so as to form ice, create a health or safety hazard or in any other manner inconvenience or endanger persons or property is declared a nuisance.
- c. Septic tanks, underground fuel storage and leaching fields: Any septic tank, underground fuel storage or leaching field which is unsafe, dangerous or detrimental to the public health or safety, or in any other manner inconvenience or endanger persons or property, is declared a nuisance.

(4) Noise: It is declared a nuisance and unlawful for any person to make, continue or cause to be made or continued any noise measured or registered in the manner provided in this Subsection from any source at a level which is in excess of the following dB(A) levels established for the time period and land uses listed below:

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Uses/Zone District	Maximum Noise in dB(A)	
Residential uses within Districts R-1, R-2, R-3, R-3A, R-4 and R-5	7:00 a.m. to 7:00 p.m.:	55 dB(A) ¹
	All other times:	50 dB(A)
Nonresidential uses within Districts R-1, R-2, R-3, R-3A, R-4 or R-5	7:00 a.m. to 9:00 p.m.:	65 dB(A) ²
	All other times:	50 dB(A)
All uses within the C-1 Zone District	All times:	70 dB(A)
All uses within the C-2 Zone District	7:00 a.m. to 7:00 p.m.	60 dB(A)
	All other times	55 dB(A)
All uses within the O-1 Zone District		60 dB(A)

¹ *Between the hours of 7:00 a.m. and 7:00 p.m., the designated noise level may be increased by ten (10) decibels for a period not to exceed fifteen (15) minutes in any one-hour period.*

² *Between the hours of 7:00 a.m. and 9:00 p.m., the designated noise level may be increased by ten (10) decibels for a period not to exceed fifteen (15) minutes in any one-hour period.*

Noise shall be measured at a height of not less than four (4) feet and not greater than seven (7) feet above ground level at or within approximately ten (10) feet of the property line of the property from which the noise is emanating. Noise shall be measured on a weighing scale on a sound level meter of standard design and quality and in accordance with the standards promulgated by the American National Standards Institute. For the purposes of this Subsection, measurements with sound level meters shall be made when a wind velocity at the time and place of such measurement is either: (1) not more than five (5) miles per hour; or (2) not more than twenty-five (25) miles per hour with a windscreen attached to the microphone.

(5) Lighting nuisance: Any floodlight, spotlight or other source of artificial light or illumination is declared a nuisance where:

a. An owner or occupant of property neighboring the property upon which the source of lighting or illumination is located submits a written complaint to the City stating that the lighting or illumination interferes with the owner's or occupant's enjoyment of his or her property; and

b. The light or illumination produces, generates or discharges light at a level exceeding two-tenths (0.2) foot-candle above the ambient light level when measured at ground level at the property line of the property upon which the source of the lighting or illumination is located.

This Subsection shall not apply to public street lighting, authorized traffic control devices or lighting necessary for the installation, repair or maintenance of public streets and public improvements by the City, the Colorado Department of Transportation or other governmental agency.

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(6) Unclean or defective drain, ditch, garbage box, etc.: Any unclean, foul, unsafe, unhealthy, dangerous, defective or filthy drain, ditch, tank or gutter, or any leaking or broken slop, garbage or manure box or receptacle of like character, is declared a nuisance.

(7) Unclean stable or stall: Any stable, stall, shed, yard or appurtenance thereto in which refuse shall collect and accumulate to an extent offensive or unhealthy to others, or which shall not be kept protected from flies and other insects and rodents and in a clean or wholesome conditions, is declared a nuisance.

(8) Disposal of certain substances: The filling, placing, depositing or location of any dung, carrion, dead animal, offal, garbage or any putrid or offensive substance, or the contents of any privy, vault or cesspool, on any street, alley, public or private ground or upon any lake, creek or other body of water, is declared a nuisance.

(9) Deposit on public property or streets: The deposit in or on or the littering of any street, alley or public place with garbage, rubbish, debris, sod, earth, sand, gravel, concrete or any other construction or waste material is declared a nuisance.

(10) Garbage, rubbish and trash:

a. Stale or uncovered garbage: Any garbage stored otherwise than in watertight and airtight cans or containers or which creates odor, stench or is accessible to animals, or otherwise creates a health hazard, is declared a nuisance.

b. Dumping or disposal of trash, garbage or debris: The storage, dumping or disposal of trash, garbage or debris within the City is deemed a nuisance; provided, however, that it shall be permissible for owners or occupants of property, other than residentially zoned property, to bury or otherwise destroy or dispose of (except by fire) used concrete, structural materials or other similar solid debris upon such property so long as no health hazard is created and such disposal conforms with all federal, state and local health department regulations and requirements.

c. Improper accumulation and storage of rubbish and trash: Any rubbish or trash that is allowed to accumulate in or around cans or containers in such a manner as to foster the propagation of rats, vermin, flies and other insects or is stored in such a manner as to be accessible to animals or littered about by wind is declared a nuisance.

d. Compost: A compost pile that substantially annoys, injures or endangers the comfort, health or safety of the public is declared a nuisance. Such annoyance includes, but is not limited to, strong offensive odors or the presence of mice, rats or other vermin.

(11) Junk nuisances:

a. It shall be a nuisance for any person entitled to the possession of any real estate or leasehold, residence, store, building or premises within the City, or any part thereof, to permit or allow the existence or storage of junk as defined in this Subsection.

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b. For purposes of this Section and Chapter, junk shall mean and include: iron, brass, copper, tin, lead or other metals; ropes, rags, fibers or fabrics; bottles or other glass; rubber or rubber products; machinery; motor vehicle parts; junk motor vehicles as defined below; junk trailers as defined below; tools; appliances; unstacked firewood; cartons, pallets, barrels and other containers; building materials such as but not limited to lumber, pipe and pipe fittings, conduit and conduit fittings (except where such building materials are stored for use upon property that is subject to a valid building permit, which permit authorizes construction utilizing such building materials); wastepaper; or other waste or discarded goods.

c. For purposes of this Section and Chapter, junk motor vehicle means a motor vehicle that is inoperable or does not have a current license plate, or which lacks one (1) or more of the following items that is otherwise standard factory equipment on the particular vehicle model: windshield, side or rear window, door, fender, headlamp, muffler, wheel and/or properly inflated tire.

d. For purposes of this Section and Chapter, an inoperable motor vehicle means any vehicle not capable in its present condition of being promptly started and driven under its own power.

e. For purposes of this Section and Chapter, junk trailer means a trailer that is inoperable due to a flat tire, lack of a wheel, lack of structural integrity or other similar reason that renders the trailer inoperable.

f. Nothing in this Subsection shall apply to the existence or storage of junk within a fully enclosed and lawfully existing permanent structure.

(12) Dangerous conditions on property:

a. Abandoned, unattended or discarded refrigerators or containers: Any abandoned, unattended or discarded icebox, refrigerator or other airtight container is declared a nuisance.

b. Pits, unkempt wells, tunnels and excavations: Any abandoned or unguarded pit, well, tunnel or excavation hazardous to life or property is declared a nuisance.

c. Dangerous or dilapidated buildings, structures or vehicles: Any building, structure, wall or tree house which is so decayed, broken down, disintegrated, dilapidated or poorly constructed as to constitute a fire hazard or other health or safety hazard to persons or property is declared a nuisance.

(13) Diseased, dead or dangerous tree and plant nuisance: Any trees, shrubs, vines, hedges or other plants that are diseased, infected or dead or which are placed as to be dangerous to the public health and safety are declared a nuisance.

(14) Property maintenance nuisance:

a. Failure to maintain site as approved. It shall be unlawful and shall constitute a nuisance for any person to fail to install or fail to maintain any detention ponds, drainageways, landscaping, lighting, trash enclosures, signage, retaining walls, irrigation systems, screening,

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fencing, parking lots, private driveways and streets and other conditions of private property required to be installed and maintained through the provisions of a rezoning, conditional or special use permit, subdivision plat, development plan, variance, fencing or landscaping plan, site plan, design standards, building permit or any other land development consent or document approved by the City, its boards, commissions and officials.

b. It shall be unlawful and constitute a nuisance to allow and to fail to prevent the erosion of soil caused by drainage originating within any property. (Ord. 8, 2003 §1; Ord. 9 §1, 2003; Ord. 04 §1, 2007; Ord. 11 §1, 2008)

Sec. 7-1-40. Exceptions to nuisance.

The provisions of this Article shall not apply to:

(1) Property, actions or activities owned, controlled or conducted by the City, its officials, contractors and employees in the performance of official municipal functions.

(2) Any noise resulting from any authorized emergency vehicle in responding to an emergency call or acting in time of emergency.

