

## CHAPTER 7

### Health, Sanitation and Animals

<b>Article I</b>	<b>Health and Sanitation</b>
	Sec. 7-1 Definitions
	Sec. 7-2 Department of Health
	Sec. 7-3 Powers
	Sec. 7-4 Abatement of nuisances
	Sec. 7-5 Unlawful acts
	Sec. 7-6 Feeding lots prohibited
	Sec. 7-7 Fly-producing conditions prohibited
	Sec. 7-8 Storage of perishable foods
	Sec. 7-9 Diseased, decayed or unwholesome foods
	Sec. 7-10 Milk
	Sec. 7-11 Unlawful to trespass upon or to pollute waters of water system
	Sec. 7-12 Improper disposal or carriage of deleterious wastes prohibited
	Sec. 7-13 Standards
	Sec. 7-14 Enforcement
	Sec. 7-15 Open burning and recreational fires
<b>Article II</b>	<b>Weeds, Brush, Rubbish</b>
	Sec. 7-31 Definitions
	Sec. 7-32 Placement of rubbish, refuse containers
	Sec. 7-33 Growth or accumulation of weeds, brush prohibited; exceptions
	Sec. 7-34 Accumulation of rubbish prohibited
	Sec. 7-35 Right of Town to remove
	Sec. 7-36 Abatement, assessment not exclusive remedy
	Sec. 7-37 Reserved
	Sec. 7-38 Evidence at trial
	Sec. 7-39 Noxious weeds
<b>Article III</b>	<b>Abatement of Nuisances</b>
	Sec. 7-51 Notice
	Sec. 7-52 Fine assessed
	Sec. 7-53 Attorney fees assessed
	Sec. 7-54 Disposal at public sale
<b>Article IV</b>	<b>Rodent Control</b>
	Sec. 7-71 Definitions
	Sec. 7-72 Buildings to be rat-proofed
	Sec. 7-73 Notice to owner to rat-proof - failure to comply
	Sec. 7-74 Notice to occupant of rat infestation; institution of eradication measures - failure to comply
	Sec. 7-75 Inspection of buildings; notice to abate improper conditions
	Sec. 7-76 Premises to be maintained to rat-proof conditions
	Sec. 7-77 Closing buildings until conditions are abated
	Sec. 7-78 Requiring compliance with notice; institution of condemnation and destruction proceedings
	Sec. 7-79 Removal of rat-proofing - failure to restore, etc.
	Sec. 7-80 New buildings, etc., to be rat-proofed
	Sec. 7-81 Building containing foodstuffs to be rat-proofed; condition prerequisite to obtaining license or permit

- Sec. 7-82 Food and feed for animals and fowl to be stored in rat-proof containers, etc
- Sec. 7-83 Disposition of garbage, refuse and dead animals
- Sec. 7-84 Accumulation of garbage, rubbish, building materials, etc.
- Sec. 7-85 Accumulation of lumber, boxes, barrels, etc.
- Sec. 7-86 Summary abatement of unlawful conditions; injunctive relief
- Sec. 7-87 Rules, regulations and standards

**Article V**

**Animals**

- Sec. 7-101 Dog license required
- Sec. 7-102 Definitions
- Sec. 7-103 License application; rabies vaccination
- Sec. 7-104 License tags
- Sec. 7-105 Lost or destroyed tags
- Sec. 7-106 Dog pound
- Sec. 7-107 Impounded dogs
- Sec. 7-108 Court proceedings
- Sec. 7-109 Notice of impoundment
- Sec. 7-110 Disposition of impounded dogs
- Sec. 7-111 Redemption from pound
- Sec. 7-112 Interference
- Sec. 7-113 Dog running at large
- Sec. 7-114 Dog parks
- Sec. 7-115 Fees for impounding dogs
- Sec. 7-116 Depositing animal feces unlawful
- Sec. 7-117 Accumulation of animal feces unlawful
- Sec. 7-118 Strict liability
- Sec. 7-119 Reserved
- Sec. 7-120 Prohibited animals
- Sec. 7-121 Cruelty to animals prohibited
- Sec. 7-122 Disturbance
- Sec. 7-123 Vicious animals
- Sec. 7-124 Hearing on destruction of vicious animal
- Sec. 7-125 Care and keeping of domestic cats

**Article VI**

**Burning Restrictions**

- Sec. 7-141 Definitions
- Sec. 7-142 High pollution prohibition
- Sec. 7-143 Exemptions
- Sec. 7-144 Defense
- Sec. 7-145 Coal burning prohibited
- Sec. 7-146 Inspections
- Sec. 7-147 Violation; penalty
- Sec. 7-148 Violation; injunctive relief
- Sec. 7-149 Registration

**Article VII**

**Right to Farm**

- Sec. 7-161 Definitions
- Sec. 7-162 Purpose
- Sec. 7-163 Nuisance
- Sec. 7-164 Disclosure

## ARTICLE I

### Health and Sanitation

#### Sec. 7-1. Definitions.

(a) *Deleterious waste* means any hazardous substance as defined by state or federal laws, or any form of sewage which the Board of Trustees finds to be a potential threat to the health or welfare of humans or animals within the Town. Standards for sewage constituting a deleterious waste will be established under this Article.

(b) *Person* means any individual, firm, company, municipal corporation, association, society, corporation or group.

(c) *Sewage* means the combination of liquid or water-carried waste conducted away from residences, business buildings, sewage treatment plants and related storage facilities and institutions.

(d) *Watercourse* means a natural or artificial channel for the passage of water either continuously or intermittently.

(e) *Waters* means water contained in any lake, pond, lagoon, any natural or artificial channel, water temporarily impounded whether by natural or artificial means, and water found underground, whether in alluvium or in any other type of aquifer, consolidated or unconsolidated. (Ord. 197, § 1, 1979)

#### Sec. 7-2. Department of Health.

The Board of Trustees shall establish and maintain a Department of Health with a Health Officer and such other personnel as deemed proper. The Board of Trustees may negotiate with the existing County Health Department and the County Commissioners in a contractual arrangement for public health services by the County Health Department, sanitations, public health nurses and vital statisticians, subject to the supervision of the Board of Trustees. (Prior code 11.1)

#### Sec. 7-3. Powers.

The Department of Health shall have the supervision and control of all matters relating to health and sanitation within the Town, and it shall have the power to compel the removal or abatement of any nuisance, source of filth, cause of disease or unwholesome business or establishment within the Town or within one (1) mile of the outer boundaries thereof. (Prior code 11.1-1)

#### Sec. 7-4. Abatement of nuisances.

The Health Officer shall cause a notice to be served upon the owner, occupant or agent in charge of any lot, building or premises in or upon which any nuisance in relation to health or sanitation may be found, or who may be the cause of such nuisance, requiring him or her to abate the same within thirty (30) days after receipt of such notice. If such owner, occupant or agent shall fail to comply with such notice, he or she shall be subject to a fine as provided in this Code. In addition to, or in lieu of, prosecuting said owner or occupant for a Code violation, if said notice to abate is not complied with within the required time, the Town may cause such nuisance to be abated, shall assess the cost of

such abatement against the property and shall notify the owner or occupant of such assessment and the amount thereof. Such assessment shall be a lien upon said property until it is paid. If said charge or assessment is not paid to the Town Collector within thirty (30) days after the receipt of such notice of assessment, said charge or assessment shall be certified to the County Treasurer, to be placed by him or her upon the tax list for the current year and collected in the same manner as other taxes are collected, with ten percent (10%) penalty thereon to defray the cost of collection. (Prior code 11.2)

**Sec. 7-5. Unlawful acts.**

It shall be unlawful for any person, being the owner, agent or occupant of any premises within one (1) mile of the Town limits, to fail, neglect or refuse to comply with any lawful order made by the Health Officer, or to fail to remove and abate any nuisance within the time stated in the notice served upon such person. (Prior code 11.3)

**Sec. 7-6. Feeding lots prohibited.**

It shall be unlawful for any person to maintain or keep within the Town any cattle yards or hog yards for the purpose of feeding cattle, sheep or hogs for fattening, and all such places so kept are also declared to be a nuisance and an offensive and unwholesome business and establishment and may be abated. (Prior code 11.4)

**Sec. 7-7. Fly-producing conditions prohibited.**

(a) It shall be unlawful for any person to maintain or keep within the Town any of the following unsanitary fly-producing, disease-causing conditions, to-wit:

- (1) Any accumulation of manure or premises where animals are kept, unless the premises are kept clean and the manure is kept in a box or vault which is screened from flies and emptied at least once each week;
- (2) Privies, vaults, cesspools, pits or like places which are not securely screened to protect them from flies;
- (3) Garbage in any quantity which is not covered or screened to protect it from flies; or
- (4) Trash, litter, rags or anything whatsoever in which flies may breed or multiply.

(b) Any of the foregoing conditions are hereby declared to be nuisances and may be abated as such, in addition to any penalty which may be imposed for a violation of this Code. (Prior code 11.5)

**Sec. 7-8. Storage of perishable foods.**

Every person being the owner, lessee or occupant of any place, other than a private dwelling house, where any meat, fish, poultry, game, vegetables, fruit or other perishable articles of food shall be stored or kept, and every person engaged in the care, custody or sale of any such articles of food supply, shall put, preserve and keep such articles in a clean and wholesome condition and shall not allow the same, or any part thereof, to be putrid, decayed, poisoned, infected or in any other manner rendered or made not safe or unwholesome for human food. (Prior code 11.10)

**Sec. 7-9. Diseased, decayed or unwholesome foods.**

No person shall expose for sale in the Town any diseased, emaciated, tainted or putrid meat or provision. No person shall offer for sale the meat of any animal killed while such animal was in an overheated, feverish or diseased condition. No person shall bring or cause to be brought into the Town, or sell or offer for sale, any decayed or unwholesome fruit, vegetables or berries. (Prior code 11.11)

**Sec. 7-10. Milk.**

No milk or milk products shall be sold or offered for sale within the Town unless the milk has been pasteurized and the milk or milk products have been produced and processed in accordance with the rules and regulations of the State Department of Public Health. (Prior code 11.12)

**Sec. 7-11. Unlawful to trespass upon or to pollute waters of water system.**

It shall be unlawful for any person directly or indirectly to defile, pollute, contaminate, trespass upon, injure, tamper, meddle, or interfere in any way or to cause, authorize or permit any trespass upon, injure, tampering, meddling, defiling, polluting, contaminating or interfering in any way with any of the works, lakes, reservoirs, dams, streams, ditches, trenches, pipes, drains, filter, valves, gauges, devices, grounds, enclosures, buildings, structures, water treatment or testing facilities, equipment, properties or works of the water system owned, controlled or managed by the Town, or any waters, streams, waterways, water courses, water sheds, places, tributaries or any of the waters in or of said water system at any place in or along the same, or within five (5) miles distance from the Town. (Ord. 197, § 2, 1979)

**Sec. 7-12. Improper disposal or carriage of deleterious wastes prohibited.**

(a) It shall be unlawful for any person to place, deposit or permit to be deposited on public or private property within the Town, including any water or watercourses, any human or animal excrement, garbage or other deleterious waste. This Article shall not apply to a septic tank, cesspool or leach field properly constructed under applicable regulations and functioning in a manner so as not to threaten the public health, safety and welfare.

(b) It shall be unlawful to carry through or within the Town, or bring into the Town, in any watercourse, including ditch, lateral, channel or open container, any deleterious wastes not meeting the standards established in this Article.

(c) It shall be unlawful to place, deposit or permit to be deposited, carry or permit to be carried, within, into or through the Town, any deleterious waste which poses a threat to humans or livestock, including a threat to any public or private water system, whether the source of water for said system is from surface supply or from wells.

(d) This Section shall not prohibit the discharge of deleterious wastes into the Town's sewer system if such discharge is in compliance with the terms of all applicable laws, statutes or ordinances regulating such discharge. (Ord. 197, § 3, 1979)

**Sec. 7-13. Standards.**

Sewage being carried through or within the Town in any ditch, lateral, channel or open container shall meet such fecal coliform, pH, ammonia and suspended organic solids standards as hereinafter established and from time to time revised by the Town. (Ord 197, § 4, 1979)

**Sec. 7-14. Enforcement.**

The Town Attorney is authorized to prosecute necessary actions in any appropriate court to enforce the terms of this Code, including injunctive relief, or to bring any action for damages or abatement of public nuisance. (Ord 197, § 5, 1979)

**Sec. 7-15. Open burning and recreational fires.**

(a) No person shall kindle or maintain outside of a habitable building any bonfire, burn or permit to be burned, any trash, paper, rubbish, wastepaper, wood, weeds, brush, plants or other combustible or flammable material anywhere within the Town limits, except when:

(1) The burning is in the course of an agricultural operation in the growing of crops as gainful occupation and presents no fire hazard to other property in the vicinity;

(2) The burning is solely for cooking food for human consumption, and said cooking is done in a manner consistent with safe practice;

(3) The burning is in an outdoor fireplace, chimnea, firepit or similar apparatus and is contained in such a manner to be safe;

(4) The burning is a training fire conducted by the fire protection district or is a training fire conducted by a fire department or privately for industrial or commercial fire training purposes, and approved in writing by the Fire Chief.

(5) The burning is a smokeless flare or a safety flare used to indicate some danger to the public;

(6) The burning is solely for the purpose of fuels mitigation to alleviate wildland fire potential or weed abatement to assist restoration of native plants, and is approved in writing by the Fire Chief; or

(7) The burning is conducted by the Town, in the sole discretion of the Town Administrator.