(3) Any noise resulting from a security system licensed with the City.

(4) The operation of aircraft or aircraft activities that would otherwise constitute a nuisance under this Article but is authorized by federal law.

(5) Air pollution or noise generally emanating from the operation of a public right-of-way other than air pollution or noise emanating from a single identifiable vehicle.

(6) An activity that would constitute a nuisance in accordance with this Article but is expressly described in a valid City-issued permit, provided that such activity is ceased, terminated or abated with seventy-two (72) hours of commencement or within such other period of time specifically identified in the permit.

(7) Construction noise, meaning that noise created by construction equipment or tools at a construction or demolition site during construction times as permitted in this Code; provided, however, that there is no amplified music emanating from the construction or demolition site, and further provided that the construction noise does not exceed ninety (90) decibels dB(A).

(8) Nonamplified noise associated with lawfully conducted sporting, athletic, educational, worship, theatrical, musical or other similar events or services conducted upon property owned by and used for a nonprofit institution, private club, public recreational facility or nonprofit recreational facility as these uses are defined by Section 16-1-10 of this Code. (Ord. 8, 2003 §1; Ord. 9 §1, 2003; Ord. 04 §2, 2007)

Sec. 7-1-50. Nuisance unlawful.

It shall be an offense and unlawful for any person being the owner, agent or occupant of, or having under his control, any building, lot or premises to maintain or allow any nuisance to be or remain thereon. It shall further be unlawful and an offense for any person to:

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- (1) Do any act constituting a nuisance;
- (2) Fail to act where such failure causes or continues a nuisance;
- (3) Permit any activity or condition constituting a nuisance; or
- (4) Aid or abet in the creation or maintenance of a nuisance. (Ord. 8, 2003 §1)

Sec. 7-1-60. Nuisance a continuing offense.

Each calendar day that a nuisance exists shall be a separate offense and a violation of this Article. (Ord. 8, 2003 §1)

Sec. 7-1-70. Methods of nuisance abatement.

(a) In order to abate any nuisance, the City may elect to pursue any one (1) or more of the following methods:

- (1) Pursue summary abatement pursuant to Section 7-1-80 of this Article;
- (2) Initiate an action for judicial enforcement in the Municipal Court or a County Court pursuant to section 7-1-90 of this Article; or
- (3) Cause abatement or removal by means of a notice and demand, together with either judicial enforcement or City abatement pursuant to Section 7-1-100 of this Article.

(b) No remedy provided in this Article shall be exclusive. All remedies shall be cumulative and available concurrently. The taking of any action authorized by this Article or any other provision of this Code, including charge or conviction of violation of this Article, shall not preclude or prevent the taking of other action to abate any nuisance. Any application of this Article that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law. (Ord. 8, 2003 §1)

Sec. 7-1-80. Summary abatement of nuisances.

(a) The City Manager may authorize the immediate and summary abatement of any nuisance where the following criteria or circumstances are determined by the City Manger to exist:

- (1) An Investigating Official certifies in writing to the City Manager that a condition, activity or circumstance exists upon property located within the City which constitutes a nuisance as identified and described in this Article. Such written certification should, when possible, include photographs, illustrations and other evidence to describe the scope and extent of the nuisance;
- (2) The Investigating Official certifies in writing to the City Manager that the nuisance presents an immediate and imminent danger to the public health, safety, or welfare; and
- (3) The delay associated with abatement of the nuisance by another method as provided in this Article will potentially result in harm or damage to person or property from the nuisance. By way of example and not limitation, such harm or damage may include: the release of sewage onto

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adjacent property; injury to persons resulting from open pits or cesspools; or the deposit of water upon public streets or sidewalks that results in potentially hazardous conditions.

(b) Following the City Manager's determination as required in Subsection (a) above, the City Manager may authorize abatement of all or a portion of the nuisance as the City Manager deems necessary to remedy the nuisance and to resolve the immediate and imminent danger to the public health, safety or welfare resulting from the nuisance. When summary abatement is authorized by the City Manager, prior notice of such abatement action to the owner, agent or occupant of the property is not required.

(c) Following abatement, the City Manager shall deliver to the owner a written description of the circumstances resulting in the abatement or other action, together with an itemized invoice or other detailed statement of the cost and expenses incurred by the City in abating the nuisance and demand for payment within twenty (20) days of the owner's receipt of the invoice or statement.

(d) Within twenty (20) days following the owner's receipt of the City Manager's invoice or statement of costs and expenses, the owner shall deliver to the City Manager payment in full for the costs and expenses. Failure to timely pay an invoice or statement of costs and expense shall constitute a violation of this Code, which shall be subject to the penalties provided by Section 1-4-20 of this Code. The City may, at its discretion and only where such costs and expenses exceed one hundred fifty dollars (\$150.00), assess the costs and expenses of abatement as a lien against the owner's property and certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments. (Ord. 8, 2003 §1)

Sec. 7-1-90. Judicial enforcement.

(a) The City Manager may initiate a civil action or criminal prosecution for the judicial enforcement of this Article against any nuisance at any time. Judicial enforcement shall also be available to abate a nuisance following efforts to abate the nuisance through the delivery of a notice and demand as provided in Section 7-1-100. The City Manager shall endeavor to advise and consult with the City Council regarding the nuisance prior to commencing judicial enforcement.

(b) If the City Manager elects to initiate judicial enforcement in the Municipal Court or a County Court, no prior notice regarding the nuisance or abatement need be provided to the defendant other than service of a summons and/or complaint in accordance with the applicable court rules.

(c) Upon a finding of a nuisance and violation of any provision of this Article by any defendant, the Court shall impose the following minimum penalty, unless the City, through the City Prosecutor, requests or consents to a lesser or different penalty:

(1) Enjoin or otherwise order the defendant to fully abate and remedy the nuisance within a specified and reasonable period of time not to exceed ten (10) days following the entry of the court's order;

(2) Fine the defendant for each violation an amount not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) for the first violation, not less than four hundred dollars (\$400.00) nor more than one thousand dollars (\$1,000.00) for the second violation,

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and not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for the third and for each subsequent violation for the same nuisance. No portion of any minimum fine may be suspended or held in abeyance by the Court;

(3) Order the defendant to forthwith pay restitution to the City for the actual costs or loss caused to the City by the violation, including but not limited to administrative expenses, costs to protect the public from the nuisance, court costs and attorney fees; and

(4) Authorize the City to assess any unpaid costs and expenses for abatement imposed by the Court in Paragraph (3) above as a lien against the owner's property and certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

(d) In addition to the minimum penalty required by this Subsection, the Court shall be authorized to:

(1) Imprison the defendant for a term not more than three hundred sixty five (365) days for each violation;

(2) Permanently enjoin the defendant from further engaging in the use of the property in a manner that would constitute a nuisance;

(3) Find the defendant in contempt of court and assess a penalty as specified by the Court, including a fine and/or imprisonment for failure to abide by, comply with or conform to any court order or injunction; and/or

(4) Impose any other penalty authorized by law. (Ord. 8, 2003 §1)

Sec. 7-1-100. Notice and demand for abatement.

Where an Investigating Official has reason to believe that a nuisance may exist upon property within the City, the Investigating Official may seek abatement of the nuisance in accordance with the following procedures:

(1) Personal contact: The Investigating Official shall first attempt to personally contact the owner or occupant of the property (by personal visit, by telephone or by letter) in an effort to seek voluntary abatement of the nuisance. The Investigating Official shall provide the owner or occupant a reasonable time, and in no event less than seventy-two (72) hours, to voluntarily abate the nuisance unless the nuisance is subject to summary abatement.

(2) Written description: Where the nuisance remains unabated following personal contact with the owner or occupant, the Investigating Official shall prepare a written description of the condition, activity or circumstance that is believed to constitute a nuisance as described in this Article. Such written certification should, whenever possible, include photographs, illustrations and other evidence to describe the scope and extent of the nuisance.

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(3) Notice and demand: The Investigating Official shall prepare a written notice titled "Notice and Demand for Nuisance Abatement" ("Notice and Demand"). Such Notice and Demand shall substantially conform to the following content requirements:

a. A written description of the condition, activity or circumstance that constitutes a nuisance and violation of this Article;

b. A statement that the condition, activity or circumstance constitutes a nuisance, together with a citation to the specific provision of this Article that declares such condition, activity or circumstance to be a nuisance and unlawful;

c. A copy of this Article, as it may be amended;

d. A demand that the nuisance be abated on or before a specified time and date. The time and date shall be not less than seven (7) days nor more than fourteen (14) days from the date of the Notice and Demand;

e. A statement that if the nuisance is not abated on or before the date and time stated in the Notice and Demand, the City may at its option pursue an action to enforce this Article in an appropriate court and/or abate the nuisance. Such statement may also inform the addressee of the potential fines and other penalties that may be imposed upon a finding by a court that a nuisance exists on the property. Such statement may also inform the addressee that the cost and expense of abatement incurred by the City will be assessed as a lien against the owner's property and that the City may certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property; and

f. Any other information as determined by the Investigating Official to enable the addressee to properly address the abatement of the nuisance and to contact the Investigating Official.

(4) Delivery of Notice and Demand: The Investigating Official shall cause the Notice and Demand to be distributed in accordance with this Subsection. Provided that the Notice and Demand is mailed or posted in substantially conformity with this Subsection, the failure of the owner, occupant or another person to receive such Notice and Demand shall not constitute a failure to comply with the requirements of this Section. The Investigating Official shall cause the Notice and Demand to be distributed as follows:

a. The Notice and Demand shall be mailed, by certified U.S. Mail return receipt requested, to the owner of the property as such owner's name and address appear in the records of the County Assessor; and

b. Either:

1. Where the property includes a residential or commercial structure, the Notice and Demand shall be mailed, by first class U.S. Mail, addressed to "Occupant" at the address of the property upon which the nuisance is located; or

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2. Where the property is vacant or undeveloped, one (1) sign measuring not smaller than two (2) feet by three (3) feet shall be posted on the property at a conspicuous location visible from a traveled thoroughfare. Such sign shall be titled "Notice and Demand for Nuisance Abatement" and shall state that the property is subject to City enforcement of this Article, shall include a brief statement of the nuisance being abated and shall include the words "additional information is available at the Village Center for the City of Cherry Hills Village during normal business hours," together with the address of the Village Center and telephone number of the Investigating Official.

(5) Failure to timely abate following Notice and Demand: If the owner or occupant shall fail to abate the nuisance on or before the date and time stated in the Notice and Demand, the City Manager may:

a. Authorize abatement of all or a portion of the nuisance as the City Manager deems necessary to remedy the nuisance. No additional or prior notice of such abatement action to the owner, agent or occupant of the property is required. Following abatement, the City Manager shall deliver to the owner a written description of the action taken to abate the nuisance, together with an itemized invoice or other detailed statement of the cost and expenses incurred by the City in abating the nuisance and demand for payment within twenty (20) days of the owner's receipt of the invoice or statement. Within twenty (20) days following the owner's receipt of the City Manager's invoice or statement of costs and expenses, the owner shall deliver to the City Manager payment in full for the costs and expenses. Failure to timely pay an invoice or statement of costs and expense shall constitute a violation of this Code, which shall be subject to the penalties provided by Section 1-4-20 of this Code. The City Manager may, at the City Manager's discretion, assess the costs and expenses of abatement as a lien against the owner's property and certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

b. Pursue an action for judicial enforcement of the nuisance violation as provided by Section 7-1-90 of this Article. (Ord. 8, 2003 §1)

Sec. 7-1-110. Costs and expenses as lien against property.

(a) Whenever this Article authorizes the City to assess against any person or property the cost and expense of abatement of nuisances, such costs and expenses shall include all costs actually incurred by the City and reasonably related to the abatement, including but not limited to an hourly rate for each hour of City staff time employed in administering this Article in the abatement of the nuisance, attorney fees and legal costs, equipment charges, contractors and other service personnel expenses charged to the City, transportation and storage charges, trash disposal charges and fees, insurance, and equipment and services necessary to protect the property and the general public from harm. The City Manager may establish reasonable and uniform charges for property inspection, preparation and delivery of notices and other administrative tasks customarily undertaken in the administration of this Article.

(b) Whenever this Article authorizes the City to assess against any person or property the cost and expense of abatement of nuisances, the City shall be authorized to assess any unpaid and delinquent costs and expenses as a lien against the property and to certify the costs and expense to the County Treasurer or

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other appropriate County official for collection in the same manner as real estate taxes against the property. Each such assessment shall be a lien against each lot or tract of land until paid and shall have priority over other liens except general taxes and prior special assessments. (Ord. 8, 2003 §1)

Sec. 7-1-120. Review of costs and expenses of abatement.

(a) Any owner of property subject to an assessment for the costs and expenses of the City's abatement of a nuisance imposed in accordance with Section 7-1-100 of this Article may request an administrative review of the assessment by the City Council.

(b) A request for an administrative review must be made in writing by the owner and delivered to the City Manager prior to 5:00 p.m. on the date upon which payment of costs and expenses are due. The written request shall describe in detail the specific reasons why the assessment is unreasonable, together with any other written information the owner asserts demonstrates the unreasonableness of the assessment. Upon the timely submission of a request, the deadline for payment of assessed costs and expenses shall be postponed until the earlier of the City Council's decision following review or such later time the City Council directs payment to be made following review.

(c) The review shall be for the sole purpose of considering the reasonableness of the assessed costs and expenses. As an administrative matter, no notice or hearing shall be required prior to review of the owner's request by the City Council.

(d) Following review of the City Manager's assessment, the written request for review and any explanation of the City Manager concerning the costs and expenses, the City Council shall either affirm the City Manager's assessment or reduce the assessment upon a finding that the assessment is unreasonable. (Ord. 8, 2003 §1)

Sec. 7-1-130. Certain defenses not available.

(a) Any person who is the record owner of the premises, location or structure at the time a Notice and Demand or other order pursuant to this Article is issued and served upon him, shall be responsible for complying with that order and liable for any costs and expenses incurred by the City, notwithstanding the fact that he conveys interests in the property to another after such notice or order was issued and delivered.

(b) It shall not be a defense to the determination that a nuisance exists or to an action to abate a nuisance that the property is boarded up or otherwise enclosed, or that the nuisance is not visible by the general public. (Ord. 8, 2003 §1)

Sec. 7-1-140. Right of entry for inspection.

(a) Any Investigating Official is authorized to enter upon private property to ascertain the existence of a nuisance if:

- (1) Emergency conditions dangerous to the public health, safety or welfare are reasonably believed to exist upon such property or upon property that is accessible from the entered property;
- (2) The Investigative Official has obtained a search warrant;

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- (3) The private property is undeveloped or vacant;
 - (4) The Investigative Official has obtained the consent of a person who purports to be in possession of the property or authorized to consent to entry; or
 - (5) The Investigative Official, after reasonable efforts to contact a person in possession by telephone, personal visit or posting or mailing of a request to enter, is unable to make contact to request the consent of the person in possession.
- (b) An Investigating Official shall not enter private property where the owner or person in possession denies consent except where emergency conditions are believed to exist or a search warrant authorizing entry is obtained.
- (c) The Municipal Judge shall have the power to issue a search warrant to permit the investigation of the existence of a nuisance upon a showing by an Investigating Official of either: (1) probable cause that a nuisance exists; or (2) emergency conditions dangerous to the public health, safety or welfare exist. (Ord. 8, 2003 §1)

Sec. 7-1-150. Right of entry for abatement.

Whenever the City exercises its right to abate a nuisance in accordance with this Article, the City shall have the authority to enter upon the property and abate the nuisance. In abating such nuisance, the City may take such action as necessary to complete the abatement of the nuisance and, should it be practicable to salvage any material derived in the abatement, the City may sell the salvaged material at private or public sale at the best price obtainable and shall keep an accounting of the proceeds from such sale. The proceeds, if any, obtained from the sale of any material salvaged as a result of the City's abatement of a nuisance shall be deposited to the General Fund of the City and any deficit between the amount so received and the cost of the abatement may be levied as an assessment against the property and collected as any other assessment by the City. Should the proceeds of the sale of such salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the nuisance was abated. (Ord. 8, 2003 §1)

Sec. 7-1-160. Administrative regulations authorized.

The City Manager is authorized to promulgate administrative regulations and forms in order to implement the provisions of this Article. No administrative regulation shall conflict with a specific requirement of this Article. (Ord. 8, 2003 §1)

Sec. 7-1-170. Extension of deadlines authorized.

A reasonable extension of any time deadline established by this Article or in the administration of this Article may be granted by the Investigating Official or City Manager upon a showing of just cause for an extension. (Ord. 8, 2003 §1)

Sec. 7-1-180. Effect on other ordinances.

Notwithstanding the provisions of any zoning ordinance or other ordinance now or hereafter enacted authorizing certain uses or location of property, it is the intention of the City Council, and it is

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hereby so declared, that any use, location or activity otherwise authorized by zoning ordinances or any other ordinance shall be subject to this Article prohibiting nuisances. (Ord. 8, 2003 §1)

Sec. 7-1-190. Enforcement by Tri-County District Health Department.