(b) This Section is declared to be noncriminal. Upon conviction, penalties set forth at Section 10-9 of this Code may be imposed by the Municipal Court. (Ord 824, § 1, 2006)

**Secs. 7-16—7-30. Reserved.**

## ARTICLE II

### Weeds, Brush, Rubbish

#### Sec. 7-31. Definitions.

(a) For purposes of this Article, *weeds* means volunteer growth of grass and herbaceous plants, but does not include plants in a planned and maintained flower or vegetable garden, and shall include all cuttings of weeds.

(b) For purposes of this Article, *brush* means woody shrubs not part of a planned and maintained landscape, and shall include all cuttings from trees and bushes.

(c) For purposes of this Article, *rubbish* means all accumulation of waste, refuse, rejected animal, mineral or vegetable matter, manure, ashes, waste paper, cans, bottles, leaves, grass cuttings, shrubbery and tree trimmings, weeds or other waste material. *Rubbish* shall also mean discarded construction materials, including but not limited to lumber, gravel, bricks, sheet rock, concrete blocks and landscaping groundcover. (Ord. 809, § 1, 2005)

#### Sec. 7-32. Placement of rubbish, refuse containers.

No person shall place any rubbish, weeds or brush in any street, alley or other public place, or upon any private property, whether owned by such person or not, within the Town, except if it is in proper containers for collection or under express approval granted by the Town. Refuse containers shall remain covered at all times and shall be kept off the street, curb, sidewalk and all other public ways, and concealed from public view, except on collection day. (Ord. 303, § 11-401, 1988; Ord. 323, § 1, 1990; Ord. 501, § 1, 1998)

#### Sec. 7-33. Growth or accumulation of weeds, brush prohibited; exceptions.

(a) No owner, lessee, agent, occupant or person/entity in possession or control of any occupied or unoccupied lot, tract of land or any part thereof in the Town shall permit or maintain on any such lot or tract of land or along the sidewalk, street or alley adjacent thereto any growth of weeds to a height greater than eight (8) inches.

(b) No owner, lessee, agent, occupant or person/entity in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the Town shall permit or maintain on any such lot, tract of land or along the sidewalk, street or alley adjacent thereto any growth of brush.

(c) Excluded from the prohibitions of Subsections (a) and (b) of this Section are the following:

(1) In agricultural districts, weeds (other than noxious weeds governed by Section 7-2-80 of this Code) shall be controlled for a distance of one hundred (100) feet from a property that adjoins another residential or nonresidential district boundary, or along any street right-of-way.

(2) On lots greater than five (5) acres in size, weeds (other than noxious weeds governed by Section 7-2-80 of this Code) shall be controlled for a distance of one hundred (100) feet from the property line of the lot; and

(3) In order to retain certain Town properties in their natural states, Town-owned parks, open space, street rights-of-way and stream and lake beds or banks.

(4) Wetlands. (Ord. 809, § 2, 2005)

**Sec. 7-34. Accumulation of rubbish prohibited.**

No owner, lessee, agent, occupant or person/entity in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the Town shall permit or maintain on any such lot, tract of land or along the sidewalk, street or alley adjacent thereto any accumulation of rubbish. (Ord. 809, § 3, 2005)

**Sec. 7-35. Right of Town to remove.**

(a) If the Town Administrator finds that any weeds, brush or rubbish exists on any property in violation of this Article, the Town Administrator may notify the owner and the lessee, agent, occupant or other person/entity in possession or control of the property that such persons have ten (10) days from the date of the notice to correct the violations and bring the property into conformity with the standards of this Article or such longer time as the Town Administrator determines is appropriate in view of the nature and extent of the violations.

(b) Notice under this Subsection is sufficient if it is deposited in the U.S. mail first class to the last known owner of the property as reflected on the records of the County Assessor and to the last known address of the lessee, agent, occupant or person/entity in possession or control of the property.

(c) If the persons notified fail to correct the violations as required by the notice, the Town shall have the right to:

(1) Enter the property and take whatever corrective actions are determined to be necessary to bring the property into compliance.

(2) Assess the owner and/or the lessee, agent, occupant or other person/entity in possession or control of the property for the actual costs of the corrective action taken, including five percent (5%) for inspection and other administrative costs incurred in connection with the action taken regarding the property.

(3) The costs assessed pursuant to Paragraph (2) above shall be the joint and several obligation of the owner and/or lessee, agent, occupant or other person/entity in possession or control of the property.

(4) The Town Administrator shall notify the owner and the lessee, agent, occupant or other person/entity in possession or control of the property in writing of the amount of the assessment for correction of the violations and that such amount is due thirty (30) days from the date of the notice, or such other time as deemed reasonable in the sole discretion of the Town Administrator. Notice under this Subsection is sufficient if it is deposited in the U.S. mail first class to the last known owner of the property as reflected on the records of the County Assessor and to the last known address of the lessee, agent, occupant or person/entity in possession or control of the property.

(5) If the owner and/or the lessee, agent, occupant or other person/entity in possession or control of the property fails or refuses to pay when due any charges assessed under this Section, the Town Clerk may, in addition to taking other collection remedies, certify due and unpaid charges, including a ten-percent penalty for cost of collection, to the County Treasurer to be collected in the same manner as other taxes are collected. (Ord. 809, § 4, 2005)

**Sec. 7-36. Abatement, assessment not exclusive remedy.**

The abatement of real property and assessment of costs incurred as provided for in this Article shall not preclude the issuance of a summons and complaint for any violation of the provisions of this Article, and the imposition of a penalty by the Municipal Court upon conviction of such charges pursuant to Subsection 1-72(a) of this Code. The provisions of this Article are designated as noncriminal violations as set forth at Subsection §10-7(c) of this Code. (Ord. 809, § 5, 2005)

**Sec. 7-37. Reserved.**

**Sec. 7-38. Evidence at trial.**

Evidence of status as owner, lessee or occupant, or servant, agent, representative or employee of such owner, lessee or occupant having control of any lot or parcel of land, may be established by proof of the name of the individual to whom the utility bill for such lot or parcel of land is mailed. (Ord. 382, § 3, 1994)

**Sec. 7-39. Noxious weeds.**

(a) It shall be unlawful for any person who is an owner, lessee or occupant of any real property within the Town to allow the growth of any species or population of weeds designated or recommended for eradication by the Commissioner of the Colorado Department of Agriculture (hereinafter "noxious weeds").

(b) The Town may compel eradication of noxious weeds from private property after first applying the same or greater measures to adjacent land or rights-of-way owned or administered by the Town.