Upon consent by the City Manager, the provisions of this Article may be enforced by the Tri-County District Health Department or by the City with the assistance of the Health Department. (Ord. 8, 2003 §1)

ARTICLE II

Garbage and Refuse

Sec. 7-2-10. Accumulation of refuse prohibited.

Any accumulation of refuse or other material on any premises, improved or unimproved, in the City is prohibited and is hereby declared to be a nuisance. (Ord. 9 §1, 2003)

Sec. 7-2-20. Responsibility for refuse on premises.

It shall be the duty of every person, whether owner, lessee or renter of any vacant lot, building or premises, including any place of business, hotel, restaurant, dwelling house, apartment, tenement or any other establishment, at all times to maintain the premises in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. (Ord. 9 §1, 2003)

Sec. 7-2-30. Removal of refuse from business.

Discarded refuse, including automobile parts, stoves, furniture and junkyard refuse, shall be removed periodically by the proprietor so that the premises are clean and orderly at all times. Silt and similar deposits from automobile wash racks shall be removed to the City dump by the establishment creating such deposit. Any accumulation of refuse that is highly explosive or flammable which might endanger life or property shall be removed to such places as approved by the Chief of Police or the Fire Chief. Such removal shall be handled by the establishments responsible therefor. (Ord. 9 §1, 2003)

ARTICLE III

Weeds, Brush and Rubbish

Sec. 7-3-10. Undesirable Plant Management Advisory Commission designated.

The Board of Trustees is appointed to act as the Undesirable Plant Management Advisory Commission for the City and shall have the duties and responsibilities as provided by state statute. (Ord. 9 §1, 2003)

Editor's Note: Section 35-5.5-101, C.R.S., establishes the requirements for undesirable plant management in the State.

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Sec. 7-3-20. Removal required; exceptions.

It is the duty of every person owning vacant or improved property, including easements and drainageways within the City, to keep cut to within ten (10) inches of the ground all weeds and to keep said property free from brush and rubbish of all kinds. However, this Article shall not apply to vegetable gardens, flower gardens and shrubbery plots. Wheat, barley, oats, rye and similar agricultural commodities also shall be so exempted. (Ord. 9, 1968; 1980 Code; prior code 4-2-2)

Sec. 7-3-30. Notice to remove.

Whenever the City determines that the provisions of Section 7-3-20 above have not been complied with, the City may notify the owner of said property directing the removal of said weeds, brush or rubbish. Said notice shall be issued by the City Clerk and sent by certified mail to the last known address of the record owner of said property. Said notice shall direct the removal of said weeds, brush or rubbish within fifteen (15) days from the date of the notice. Said notice shall further advise the owner that, in the event said weeds, brush or rubbish are not removed within the stated time, the City shall cause the work to be done at the expense of the owner and that said costs, if not promptly paid, shall constitute a lien against the property. If there is no last known address of the owner or if the notice mailed to the owner is returned without delivery, the City shall post a similar notice in a conspicuous spot on the premises for at least ten (10) days. (Ord. 9, 1968; 1980 Code; prior code 4-2-3; Ord. 9 §1, 2003)

Sec. 7-3-40. Failure to remove.

If the owner fails to remove the weeds, brush or rubbish within the time and in the manner prescribed herein, the City Manager may have the weeds, brush or rubbish removed from the property. (Ord. 9, 1968; 1980 Code; prior code 4-2-4)

Sec. 7-3-50. Assessment of costs; notice.

The costs of removing the weeds, brush or rubbish from the property shall be chargeable against the delinquent owner and against the property. In addition to the actual out-of-pocket costs incurred by the City, the costs shall include an additional amount as set forth in Appendix A to this Code to cover inspection and other incidental costs to the City. The City may either remove the weeds, brush or rubbish or hire an independent contractor for that purpose. (Ord. 9, 1968; 1980 Code; prior code 4-2-5)

Sec. 7-3-60. Establishment of lien.

The cost of removing the weeds, brush or rubbish from the property (including the five-percent or twenty-five-dollar additional amount, whichever is more) together with a ten-percent penalty thereon to defray the cost of collection, shall be reported to the County Treasurer, to be placed by him upon the tax list for the current year and to be collected in the same manner as other taxes or assessments are collected. 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. (Ord. 9, 1968; 1980 Code; prior code 4-2-6)

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Sec. 7-3-70. Penalty.

Any person owning property within the City who, within fifteen (15) days after notice directing said person to remove weeds, brush or rubbish, fails to do so, shall be guilty of a misdemeanor and punishable as set forth in Section 1-4-20 of this Code. The provisions of this Section shall not be construed to waive the provisions for assessment of costs and establishment and enforcement of liens upon the property. (Ord. 9, 1968; 1980 Code; prior code 4-2-7)

ARTICLE IV

Trees

Sec. 7-4-10. Prohibited trees.

(a) It is unlawful to sell or import into the City, or to plant or cause to be planted within the corporate limits of the City, any female box-elder tree (*Acer negundo*).

(b) The owner of any property within the City, upon which any female box-elder tree has been planted after the effective date of this Article, shall cut and remove such tree from his property after being given two (2) days' written notice to do so by the City.

(c) In case of the failure of any owner of such property to cut and remove such box-elder tree planted after the effective date of this Article, the City shall cut and remove such box-elder tree.

(d) It is unlawful and deemed a nuisance to sell or import into the City or plant or cause to be planted any female cottonwood trees (*Populus spices*), Siberian elm (*Ulmus pumila*) or other undesirable plants as designated by ordinance upon any property within the City, and the planting or setting out of these certain plants is declared to be a menace to public health, safety and welfare and a public nuisance. (Ord. 9 §1, 2003)

Sec. 7-4-20. Trees and limbs in public right-of-way.

It shall be the duty of the owner of any property adjacent to the public right-of-way to remove any trees or limbs located in or above the public right-of-way when such trees or limbs constitute a danger to public safety. Such trees and limbs shall constitute a nuisance. For the purposes of this Section, a danger to public safety shall include all trees and limbs which hinder visibility or which may otherwise affect public health, safety and welfare, and trees and limbs which present a structural defect which may cause the tree or limb to fall on a person or on property of value. (Ord. 9 §1, 2003)

Sec. 7-4-30. Control of trees and shrubs.

(a) Trees, shrubs and other vegetation which are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to people or property within the City are hereby declared a nuisance.

(b) The City shall give written notice to the owner or occupant of any property abutting City rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way or

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other public property with such unsafe condition. The City shall correct any such unsafe condition immediately upon the expiration of the notice period specified in the notice of abatement.

(c) It is unlawful and deemed a nuisance for any person to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plant upon access-controlled arterials or other public parks and greenbelts within the City, unless authorized or directed by the City.

(d) It is unlawful and deemed a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the City, except any person who notifies the City of such injury, damage or destruction and makes arrangements to repair or replace such vegetation or pay for the cost of such repair or replacement. (Ord. 9 §1, 2003)

ARTICLE V

Animals

Division 1 General

Sec. 7-5-10. Authorization.

This Article is enacted pursuant to the general police power, the Home Rule Charter and Section 31-15-401, C.R.S. (Ord. 5 §2, 2003)

Sec. 7-5-20. Purpose and intent.

The purposes of this Article are to promote the public health, safety and general welfare of the citizens of the City and to ensure the humane treatment of animals by regulating the care and control of animals within the City. (Ord. 5 §2, 2003)

Sec. 7-5-30. Definitions.

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

Abandon means the leaving of an animal by its owner or keeper without making the adequate provisions for its proper care. This shall include, but is not limited to, depositing or dropping off an animal on public property or on property other than that of the owner or keeper without permission of the property owner.

Aggressive dog means any dog that, without intentional provocation, engages in any of the behaviors listed in Section 7-5-340(b).

Animal means any live vertebrate creature, domestic or wild. As used in this Article, *animal* excludes humans.

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Animal control officer means any person designated by the City to enforce the provisions of this Article or any other ordinance or law of the State pertaining to animals, and shall include police officers.

Animal shelter means any impounding entity designated by the City as the facility for the boarding and disposition of any animal impounded under the provisions of this Article or any other ordinance or law of the State. The City may designate other facilities as necessary for the boarding of impounded livestock, wildlife or exotic species that may need to be confined safely or humanely.

Attack means any violent or hostile physical contact with a person or domestic animal, or any violent or hostile behavior that confines the movement of a person or domestic animal, including, but not limited to, chasing, cornering or encircling.

Bodily injury means physical injury that results in bruising, skin pain or any impairment of physical condition.