(c) Upon discovery of noxious weeds on land within the Town, the Town shall notify the landowner, lessee and occupant by certified mail. Notice shall name the noxious weeds, state that eradication is required, advise the landowner or occupant to commence eradication efforts within a specified period of time and state the integrated weed management techniques prescribed by the Commissioner for eradication. Where possible, the Town shall consult with the affected landowner, lessee or occupant in the development of a plan for eradication of the noxious weeds. Within five (5) days of the date of mailing of the notification, the landowner, lessee and occupant shall either comply with the terms of the notification, submit an acceptable plan and schedule for eradication, or shall request an arbitration panel to determine the final management plan, pursuant to Section 35-5.5-109(4)(b), C.R.S. In the event that the landowner, lessee or occupant fails to comply within five (5) days of the mailing of the notice, the Town may take steps to eradicate the weeds from the property. An arbitration panel appointed pursuant to this Section shall be made up of a weed management specialist or scientist, a landowner of similar land within the Town and a third panel member chosen

by agreement of the first two (2) panel members. The decision of the arbitration panel shall be final and not appealable.

(d) *Eradication* means reducing the reproductive success of a noxious weed species or a specified noxious weed population in largely uninfested regions to zero and permanently eliminating the species or population within a specified period of time. Once all specified weed populations are eliminated or prevented from reproducing, intensive efforts shall continue until the existing seed bank is exhausted.

(e) Landowners whose property is affected by noxious weeds shall bear the entire cost of eradication of noxious weeds, including the costs incurred by the Town for inspection, eradication, administration, attorney's fees, and all other costs incident to eradication. The Town may assess against real property and its owner the entire cost of inspection, eradication and other incidental costs and fees in connection with eradication of noxious weeds, and the Town shall have the power to levy a tax lien against such property for such costs, pursuant to Section 35-5.5-108.5 (9)(II), C.R.S.

(f) A landowner who has obtained a waiver of compliance from the Department of Agriculture shall not be required to comply with this Section.

(g) After a public hearing with thirty (30) days' prior notice, the Board of Trustees may designate additional noxious weeds subject to the conditions and requirements of this Section. The Board of Trustees shall include management objectives for any additional noxious weeds not designated as noxious weeds by the Colorado Department of Agriculture.

(h) The Town, through its delegates, agents or employees, may enter upon private premises for the purposes of inspecting for noxious weeds after obtaining verbal permission from the landowner or occupant, or after obtaining an inspection warrant from a municipal, county or district court pursuant to Section 35-5.5-108.5(5), C.R.S.

(i) The Town, through its delegates, agents or employees, shall have the right to enter upon any premises, lands or places during reasonable business hours for the purpose of ensuring compliance with noxious weed eradication.

(j) In addition to liability for costs of eradication and costs incident thereto, including attorney's fees, a person who violates this Section may be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) per violation, except that the penalty may be doubled if the person has violated this Section more than once. Prior to imposition of a penalty, the person shall receive written notice and an informal hearing before the Town Administrator. This Section is exempted from the penalty provisions in Section 10-7(c) of this Code, and the provisions of this Subsection hereby supercede such penalty provisions.

(k) A person may appeal an adverse decision made pursuant to this Section by filing a written request with the Town Clerk for an informal appeals hearing before the Town Administrator. The Town Administrator may, in his or her discretion, designate an appeals panel to hear the appeal. Failure to file a request for appeal within thirty (30) days shall be deemed a waiver of the right to appeal and a failure to exhaust administrative remedies pursuant to C.R.C.P. Rule 106.

(l) The decision of the Town Administrator or his or her designees may be appealed to the Board of Trustees by filing a written notice of appeal with the Town Clerk within ten (10) days of the Town Administrator's decision. Failure to file a written notice of appeal shall be deemed a waiver of the right to appeal and a failure to exhaust administrative remedies pursuant to C.R.C.P. Rule 106.

(m) It shall be a violation of this Section for any person to do any act which is forbidden or declared to be unlawful, or to fail to do or perform any act required in this Section. In addition to any of the remedies stated herein, the Town Attorney, acting in behalf of the Board of Trustees, may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violations. The remedy provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies. For violations of this Section, the Town may impose assessments for costs of noxious weed eradication and costs incident thereto, including attorney's fees. A person who violates this Section may be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) per violation, except that the penalty may be doubled if the person has violated this Section more than once. This Section is exempted from the penalty provisions in Subsection 10-7(c) of this Code, and the provisions of this Section hereby supersede such penalty provisions. (Ord. 705 §§ 1, 2, 2003)

**Secs. 7-40—7-50. Reserved.**

### **ARTICLE III**

#### **Abatement of Nuisances**

**Sec. 7-51. Notice.**

The owner of any property which the Town declares to be a nuisance shall be given written notice by certified mail to remove the property within fifteen (15) days. (Ord. 304, § 1, 1988)

**Sec. 7-52. Fine assessed.**

In the event the property is not completely removed within fifteen (15) days, a fine of one hundred dollars (\$100.00) per day shall be assessed beginning on the date the notice is mailed. (Ord. 304, § 2, 1988)

**Sec. 7-53. Attorney fees assessed.**

In the event the property is not completely removed within fifteen (15) days, the property owner shall be assessed reasonable attorney fees in connection with the sale and disposition of the personal property. (Ord. 304, § 3, 1988)

**Sec. 7-54. Disposal at public sale.**

In the event the property is not removed within fifteen (15) days, Town officials are authorized to dispose of the property at public sale. Proceeds of the sale shall be first applied to expense of the sale, then to attorney fees, then to fines, and the balance, if any, shall be paid to the owner. (Ord. 304, § 4, 1988)

**Secs. 7-55—7-70. Reserved.**

## ARTICLE IV

### Rodent Control

#### Sec. 7-71. Definitions.

For the purpose of this Article, the following definitions shall apply:

(1) *Generally* means words and phrases used in this Article shall be construed as follows: Words used in the present tense shall include the future; words in the singular shall include the plural and words in the plural shall include the singular. The male personal pronoun may be applied to any person as herein defined.

(2) *Building* means any structure or dwelling, whether public or private, which is devoted to or designed for occupancy, or for the transaction of business, for the rendering of professional service for amusement, for the display, sale or storage of goods, wares or merchandise, or for the performance of work or labor, including hotels, apartment buildings, rooming houses, fraternity houses, tenement houses, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories and all other houses, outhouses, sheds, barns, wells and other structures or premises used for or in connection with business or dwelling purposes, whether the same is occupied or not.

(3) *Health Officer* means the Director of the Department of Public Health or the Health Department of the Town, or any duly authorized representative.

(4) *Occupant* means the individual, partnership or corporation that uses or occupies any building or part or fraction thereof, whether the actual owner or tenant. In the case of vacant buildings or vacant portions thereof, the owner, agent or custodian shall have the responsibility as occupant.

(5) *Owner* means the actual owner, agent or custodian of the building, whether individual, partnership or corporation. The lessee shall be construed as the *owner* for the purpose of this Article when building agreements hold the lessee responsible for maintenance and repairs.

(6) *Rat eradication* means the elimination or extermination of rats within buildings by any or all of the accepted measures, such as poisoning, fumigating, trapping, clubbing, etc.

(7) *Rat harborage* means any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside any structure.