Bodily injury – serious means any physical injury consisting of muscle tears, broken bones or disfiguring lacerations requiring professional medical treatment, multiple sutures or cosmetic surgery.

Commercial means carried out for monetary gain.

Common areas include, but are not limited to, City parks, bridle and recreation paths, trails, or play areas, clubhouses and other recreational facilities that are open to the public.

Domestic or pet animal means dogs, cats, rodents, birds, reptiles, fish, pot-bellied pigs and any other species of animal which is sold or retained as a household pet, but does not include skunks, nonhuman primates and other species of wild, exotic or carnivorous animals that may be further restricted in this Article.

Exotic animal means any live monkey, alligator, crocodile, cayman, raccoon, skunk, fox, bear, sea mammal, poisonous snake, member of the feline species other than domestic cat, member of the canine species other than domestic dog, or any other animal that would require a standard of care and control greater than that required for customary household pets sold by commercial pet shops or domestic farm animals.

Feral means wild or has escaped from domestication and become wild.

Guard dog means any dog used or trained for the protection of persons or property by attacking or threatening to attack any person found within an area patrolled by such dog.

Harbor means the act of keeping or caring for an animal, or providing premises to which the animal returns for food, shelter or care.

Keeper means any person who is in possession of or is keeping, harboring or caring for any animal.

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Kennel means any establishment or place where one (1) or more animals, either temporarily or permanently, are bred, born, raised, boarded, trained, kept or fed for money or any other consideration, or for sale.

Livestock means animals commonly regarded as farm animals, including, but not limited to, cattle, horses, goats, llamas, ostriches, swine, alpacas and sheep, but excluding pet animals such as rabbits, poultry and domestic fowl.

Mistreatment means an act or omission that causes or unreasonably permits the continuation of unnecessary or unjustifiable pain and suffering.

Nuisance animal means any animal that unreasonably annoys humans, causes damage to property other than the owners or endangers the life or health of persons.

Nuisance dog or cat means any such animal that, without intentional provocation, engages in any of the behaviors listed in Section 4-6-340(a) or Section 4-6-340(d).

Owner means any person over eighteen (18) years of age who has right of property in an animal or who harbors such animal or allows such animal to remain about his premises. The parent, guardian or legal custodian of any child under the age of eighteen (18) years who owns, keeps, harbors, has custody of or cares for an animal shall be deemed to be the owner of such animal.

Possess, or any derivation thereof, means exercising physical control over any animal.

Poultry means any domesticated bird, including but not limited to, chickens, turkeys, ducks and geese.

Quarantine means the confinement for a minimum of ten (10) days of an animal which has bitten a person.

Rabbits, poultry and domestic fowl includes rabbits, pigeons, peacocks, chickens, chicks, capons, ducks, geese, turkeys, doves, squabs and all similar domestic fowl other than pet animals.

Stray animal means any animal, with or without a rabies or a City registration tag, found unattended or running at large anywhere within the City.

Tether means to tie up or chain to a fixed or heavy inanimate object so as to restrict the free movement of an animal to a distance no greater than the length of its leash or chain.

Trap means any mechanical device or snare that seeks to hold, capture or kill an animal.

Trap - humane means a box-type live trap which does not cause bodily harm to the animal intended to be captured or any other animal or person coming in contact with such trap.

Trapping means the setting, laying or otherwise using of a trap.

Vaccination or vaccination for rabies means the inoculation of a dog or cat with a vaccine licensed by the United States Department of Agriculture for use in the prevention of rabies.

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Veterinarian means a person licensed by the State to practice veterinary medicine.

Vicious dog means any dog that engages in any of the behaviors listed in Section 7-5-340(c) of this Article.

Wild animal means all species of animals which exist in their natural, unconfined state and are usually not domesticated. (Ord. 5 §2, 2003; Ord. 9 §1, 2003)

Sec. 7-5-40. Duties and powers of animal control officer.

(a) The City Manager may appoint or the City Council may contract for an animal control officer. The animal control officer shall have authority to enforce any ordinance of the City relating to animals.

(b) Animal control officers are hereby designated as peace officers and shall be authorized to issue, sign and serve summonses and complaints in order to enforce the provisions of this Article, or any other provision of this Code or state law pertaining to animals, and to make all determinations within the discretion required by the provisions of this Article or other applicable law.

(c) An animal control officer or police officer may enter upon private property to capture any animal to be impounded for, or to investigate any report of, a violation of this Article if:

(1) The officer has obtained consent of the person in possession of the property;

(2) The officer has obtained a search warrant pursuant to Rule 241 of the Colorado Municipal Court Rules;

(3) The officer is in pursuit of an animal which is or has been running at large, provided that the officer does not enter into any enclosed building or structure;

(4) The officer is in pursuit of an animal which the officer has probable cause to believe has bitten a person, provided that the officer does not enter into any enclosed building or structure; or

(5) The officer is attempting to abate a continuing violation of any provision of this Article when the owner of the property is not available, provided that the officer does not enter into any enclosed building or structure.

(d) Notwithstanding Subsection (c)(2) above, if the animal control officer has reasonable cause to believe that the keeping or maintaining of any animal is so hazardous, unsafe or dangerous as to require immediate inspection to safeguard the animal or the public health or safety, the animal control officer shall have the right immediately to enter and inspect the property or vehicle in or upon which the animal is kept, and may use any reasonable means required to effect such entry and make such inspection, whether the property or vehicle is occupied or unoccupied and whether permission to inspect has been obtained or not. If the property or vehicle is occupied, the animal control officer shall first present proper credentials to the owner or occupant of the property or vehicle and demand entry, explaining his reasons therefor and the purpose of the inspection. Such entry shall be solely for the purpose of abating the violation, and no evidence obtained during or as a result of such entry shall be admissible for purposes of prosecution.

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(e) No person shall fail to allow or refuse entry to an animal control officer requesting entry for the purpose of inspection pursuant to this Section. (Ord. 5 §2, 2003)

Sec. 7-5-50. Prohibited and restricted animals.

(a) Prohibited animals:

(1) It shall be unlawful for any person to own, possess, maintain, feed, shelter or trade in any of the following species of animals:

- a. All poisonous snakes, poisonous reptiles and nonpoisonous snakes with a length greater than six (6) feet;
- b. Nonhuman primates;
- c. Any species of feline other than ordinary domesticated house cats;
- d. Bears of any species;
- e. All crocodilians;
- f. Raccoons, porcupines, skunks, badgers or other like species;
- g. Foxes, wolves, coyotes or other species of canines other than dogs; or
- h. Any other animal that is not indigenous to the State or is not classified as a domestic animal.

(2) Alleged domestication of any prohibited animal shall not be a defense to a violation of this Section. Any animal that is not domesticated shall be presumed to be a prohibited animal until proven otherwise by a preponderance of the evidence to the satisfaction of the Municipal Court.

(3) Nothing in this Section shall prohibit the bona fide activities of any wildlife rehabilitator licensed by the Colorado Division of Wildlife, so long as such licensee complies with all applicable Code and zoning ordinance provisions.

(b) Restricted animals: Restraint of guard dogs. It is unlawful to place or maintain a guard dog in any area for the protection of persons or property unless the following conditions are met:

(1) Confinement. The dog must be confined in a building, compartment or fenced enclosure. If the enclosure is a fence: (a) the fence must be at least six (6) feet in height; (b) the fence must be in conformance with the City's Zoning Code; and (3) fencing materials shall not have openings with a diameter of more than two (2) inches, and, in the case of wooden fences, gaps between wooden slats shall not be more than two (2) inches. The enclosure must have gates and entrances thereto securely closed and locked and all fences properly maintained and escape-proof.

(2) Physical control. At all times such dog is not confined within its enclosure, the dog must be restrained by means of a leash, cord or chain not exceeding four (4) feet in length, held by a person who is at least eighteen (18) years of age and is physically able to control said dog.

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(3) Signs. The owner or keeper of a guard dog must post signs on all exterior building doors, gates and other entrances, stating that a guard dog is on the premises. (Ord. 5 §2, 2003; Ord. 9 §1, 2003; Ord. 7 §1, 2009)

Sec. 7-5-60. Exemptions for police dogs.

Police dogs used by a law enforcement agency in the performance of its functions and duties shall be deemed exempt from the provisions of this Article. (Ord. 5 §2, 2003)

Division 2 Care and Treatment of Animals

Sec. 7-5-110. Improper treatment of animals.

(a) Cruelty: It shall be unlawful for any person to commit or cause to be committed any intentional act of mistreatment, abandonment or harassment to any animal, exclusive of any act constituting aggravated cruelty as set forth in Section 18-9-202(1.5), C.R.S. Ownership of said animal shall not be a defense to such acts or to a violation of this Section.

(b) Neglect: It shall be unlawful for the owner or keeper of any animal to deprive such animal of adequate nutrition, potable water at all times, proper protection from the elements and extreme temperatures, opportunity for exercise, adequate veterinary care, grooming or socialization, or otherwise neglect such animal in any manner as to endanger its health or cause it to suffer.

(c) Unsafe tethering: It shall be unlawful for the owner or keeper of any animal to tether the animal in such a manner that the animal may become entangled and unable to reach shelter or water, or in such a manner that the animal may be injured, strangled or otherwise caused to suffer.

(d) Unsafe transporting: It shall be unlawful for any person to transport or confine an animal in a motor vehicle in such a manner as to permit injury or endanger the life of said animal. For purposes of this Section, endangering the life of an animal includes:

(1) Transporting any animal in an open truck or any vehicle in such a manner as to permit the animal to jump or be thrown therefrom by acceleration, sudden movement or accident involving the vehicle; or

(2) Confining or transporting any animal in such a way that the animal is exposed to extremes in temperature or weather conditions.

(e) Poisoning dogs, cats or other domestic animals: It shall be unlawful for any person to poison any dog, cat or other domestic animal or to knowingly distribute or set out poison or any other toxicant within the City that causes the poisoning of such animal. The distribution or setting out of any poison, toxicant or poisoned meat or food, other than those specifically for insect, rat, mouse or other rodent poisoning, shall be prima facie evidence of a violation of this Section. This Section shall not apply when a dog, cat or other domestic animal is being destroyed by a licensed veterinarian, animal control officer or police officer who is acting within the scope of his official duties. (Ord. 5 §2, 2003)

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Sec. 7-5-120. Trapping prohibited.

No person shall do any trapping anywhere in the City, except in the following circumstances:

(1) Use of a trap specifically designed to kill rats, mice, gophers or moles, when such trap is used with the express consent of the owner or adult occupant of the property on which the trap is set; or

(2) Use of humane traps for the control of nuisance animals under the following conditions:

a. Traps must be used with the express consent of the owner or adult occupant of the property where the trap is set.

b. Traps employed by a professional trapping or pest control company must have a tag identifying the company's name and telephone number attached.

c. Traps must be checked and tended at least once daily and animals captured in humane traps must be released within twenty-four (24) hours of capture.

d. Traps set in the open must be covered to provide shade and protection from extreme weather conditions.

(3) Use of traps by a public official or agency or its designee when such person is acting within the scope of his official duties, provided that if such trapping involves taking wildlife with any leghold trap, any instant kill body-gripping design trap or by poison or snare, such trapping shall have been determined by the Tri-County Health Department to be necessary for the purpose of protecting human health or safety and the Tri-County Health Department shall have requested and designated such designee to undertake such activity for such purpose on its behalf. (Ord. 5 §2, 2003)

Sec. 7-5-130. Livestock – running at large prohibited.

It shall be unlawful for any owner or keeper of livestock to permit the same to run at large within the City. Said livestock shall be deemed to be running at large when:

(1) Off of or away from the premises of the owner or keeper thereof; and

(2) Not under the control of such owner or keeper, or his agent or servant or member of his immediate family, either by rope, cord or chain. (Ord. 5 §2, 2003)

Sec. 7-5-140. Grazing and herding animals restricted.

It shall be unlawful for the owner or keeper of any livestock to herd or graze said livestock upon or in any street, alley or other public way or place in the City, or upon any vacant premises or unenclosed premises in said City, whether said livestock are attended by any person or not. This Section shall not apply to any livestock securely tied or staked on private property, beyond reach of any public place or other person's property. Any livestock found grazing or being herded within the City in violation of this Section shall be deemed to be running at large. (Ord. 5 §2, 2003)

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Sec. 7-5-150. Fencing unneutered male animals.

The owner or keeper of any stallion, ram, boar or bull which is more than sixteen (16) months of age and unneutered, in addition to complying with the other provisions of this Article, shall keep said animal within a fence or similar enclosure of at least six (6) feet in height and of such sturdy construction so as to be escape-proof. (Ord. 5 §2, 2003)

Division 3 Health and Sanitation Requirements

Sec. 7-5-210. Removal of excrement.

(a) No owner or keeper of any dog shall cause or allow such animal to soil, defile or defecate on any public property, street, sidewalk or public way, common area or common grounds owned jointly by members of a homeowners or condominium association, or private property other than that of the owner or keeper, unless such owner or keeper immediately removes and disposes of all feces deposited by such animal.

(b) Animal excrement shall not be placed in storm sewers or street gutters, but shall be disposed of in a sanitary manner.

(c) No owner or keeper of any animal shall permit excessive excrement to accumulate on the property of the owner or keeper, or on the property of others so as to cause or create an unhealthy, unsanitary or offensive living condition on the owner's or keeper's property or to abutting property of others. (Ord. 5 §2, 2003)

Sec. 7-5-220. Death of animals.

(a) An owner or keeper shall dispose of any dead animal found on the owner's or keeper's property within twenty-four (24) hours of death or discovery of such dead animal by the following methods: burial, incineration in a state-approved facility, rendering or other state-approved means. No dead animal shall be buried within the City limits or dumped or abandoned on any public or private property.

(b) The City shall be responsible for disposal of any dead wild animal found upon any City streets, sidewalks or any other public property. (Ord. 5 §2, 2003)

Sec. 7-5-230. Sale of animals.

(a) No person shall engage in the commercial business of breeding, buying, selling, trading or boarding of cats or dogs upon residentially zoned property within the City.

(b) No person shall display any animal in a public place for the purposes of selling or giving the animal away. *Public place* shall include, but is not limited to, streets, highways, parking lots, sidewalks, common areas, parks and recreational trails. This Section shall not apply to a registered rescue group or animal welfare society. (Ord. 5 §2, 2003)

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*Division 4
Dogs and Cats*

Sec. 7-5-310. Registration and vaccination requirements – dogs.

(a) Registration required: No person shall own, keep or harbor any dog within the City unless such dog is registered as provided in this Section.

(b) Application: Application for such registration shall be made by the owner on a form to be provided by the Chief of Police or his designee within ten (10) days, exclusive of Saturdays, Sundays and legal holidays, after acquiring any dog or within ten (10) days after a dog becomes six (6) months of age; provided that any owner moving to the City or becoming a resident as a result of annexation shall have until ten (10) days after moving or annexation to obtain such registration. Annual renewal of registration of the dog by the owner shall be obtained between January 1 and February 28 of each year.

(c) Proof of vaccination: All owners registering a dog over the age of six (6) months with the City must show to the satisfaction of the Chief of Police or his designee that the dog has been vaccinated against rabies by a veterinarian, unless such owner presents a written statement from a veterinarian that vaccination against rabies would be detrimental to the health of such dog. Such vaccination shall be repeated, as necessary, when the current vaccination expires as required by the State.

(d) Registration fees: The registration fee shall be ten dollars (\$10.00) per dog, which fee must be paid to the City at the time of submission of the registration form.

(e) Tags: Upon acceptance of a completed registration form, and payment of the registration fee, the City shall issue a registration tag for each dog registered. Every dog for which the owner is required to obtain a registration tag must wear a valid registration tag at all times when the animal is off the premises of the owner or keeper. Every dog discovered off the owner's or keeper's property not wearing the required registration tag shall be presumed not to have been registered as required by this Section.

(f) Failure to register; attach tag: Failure to register a dog as required herein, or failure to cause the dog to wear the registration tag, except as herein provided, shall constitute a violation of this Article. In addition, no dog impounded pursuant to Section Division 5 below shall be released to its owner or keeper unless and until a registration tag, as described in this Section, has been issued to said dog. (Ord. 5 §2, 2003; Ord. 7 §13, 2004)

Sec. 7-5-320. Vaccination required – cats.

The owner or keeper of a cat within the City limits shall have the cat vaccinated against rabies by a veterinarian on or before the cat reaches the age of six (6) months, and shall have the vaccination repeated annually thereafter. A certificate of vaccination in duplicate shall be completed by the veterinarian, one (1) copy to be issued to the cat owner or keeper and one (1) to be retained in the veterinarian's files. (Ord. 5 §2, 2003)

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Sec. 7-5-330. Control of dogs – running at large.