(8) *Rat-proofing* means a form of construction to prevent the ingress of rats into buildings from the exterior or from one (1) building or establishment to another. It consists essentially of treatment with material, impervious to rat gnawing, of all actual or potential openings in exterior walls, ground or first floors, basement, roofs and foundations that may be reached by rats from the ground by climbing or by burrowing. (Prior code 12.1)

**Sec. 7-72. Buildings to be rat-proofed.**

It is hereby ordained and required that all buildings in the Town shall be rat-proofed or free of rats, and maintained in a rat-proof or rat-free condition to the satisfaction of the Health Officer. (Prior code 12.2)

**Sec. 7-73. Notice to owner to rat-proof; failure to comply.**

Upon receipt of written notice or order from the Health Officer, the owner of any building or structure specified therein shall take immediate measures for rat-proofing the building. Unless such work and improvements have been completed by the owner in the time specified in the written notice, in no event to be less than fifteen (15) days, or within the time to which a written extension may have been granted by the Health Officer, then the owner shall be deemed guilty of an offense under the provisions of this Article. (Prior code 12.3)

**Sec. 7-74. Notice to occupant of rat infestation; institution of eradication measures - failure to comply.**

Whenever the Health Officer notifies the occupant of a building in writing that there is evidence of rat infestation of the building or structure, the occupant shall immediately institute rat eradication measures and shall continuously maintain such measures in a satisfactory manner until the premises are declared by the Health Officer to be free of rat infestation. Unless such measures are undertaken within five (5) days after receipt of notice, it shall be construed as a violation of the provisions of this Article, and the occupant shall be held responsible therefor. (Prior code 12.4)

**Sec. 7-75. Inspection of buildings; notice to abate improper conditions.**

The Health Officer is empowered to make unannounced inspections of the interior and exterior of buildings to determine full compliance with this Article. The Health Officer shall make periodic inspections of all rat-proofed buildings to determine evidence of rat infestation and the existence of new breaks or leaks in their rat-proofing. When any evidence is found indicating the presence of rats or openings through which rats may again enter buildings, the Health Officer shall serve the owners or occupants with notice, or orders to abate the conditions found. (Prior code 12.5)

**Sec. 7-76. Premises to be maintained to rat-proof conditions.**

The owners of all rat-proofed buildings are required to maintain the premises in a rat-proof condition and to repair all breaks or leaks that may occur in the rat-proofing without a specific order of the Health Officer. (Prior code 12.6)

**Sec. 7-77. Closing buildings until conditions are abated.**

Whenever, in the opinion of the Health Officer, conditions inside or under occupied business buildings or structures provide extensive harborage for rats, the Health Officer is empowered, after due notification in accordance with Section 7-73 of this Code, to close such business buildings until such time as the conditions are abated by rat-proofing and harborage removal including, if necessary, the installation of suitable concrete floors in basements or replacement of wooden first or ground floors with concrete or other major repairs necessary to facilitate rat eradication. (Prior code 12.7)

**Sec. 7-78. Requiring compliance with notice; institution of condemnation and destruction proceedings.**

Whenever, in the opinion of the Health Officer, conditions inside or under unoccupied buildings of structures provide extensive harborage for rats, the Health Officer is empowered to require compliance with the provisions of Section 7-73 of this Code. In the event that such conditions are not corrected in a period of sixty (60) days, or within the time to which a written extension may have been granted by the Health Officer, the Health Officer is empowered to institute condemnation and destruction proceedings, with a view to the destruction of the building or structure or other abatement of the nuisance. (Prior code 12.8)

**Sec. 7-79. Removal of rat-proofing - failure to restore, etc.**

It shall be unlawful for an occupant, owner, contractor, public utility company, plumber or any other person to remove the rat-proofing from any building or structure for any purpose and fail to restore the same promptly in a satisfactory condition, or to leave it damaged, or to make any new openings that are not closed or sealed effectively against the entrance of rats. (Prior code 12.9)

**Sec. 7-80. New buildings, etc., to be rat-proofed.**

It shall be unlawful for any person to construct, repair or remodel any building, dwelling, stable, market or other structure whatsoever, unless such construction, repair, remodeling or installation shall render the building or other structure rat-proof in accordance with the regulations prescribed in this Article. The provisions of this Section apply only to such construction, repairs, remodeling or installation as affect the rat-proof condition of any building or other structure. (Prior code 12.10)

**Sec. 7-81. Building containing foodstuffs to be rat-proofed; condition prerequisite to obtaining license or permit.**

It shall be unlawful for any person to occupy any new or existing business building wherein foodstuffs are to be stored, kept, handled, sold, held or offered for sale without complying with the provisions of this Article. Unless the provisions of this Section are complied with, no Town license or permit to conduct or carry on such business will be issued. (Prior code 12.11)

**Sec. 7-82. Food and feed for animals and fowl to be stored in rat-proof containers, etc.**

All food and feed within the Town for feeding chickens, cows, pigs, horses and other animals shall be stored in rat-free and rat-proof containers, compartments or rooms unless stored in a rat-proof building. (Prior code 12.12)

**Sec. 7-83. Disposition of garbage, refuse and dead animals.**

All garbage or refuse, consisting of waste animal or vegetable matter upon which rats may feed, and all small dead animals, within the corporate limits of the Town, shall be placed and stored until collected in covered metal containers of a type prescribed by the Health Officer. It shall be unlawful for any person to dump or place on any premises, land or waterway, except on official Town disposal sites or other authorized places, any dead animals, or any waste vegetable or animal matter of any kind. (Prior code 12.13)

**Sec. 7-84. Accumulation of garbage, rubbish, building materials, etc.**

It shall be unlawful for any person to place, leave, dump or permit to accumulate, except on official Town disposal sites or other authorized places, any garbage, rubbish, building materials or trash in any building or on any premises, improved or vacant, or on any open lot or alley in the Town so that the same shall or may afford food or harborage for rats. (Prior code 12.14)

**Sec. 7-85. Accumulation of lumber, boxes, barrels, etc.**

It shall be unlawful for any person to permit to accumulate on any premises, improved or vacant, or on any open lot or alley in the Town any lumber, boxes, barrels, bottles, cans, containers or similar materials that may be permitted to remain thereon unless they shall be placed on open racks that are elevated not less than eighteen (18) inches above the ground and evenly piled or stacked. (Prior code 12.15)

**Sec. 7-86. Summary abatement of unlawful conditions; injunctive relief.**

Whenever the Health Officer shall find that a public health emergency exists because of the infestation of a building, structure or dump by rats which is likely to cause plague, typhus fever, rat-bite fever or other diseases in the residents of the Town, or its police jurisdiction, he or she may summarily abate such condition of infestation by rats without prior notice to the owner or occupant. If a danger of infection of human beings with plague, typhus fever, rat-bite fever or other diseases exists, the Health Officer shall give not less than five (5) days' written notice to the owner or occupant of the building, other structure or dump, of hearings and shall not take summary steps to abate such infestation by rats until after such hearings following the notice referred to in this Section. The Health Officer is also authorized to apply to the District Court for injunctive relief against any person who endangers the public health by virtue of maintaining any building, other structure or dump infested with rats. (Prior code 12.16)