No owner or keeper of any dog shall allow such dog to run at large on public or private property within the City as provided herein. For purposes of this Section, a dog shall be deemed to be running at large under the following circumstances:

- (1) The dog is on the property of another without the prior consent of such other person.
- (2) The dog is on any property other than that of the owner or keeper and is not restrained by means of a leash, cord or chain held by a person who is physically able to control said dog.
- (3) Any stray or injured dog on public or private property of another shall be deemed to be running at large and shall be impounded. An animal control officer or police officer may transport an injured dog in need of medical attention to a veterinarian for medical treatment or, if the dog is severely injured, may humanely destroy such animal. The owner, if ascertainable, shall be notified of such action. The owner of any such dog shall be liable for all expenses incurred, including but not limited to fees incurred for impoundment, treatment and disposition. (Ord. 5 §2, 2003)

Sec. 7-5-340. Prohibited acts.

(a) Nuisance dogs. Any dog exhibiting behavior set forth in this Section is hereby declared to be a nuisance dog. It shall be unlawful, and is prohibited within the City, for any owner or keeper of a dog to allow said dog to:

- (1) Create a disturbance by persistent or habitual barking, howling, yelping or other unreasonable noise that unreasonably interferes with or disturbs the peaceful and ordinary activities of a resident of this City.

- a. For purposes of this Section, it shall not be a defense in prosecution that a dog's barking, howling or other unreasonable noise was provoked by a person's ordinary or reasonable use of public roadways, sidewalks, recreation trails or the Highline Canal Trail.

- b. No summons and complaint shall be issued nor shall there be a conviction for a violation of this Section unless there are two (2) or more complaining witnesses from separate households who shall have signed such complaint. This requirement shall not apply where:

1. An animal control officer or police officer who has personally investigated the complaint of a single complainant and observed the nature and duration of the noise created by the dog may testify to his observations. Said testimony shall satisfy the requirement for the second complaining witness; or

2. A complainant presents to the animal control officer or police officer at the time of the complaint other credible corroborative evidence of the alleged violation (such as audiotape or videotape).

- (2) Cause offensive or noxious odors, exhibit any other conduct or create any other condition which disturbs the peace, safety or comfort of a neighborhood.

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(3) Cause damage to or destruction of any shrubbery, plants, flowers, grass, lawn, fence or anything whatsoever upon any public or private premises owned or occupied by a person other than the owner or keeper of such animal.

It shall not be a defense to a violation of this Section that the dog owner or keeper was not available to remedy such violation.

(b) Aggressive dogs. It shall be unlawful for any owner or keeper of a dog to permit or allow said animal, without provocation, to:

(1) Harass persons by encroaching onto public property or private property from the owner's or keeper's yard through or over a fence;

(2) Approach any person in a threatening manner while off the property of the owner or keeper; or

(3) Attack or injure another domestic animal while off the owner's or keeper's property.

(c) Vicious dogs, harboring prohibited.

(1) No one shall keep, possess or harbor a vicious dog within the City. For the purposes of this Section, a *vicious dog* shall be defined as a dog that:

a. Without provocation, causes bodily injury or serious bodily injury or the death of a person, domestic animal or livestock; or

b. Has been previously determined by any court to be currently listed as a vicious dog; or

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

(2) It shall be an affirmative defense to charges under this section if:

a. The dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault;

b. At the time, the person was committing a crime or offense upon the property of the owner or keeper of the dog;

c. The person was teasing, tormenting, abusing or assaulting the dog;

d. The dog was attacked or menaced by the domestic animal, or the domestic animal was on the property of the owner or keeper of the dog;

e. The dog was responding to pain or injury; or

f. The person or domestic animal was disturbing the dog's natural functions such as eating or sleeping.

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(d) Nuisance cats. It shall be unlawful for any owner of a cat within the City limits to allow such cat to become or create a nuisance. A cat shall be deemed to be a nuisance when the cat has been abandoned or is known to be living in a wild state with no known rabies vaccination record, or when the cat inflicts damage or injury, by any means, to the person or property of anyone but the owner or keeper.

(e) Interference with police dogs prohibited. It shall be unlawful for any person to interfere with any dog used by the Police Department in the performance of the functions or duties of said department, or to interfere with, meddle with or harass any such dog while said dog is being used by the Police Department or any officer or member thereof in the performance of any of the functions or duties of said department or of such officer or member. (Ord. 5 §2, 2003)

Sec. 7-5-350. Reporting of dog and cat bites and confinement.

(a) Confinement of dogs and cats which have bitten persons. The owner or keeper of any cat or dog that has bitten any person so as to cause an abrasion of the skin shall immediately notify an animal control officer or a police officer. Any such animal shall be immediately quarantined for a period of ten (10) days or longer on the advice of the attending veterinarian or the Tri-County Health Department. No person shall remove an animal from quarantine during the quarantine period. The animal control officer shall determine, in his discretion, the location of quarantine for any animal. If not quarantined on the premises of the owner or keeper, confinement will be at the animal shelter or in any veterinary hospital or kennel. Such quarantine shall be at the sole expense of the owner or keeper.

(b) Owners required to produce animals which have bitten persons. The owner or keeper of any dog or cat that has been reported as having inflicted a bite which caused an abrasion of the skin of any person shall, on demand of the animal control officer, produce said animal for examination and confinement, as prescribed in this Section. If the owner or keeper of any such animal has refused to produce the animal, the owner or keeper shall be subject to immediate arrest if there is probable cause to believe the animal has inflicted a bite upon a person and that the owner or keeper is in possession of the animal and is willfully hiding or refusing to produce the animal upon such demand. Such person shall be taken before a Judge of the Municipal Court, who may order the immediate production of the animal. If the owner or keeper of any such animal shall willfully or knowingly hide or refuse to produce the animal, each day of refusal to produce the animal shall constitute a separate violation. It shall be unlawful to give away or sell such animal, remove any such animal from the City or destroy such animal before it can be properly confined by the animal control officer.

(c) Treatment of bites to be reported by physician. Every physician and other medical practitioner who treats a person for bites inflicted by a dog or cat shall report such treatment to an animal control officer within twenty-four (24) hours, giving the name, address and telephone number of such person.

(d) Veterinary and additional owner responsibilities. The owner or keeper of any dog or cat shall inform the veterinarian before any rabies inoculation is given whether the dog or cat is under bite confinement or has inflicted a bite on any person within the last ten (10) days. It shall be the responsibility of any veterinarian to vaccinate any dog or cat over six (6) months of age that is presented in good health and has not inflicted a bite upon a person in the preceding ten (10) days.

(e) Disposition of rabies-infected animals. Animals known to have been bitten by or exposed to a rabid animal shall be immediately destroyed, or released upon proof of current rabies immunization and "booster injection" given by a licensed veterinarian at the expense of the owner or keeper. The owner or

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keeper of any animal released under this Section shall be required to keep said animal under quarantine for a period of six (6) months or as may be determined necessary by the County public health officer. (Ord. 5 §2, 2003)

Division 5 Impoundment; Disposition; Fees

Sec. 7-5-410. Impoundment.

In addition to any other remedies provided in this Article, an animal control officer or police officer may seize, impound and humanely confine to an animal shelter or other impoundment facility, inside or outside the jurisdictional limits of the City, any animal that exhibits behavior in violation of this Article. (Ord. 5 §2, 2003)

Sec. 7-5-420. Notice of impoundment.

Upon the impoundment of any animal, the police or animal control officer shall make a reasonable effort to ascertain ownership of any impounded animal and shall make a reasonable effort to notify the owner, either verbally or in writing, of such animal so impounded. In the event ownership of an impounded animal cannot be reasonably determined, notice may be posted on the main entrance to the Village Center of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, Colorado. The posted notice shall include a description of the animal, the time and place of taking, the place of impoundment and the date by which said animal must be claimed. (Ord. 5 §2, 2003)

Sec. 7-5-430. Redemption of impounded animals.

Any owner or keeper of any animal impounded pursuant to this Article may reclaim his animal from the impounding facility upon payment of all incurred fees for impoundment, boarding, euthanasia, disposal, veterinary and all other services as needed. Failure of the owner or keeper of any impounded animal to claim such animal from the animal shelter or impoundment facility shall not relieve the owner or keeper of all applicable charges and fees incurred by the impoundment facility. In addition, any dog owned or kept within the jurisdictional boundaries of the City shall be released only upon compliance with, and payment of the fees imposed by Section 7-5-310(d) hereof, and any cat owned or kept within the jurisdictional boundaries of the City shall be released only upon compliance with Section 7-5-320 hereof. (Ord. 5 §2, 2003)

Sec. 7-5-440. Disposition.

Whenever an animal has been impounded, the animal shall be impounded in a humane manner for a period of not less than five (5) days following the date of impoundment except as otherwise set forth in this Section. Any animal so impounded which is not claimed within said five-day period may be disposed of by adoption, donation or destruction at the discretion of the animal control officer. (Ord. 5 §2, 2003)

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Sec. 7-5-450. Summons hold status.