**Sec. 7-87. Rules, regulations and standards.**

The Health Officer is empowered to adopt rules, regulations and standards in aid of the construction and enforcement of this Article which are not inconsistent with the terms and provisions hereof. (Prior code 12.17)

**Secs. 7-88—7-100. Reserved.**

**ARTICLE V**

**Animals**

**Sec. 7-101. Dog license required.**

The owner, possessor or keeper of any dog within this Town shall purchase a license for such dog from the Town Clerk on or before March 1 of each year or within thirty (30) days after the dog reaches the age of three (3) months. Dogs purchased, obtained or otherwise acquired, or located in Town subsequent to the first day of March in any calendar year shall be licensed within thirty (30) days after such acquisition or location. (Ord. 303, § 11-701, 1988)

**Sec. 7-102. Definitions.**

As used in this Article, the following definitions shall apply:

- (1) *Cat* means any domesticated animal of the species *Felis domestica*.
- (2) *Dog* shall be construed to mean a dog over three (3) months of age.
- (3) *Keeper* means a person who has custodial or supervisory authority or control over an animal.
- (4) *Owner*. Where ownership of an animal is shared, all owners shall be jointly and severally liable. The owners may be liable even if the animal was in possession of a keeper at the time of the offense. (Ord. 303, § 11-701, 1988; Ord. 476, § 1, 1997; Ord. 712, § 1, 2003; Ord. 926, § 2, 2007)

**Sec. 7-103. License application; rabies vaccination.**

(a) Each application for dog license shall be made to the Town Clerk upon a form provided for that purpose, and it shall be accompanied by a certificate from a duly licensed veterinarian showing that the dog has been vaccinated against rabies consistent with Subsection (b) below.

(b) It is unlawful for any person to own, keep or possess any dog over the age of three (3) months which has not been vaccinated against rabies. The owner of any dog shall have the animal vaccinated by a duly licensed veterinarian by three (3) months of age, and shall keep the vaccinations current. The vaccines used shall be of the type recommended by the "Compendium of Animal Rabies Control" as promulgated by the National Association of State Public Health Veterinarians and shall provide for duration of immunity of up to three (3) years. (Ord. 303, § 11-701, 1988; Ord. 546, § 1, 2000)

**Sec. 7-104. License tags.**

Upon application for a dog license, the furnishing of the required certificate of inoculation and the payment of the required fee, the Town Clerk shall issue a dog license which shall be numbered and also a metal tag bearing the same number as the license, which tag shall be securely attached to the collar to be worn by the dog so licensed at all times. (Ord. 303, § 11-701, 1988)

**Sec. 7-105. Lost or destroyed tags.**

If a dog tag is lost or destroyed, the license holder may obtain a duplicate tag from the Town Clerk upon paying a fee to be established by the Town Clerk. (Ord. 303, § 11-701, 1988)

**Sec. 7-106. Dog pound.**

The Board of Trustees shall have the right to establish a dog pound for the Town to be operated by Town personnel, or to contract with a public or private person or organization for the operation of a dog pound for and on behalf of the Town. (Ord. 303, § 11-701, 1988)

**Sec. 7-107. Impounded dogs.**

It shall be lawful for any authorized dog catcher and all police officers to impound any dog which is not wearing a dog tag as herein provided and any dog which they reasonably feel to be in violation of any of the provisions of this Article, whether such dog is wearing a dog tag or not. It shall be lawful for the dog catcher or any police officer to go upon private property for the purpose of catching any dog to be impounded. (Ord. 303, § 11-701, 1988)

**Sec. 7-108. Court proceedings.**

If a dog is impounded, it shall be the duty of the dog catcher or any police officer to immediately institute proceedings in the Municipal Court on behalf of the Town against the owner, possessor or keeper, charging a violation of the appropriate Section of this Code. Nothing herein contained shall be construed as preventing the dog catcher, any police officer or any citizen from instituting a proceeding in the Municipal Court for violation of this Article where there is no impoundment. (Ord. 303, § 11-701, 1988)

**Sec. 7-109. Notice of impoundment.**

As soon as practicable after the date of impoundment, notice of such impoundment shall be personally served upon the owner, possessor or keeper of such dog if the address of such person is known. If the owner, possessor or keeper of such dog is not known, or if his or her address cannot be determined, the dog catcher shall cause to be posted at the Town Hall for five (5) consecutive days a notice of impoundment, which notice shall describe the dog, set forth the date of impoundment and set forth the location from which the dog was taken up. (Ord. 303, § 11-701, 1988)

**Sec. 7-110. Disposition of impounded dogs.**

If an impounded dog has not been claimed within five (5) days from first notice of impoundment, the dog may be disposed of in any humane manner prescribed by the dog catcher or by persons so authorized to do so by the Board of Trustees. (Ord. 303, § 11-701, 1988)

**Sec. 7-111. Redemption from pound.**

Any owner, possessor or keeper of a dog desiring to redeem such dog from the pound shall pay the Town such sums as has been or will be charged the Town by the impoundment facility for impoundment, room and board and other services, and further shall pay the Town all license or rabies inoculation fees provided for in this Article. (Ord. 303, § 11-701, 1988)

**Sec. 7-112. Interference.**

It shall be unlawful for any person to interfere with, molest, hinder or prevent the dog catcher or his or her assistants from discharging their duties under this Code. (Ord. 303, § 11)

**Sec. 7-113. Dog running at large.**

(a) No owner or keeper of any dog shall fail to keep the dog on the premises of the owner or keeper unless the dog is under the control of a competent person and restrained by a substantial chain

or leash not exceeding twenty (20) feet in length. Any owner or keeper with a dog at a designated dog park shall be governed by the provisions at Section 7-114.

(b) Any dog that is out of doors on the owner's or keeper's property shall be maintained on the premises by means of adequate fencing, to include, but not be limited to, an underground electronic barrier with a transmitter collar worn by the dog, or voice control of a competent person. Leaving an unattended dog fastened to a leash, chain or trolley shall not be deemed to comply with the requirements of this Section.

(c) It shall be an affirmative defense to a charge of a violation of this Section that the dog was on the premises of another person known to the owner or keeper with the express permission of the property owner, the dog was accompanied by its owner or keeper and the dog was within the immediate presence and voice control of the owner or keeper.

(d) *Voice control* means control of the behavior of a dog which is not leashed or otherwise physically restrained by its owner or keeper sufficient that the dog does not, without regard to circumstances or distractions:

- (1) Charge, chase or otherwise display aggression toward any person or behave toward any person in a manner that a reasonable person would find is harassing or disturbing;
- (2) Charge, chase or otherwise display aggression toward any dog or other animal;
- (3) Chase, harass or disturb wildlife or livestock; or
- (4) Fail to come to and stay with the owner or keeper immediately upon command by such person.

Voice control does not exist unless the guardian or keeper exercises this command authority at all times to keep the dog within the requirements of this definition. (Ord. 303, § 11-702, 1988; Ord. 425, § 4, 1995; Ord. 475, § 1, 1997; Ord. 811. § 1, 2005)

#### **Sec. 7-114. Dog parks.**

(a) Section 7-113 above shall not apply to areas designated by the Town as dog training areas or off-leash dog park sites (*dog parks*).

(b) At any designated dog park, the owner or keeper of a dog may allow the dog to be at large off leash, subject to the conditions set forth below. Violation of any condition set forth herein shall constitute a violation of this Section. Such violations are designated as noncriminal and, upon conviction, the penalties set forth at Subsection 1-72(a) of this Code shall apply.

- (1) Owners/keepers shall obey the hours of the dog park as posted.
- (2) Owners/keepers shall keep their dogs on a leash held by a person able to control the dogs when entering or leaving the fenced enclosure of the dog park.
- (3) Dogs must be accompanied by a person at least twelve (12) years of age when inside the enclosed area of the dog park.

(4) Children under the age of twelve (12) years must be supervised by a person who is at least eighteen (18) years of age.

(5) Owners/keepers shall not allow their dogs to chase or harass wildlife or other dogs.

(6) Owners/keepers shall not leave their dogs unattended at the dog park.

(7) Pinch (prong) and spike collars shall be removed prior to entering the dog park, without removal of the dog's license tags.

(8) Owners/keepers shall not bring any of the following dogs into the dog park:

a. Vicious or aggressive dogs;

b. Female dogs in heat;

c. Dogs without a current vaccination tag attached to the collar worn by the dog;

d. Dogs without a current identification tag attached to the collar worn by the dog or a traceable microchip;

e. Unvaccinated dogs;

f. Dogs known to be ill or exhibiting signs of illness; or

g. Dogs not under voice command, unless in areas at the site designated for training.

(9) Any person who brings a dog to a designated dog park shall be considered the owner/keeper of the dog for purposes of this Section.

(10) Anyone entering a designated dog park assumes the risk of injury and property damage caused by their dogs to other dogs, other persons or any of the facilities at the dog park. By entering the dog park, every person agrees to release the Town and its employees from liability for injuries or property damage caused by any act or omission of the Town or its employees. The owner/ keeper assumes liability for any injury or property damage to persons or other dogs caused by their dogs. (Ord. 808, § 1, 2005)

#### **Sec. 7-115. Fees for impounding dogs.**

Any owner, possessor or keeper of a dog impounded pursuant to Section 7-107 of this Chapter shall pay a fee in an amount set by resolution of the Board of Trustees in addition to any other fees, charges or fines related to such animal. (Ord. 970, § 1, 2008)

#### **Sec. 7-116. Depositing animal feces unlawful.**

(a) It is unlawful for any owner, possessor or person who keeps any animal to permit it to deposit any fecal matter on any public or private property of another, or in any waters.

(b) It is an affirmative defense to this Section if a person in immediate control immediately removes and deposits in an appropriate trash container fecal matter deposited by a domesticated animal. (Ord. 728, § 1, 2004)

**Sec. 7-117. Accumulation of animal feces unlawful.**

The accumulation of animal feces compromises public health and constitutes a threat to public safety and welfare. It is unlawful for the owner or keeper of an animal to allow animal feces to accumulate so as to be a health hazard or so that the odor is noticeable on adjoining property. (Ord. 728, § 1, 2004)

**Sec. 7-118. Strict liability.**

For the purpose of prosecution for violation of this Article, it shall not be necessary in order to obtain a conviction to prove notice or knowledge on the part of the owner, possessor or keeper of the dog in question that such dog was violating any of the provisions of this Article at the time and place charged, it being the purpose and intent of this Article to impose strict liability upon the owner, possessor or keeper of any dog for the actions, conduct or condition of such dog. (Ord. 303, § 11-703, 1988)

**Sec. 7-119. Reserved.**

**Sec. 7-120. Prohibited animals.**

No person shall keep or harbor within the Town limits any animal that may reasonably and generally be categorized as fowl, rabbit, livestock or wild animal, except as herein provided, and except rodent, cats and birds commonly kept within the home. (Ord. 303, § 11-704, 1988)

**Sec. 7-121. Cruelty to animals prohibited.**

(a) No person shall:

- (1) Overdrive, overload, drive when overloaded or overwork any animals;
- (2) Cruelly beat, cruelly mutilate or torture any animal;
- (3) Needlessly shoot at, wound, capture or in any other manner needlessly molest, injure or kill any animal; or
- (4) Carry, transport or keep in a cruel manner any animal.

(b) It is a specific defense to a charge of violating Subsection (c) below that the action was necessary to avoid injury to a person or that the animal was not a domesticated animal and the action was necessary to avoid injury to a person or property.

(c) It is unlawful for any person to fail to provide an animal owned or in the custody of such person with adequate food and water, proper shelter, veterinary services and humane care and treatment necessary to maintain the good health of the animal and to prevent suffering by the animal.

(d) Where there is reasonable suspicion to believe that an animal(s) is being mistreated or neglected, as described in Paragraphs (a) and (c) of this Section, and the owner or keeper is unavailable, the Police Department may enter the premises and remove and impound the animal(s). *Premises*, as used in this Section, is defined to include the land and the structures thereon, not to include the home.

(e) Where an animal(s) is located in a home and is not otherwise accessible, and a peace officer has probable cause to believe that the animal(s) is being mistreated or neglected, as described in paragraphs (a) and (c) of this Section, to the extent that the life of the animal(s) is endangered and the owner or keeper is unavailable, the peace officer may enter the home for the purpose of removing and impounding the animal(s) upon the issuance of a warrant issued by an appropriate court for such purpose.

(f) The owner or keeper of the impounded animal(s) shall be responsible for all charges incurred in impounding the animal.

(g) Upon impounding the animal(s), the Police Department shall make all reasonable efforts to notify the owner or keeper of the impoundment. If attempts to notify the owner or keeper of the impoundment in person or by telephone are unsuccessful, notice may be made by posting written notification of the impoundment at the premises from which the animal(s) was removed. (Ord. 303, § 11-705, 1988; Ord. 425, §§ 1—3, 1995, Ord. 884, § 1, 2007)

**Sec. 7-122. Disturbance.**

(a) It shall be unlawful for any owner or keeper of any animal to fail to prevent the animal from disturbing any person by barking, howling, yelping or any other audible sound.