Any animal impounded or held as evidence pursuant to a "summons hold" shall not be released to the owner or keeper prior to service of a summons and complaint upon the animal owner or keeper. (Ord. 5 §2, 2003)

Sec. 7-5-460. Vicious dog impoundment.

A vicious dog shall be subject to mandatory impoundment if the victim of the offense has suffered bodily or serious bodily injury, if the animal has been engaged in or been trained for fighting, or if the dog otherwise presents a clear and present danger to the public health or safety. A vicious dog shall remain impounded unless otherwise ordered released by the Municipal Judge. The Municipal Judge shall order any owner or keeper who has entered into a deferred judgment or deferred prosecution to make payment to the impound facility for all impoundment fees, boarding costs and any reasonable and necessary medical expenses incurred during the impoundment of the dog. (Ord. 5 §2, 2003)

Sec. 7-5-470. Guard dog impoundment.

A guard dog found running at large shall be impounded and shall not be ordered released by the Municipal Judge until the owner or keeper of said dog has taken appropriate corrective action to ensure that the dog's enclosure is escape-proof. (Ord. 5 §2, 2003)

Sec. 7-5-480. Breaking into impound facility; interfering with police.

It shall be unlawful for any unauthorized person to break, open, assist or attempt to break or open any impoundment facility, pen or enclosure, public or private, with the intent to release any animal impounded by or on behalf of the City. (Ord. 5 §2, 2003)

Sec. 7-5-490. Immediate destruction.

(a) Nothing in this Article shall be construed to prevent the immediate destruction of any vicious dog or other vicious animal when deemed necessary in the interest of public safety by the animal control officer or police officer under circumstances where a significant and immediate threat to the health or safety of a person or another animal exists.

(b) Nothing in this Article shall be construed to prevent the immediate destruction of any domestic or wild animal when a veterinarian, animal control officer or police officer has determined that such animal is critically ill or injured, is suffering extreme pain or has a poor prognosis for recovery. (Ord. 5 §2, 2003)

Division 6 Enforcement; Penalties

Sec. 7-5-610. Prosecution for violations.

- (a) It shall be a violation of this Article to:
- (1) Fail to comply with any provision of this Article;

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(2) Fail to comply with any lawful order of an animal control officer or police officer unless such order is lawfully stayed or reversed;

(3) Intentionally interfere with, hinder, harass, molest, injure or obstruct any animal control officer or police officer in the discharge of his official duties under this Article or other applicable law;

(4) Fail to comply with any special sanctions imposed pursuant to Subsection (e) below, or pay any fines, civil penalties or costs imposed by the Municipal Court or any fees and charges imposed by the animal shelter or impoundment facility arising from impoundment of an animal.

(b) Penalty. The owner of an animal shall be subject to escalating penalties, as provided below, for each violation of this Article, whether the subject animal is the same animal, a different animal or various animals belonging to the said owner. The maximum fine shall not exceed one thousand dollars (\$1,000.00) for any one (1) offense, each day constituting a separate offense. Except as otherwise provided herein, any violation of this Article shall be punishable by a fine of not less than twenty-five dollars (\$25.00) for the first violation, not less than fifty dollars (\$50.00) for the second violation, and a mandatory court appearance and fine of not less than seventy-five dollars (\$75.00) for the third and each subsequent violation for the same offense. Notwithstanding the foregoing, any violation for an aggressive dog (Section 7-5-340(b)); vicious dog (Section 7-5-340(c)); prohibited animal (Section 7-5-50(a)); restricted animal (guard dog) (Section 7-650(b)); cruelty (Section 7-5-110(a)); neglect (Section 7-5-110(b)); or poisoning (Section 7-5-110(e)) shall require a court appearance and shall be punishable by imprisonment not exceeding the limit established in Section 1-4-20(A) of the Code and/or a fine of not less than one hundred dollars (\$100.00) for the first violation, not less than two hundred fifty dollars (\$250.00) for the second violation, and not less than five hundred dollars (\$500.00) for the third and each subsequent violation for the same offense. As part of any penalty for a third violation of a vicious dog offense, where each offense concerns the same dog, the Court shall order destruction of the dog in addition to, and not in lieu of, any fine imposed. No portion of any minimum fine may be suspended or held in abeyance by the Municipal Court. The Municipal Court is authorized to adopt a fine schedule in accordance with this Section.

(c) Strict liability. For the purpose of prosecution for violations of any Section of this Article, it shall not be necessary in order to obtain a conviction to prove notice on the part of the owner or keeper of the animal in question that said animal was violating any provision of this Article at the time and place charged, it being the purpose of this Section to impose strict liability upon the owner or keeper of any animal.

(d) Separate offense. Each separate day or any portion thereof during which a violation of this Article occurs or continues shall constitute a separate offense and, upon conviction thereof, shall be punishable as herein provided.

(e) Special sanctions. The animal control officer, or the City Attorney or his designee, may recommend that one (1) or more special sanctions be levied against any animal owner or keeper convicted of any violation of this Article or pursuant to a deferred judgment or deferred prosecution. This recommendation may be presented to the Municipal Court as a proposed condition of sentencing upon conviction or as a condition of deferred judgment or deferred prosecution, and may be in lieu of or in addition to the penalties specified herein. The Municipal Court may take into consideration the severity

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of the incident, the prior history or the owner or keeper, and the recommendation of the animal control officer or City Attorney. Special sanctions include, but are not limited to, the following:

- (1) Confinement of an animal in a secure enclosure in compliance with the zoning ordinance;
- (2) Spaying or neutering of the animal;
- (3) Obedience training/behavior modification for the animal;
- (4) Responsible pet ownership class for the owner or keeper;
- (5) Community service work for the owner or keeper;
- (6) Microchipping of the animal;
- (7) Euthanasia of the animal;
- (8) Ban on owning or maintaining other animals in the City for a specified period;
- (9) Use of humane training devices for behavior modification of the animal;
- (10) Inspections of premises where the animal is kept in cases of neglect or cruelty;
- (11) Restitution for costs of care rendered or shelter given at the City's designated animal shelter, costs of veterinary care and costs of medical treatment; and
- (12) Treatment or counseling programs for the animal or owner.

The provisions of this Section shall not in any way limit the power of the Municipal Court, on its own motion, to impose any other sanction or measure, as it deems appropriate. (Ord. 5 §2, 2003)

Sec. 7-5-620. Destruction or seizure on court's order.

(a) If a complaint has been filed in the Municipal Court against the owner or keeper of an animal for violation of this Article, the Municipal Judge may, upon making a finding that the animal is vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner. Surrender of an animal by the owner or keeper or destruction of any animal shall not relieve or render the owner or keeper immune from the jurisdiction or decision of the Court, or to the fees, fines or penalties which may result from a violation of this Article.

(b) If an affidavit has been submitted to the Municipal Court Judge which satisfies the Judge that an animal which is the subject of a violation of this Article is located within the City, and that the animal either possesses a clear and present danger to the health, general welfare or safety of other persons or the animal or is suffering extreme neglect or cruelty, the Municipal Judge may order the animal seized by a designated officer or employee of the City pursuant to Rule 241 of the Colorado Municipal Court Rules. The owner or keeper may request a hearing concerning any such order for seizure entered pursuant to this Section by filing an appropriate motion pursuant to Rule 241(e) of the Colorado Municipal Court Rules. Whenever an animal is seized by order of the Municipal Court or other court having jurisdiction, the

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animal shelter shall not adopt, donate or euthanize the animal unless such action is permitted by a subsequent order of the same court which ordered the initial seizure. Any animal held pursuant to court order may be disposed of by the animal shelter if unclaimed by the owner or keeper more than three (3) days following issuance of a court order authorizing the release of the animal. The animal owner or keeper shall be liable for all expenses arising from the impoundment and boarding of any animal under a seizure order until the animal is released or otherwise disposed of.

(c) Whenever an animal is seized or impounded pursuant to this Article, the animal owner or keeper may be summoned before the Municipal Court on the next scheduled court date following the seizure to answer any charges arising incident to the seizure. Trials involving charges resulting in animal seizures shall be given priority on the Municipal Court docket in order to minimize the expense to animal owners or keepers for impoundment and boarding of seized animals. (Ord. 5 §2, 2003)

Sec. 7-5-630. Immunity from liability.

The City and its agents and employees, the animal shelter or boarding facility and its agents and employees, and any veterinarian consulted pursuant to this Article shall be immune from liability for any actions taken pursuant to this Article. (Ord. 5 §2, 2003)