(b) No person shall be charged with violating this Section unless a written warning was issued to the owner or keeper of the animal within twelve (12) months preceding the first date alleged as the date of violation in the complaint. The written warning shall advise the owner or keeper of the animal of the nature of the violation, the date and approximate time of the violation, and that in the event a second violation occurs within a year of the date of the written warning, a summons and complaint may be issued. The written warning shall be provided to the owner or keeper of the animal by personal service, posting upon the property of the owner or keeper of the animal or mailing first class to such person. A copy of the written warning is prima facie evidence that the warning was issued and served properly. (Ord. 383, § 34, 1994; Ord. 550, § 1, 2000; Ord. 712 § 2, 2003)

**Sec. 7-123. Vicious animals.**

(a) It is unlawful for any person to harbor or keep a vicious animal within the Town. Any vicious animal shall be deemed a public nuisance, and may be seized by any police officer or animal control officer of the Town, and upon appropriate complaint and order of the Municipal Court or any other court of competent jurisdiction, may be humanely destroyed or otherwise disposed of, as the Court may determine in the abatement of the nuisance and protection of the public safety. It shall be an affirmative defense to prosecution under this Section that a dog is under the control of a law enforcement agency or the dog is a trained guard dog kept for the protection of property, and restrained by cage, fence or other adequate means from contact with the general public or with persons who enter the premises with the actual or implied permission of the owner or occupant, provided that the premises are posted in a

manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog. Nothing in this Section shall be construed to prevent the immediate killing of a vicious animal if, under the circumstances, such action is required to protect the public safety.

(b) *Vicious animal* is defined as an animal that bites or attacks a human or another animal, or approaches a human in an apparent attitude of attack, whether or not an attack actually occurs. (Ord. 383, § 35, 1994; Ord. 520, § 4, 1998)

#### **Sec. 7-124. Hearing on destruction of vicious animal.**

(a) Upon the filing of a motion for destruction of a vicious animal, the Municipal Court shall set a hearing as soon as practical. The Court or Town Prosecutor shall promptly serve the owner, if known or reasonably discoverable, with written notice of the hearing and a copy of the motion at least five (5) days before the hearing. Service shall be pursuant to C.M.C.R. 204(e), 249(b) and C.R.C.P. 5(b).

(b) The hearing shall be for the purpose of deciding if the animal is a public nuisance. The Town shall bear the burden of proof at the hearing, by a preponderance of the evidence. If the owner, without good cause, fails to appear at the hearing, at arraignment or at trial, the dog shall be deemed abandoned and, upon proper proof of the public nuisance, may be destroyed or otherwise disposed of consistent with this Section.

(c) A continuance of the hearing on the motion for destruction, or a stay of the destruction order, may be granted only if the owner posts a bond sufficient to cover the total costs of the impoundment and destruction. (Ord. 520, § 5, 1998)

#### **Sec. 7-125. Care and keeping of domestic cats.**

(a) Vaccination and identification tags.

(1) It is unlawful for any person to own, keep or possess any cat over the age of three (3) months which has not been vaccinated against rabies. The owner of any cat shall have the animal vaccinated by a duly licensed veterinarian by three (3) months of age and shall keep the vaccinations current. Upon request of the Town Administrator, or his or her designee, or any police officer of the Town, the owner or keeper shall provide proof of the vaccination.

(2) Every person who owns, keeps or possesses any cat over the age of three (3) months shall attach an identification tag to the collar or harness of the cat. The identification tag shall contain the name, address and phone number of the owner or keeper of the cat. Such tags shall remain attached to the collar or harness at all times, and the collar or harness shall be worn by the cat at all times.

(b) Removal of excrement. It shall be unlawful for any owner or keeper of any cat to fail to immediately remove excrement deposited by his or her cat upon any public property or private property.

(c) Damage to property. It shall be unlawful for any owner or keeper of any cat to fail to prevent such animal from destroying, damaging or injuring any shrubbery, plant, flowers, grass, lawn or any

other item on public property or upon private property owned or occupied by a person other than the owner or keeper of the animal.

(d) Feral cats. It shall be unlawful for any person to offer any food to a feral cat.

(e) This Section is declared to be a noncriminal violation. Upon conviction, penalties set forth at Section 1-72 of this Code may be imposed. (Ord. 926, § 1, 2007)

**Secs. 7-126—7-140. Reserved.**

## ARTICLE VI

### Burning Restrictions

#### Sec. 7-141. Definitions.

The following words and phrases shall have the indicated meanings:

(1) *High pollution day* means that period of time declared to be a high pollution day by the State Department of Health.

(2) *Sole source of heat* means one (1) or more solid fuel-fired heating devices which constitute the only source of heat in a private residence for purposes of space heating.

(3) *Solid fuel-fired heating device* means a device designed for solid fuel combustion so that useable heat is derived for the interior of a building and includes solid fuel-fired stoves, fireplaces and furnaces or boilers. *Solid fuel-fired heating device* does not include a barbecue device used solely for the cooking of food or natural gas-fired fireplace logs. (Ord. 363, § 1, 1993)

#### Sec. 7-142. High pollution prohibition.

(a) It is unlawful for any person to operate a solid fuel-fired heating device during a high pollution day unless that person has an exemption granted pursuant to Section 7-143 below. It shall be the duty of all persons owning or operating a solid fuel-fired heating device to be aware of any declaration of a high pollution day by the State Department of Health.

(b) At the time of the declaration of a high pollution day, the Town shall allow three (3) hours for the burndown of existing fire in solid fuel-burning devices prior to the initiation of enforcement. (Ord. 363, § 1, 1993)

#### Sec. 7-143. Exemptions.

(a) A person may operate a solid fuel-fired heating device during a high pollution day if an exemption has previously been obtained from the Building Inspector. An exemption may be granted if the applicant submits a sworn statement that either:

(1) A solid fuel-fired burning device is the sole source of heat and that said device was installed prior to the effective date of the ordinance codified herein; or

(2) An electrical heating system is the primary source and a solid fuel-fired heating device is a supplemental heating system, and said system was installed prior to the effective date of the ordinance codified herein. A fee to cover the administrative costs of the exemption certificate may be charged. The fee shall be established and from time to time revised by resolution of the Board of Trustees.

(b) An exemption obtained under this Section shall be effective for one (1) year from the date it is granted and may be renewed upon submission of a new sworn statement as provided in Subsection (a) above.

(c) An exemption granted as provided herein may be revoked by the Town if the solid fuel-fired heating device is operated inefficiently so as to create a nuisance due to excessive smoke production.

(d) The exemption certificate shall be posted in a conspicuous location near the main entrance to be visible from the street. (Ord. 363, § 1, 1993)

**Sec. 7-144. Defense.**

It shall be an affirmative defense to a charge of burning on a high pollution day under Section 7-142 above, that a power outage, interruption of natural gas supply or temporary equipment failure existed at the time and location of the violation, which did not result from any action of the person charged with the violation. (Ord. 363, § 1, 1993)

**Sec. 7-145. Coal burning prohibited.**

It is unlawful to burn coal in any form in a solid fuel-fired heating device. (Ord. 363, § 1, 1993)

**Sec. 7-146. Inspections.**

For the purpose of determining compliance with the provisions of this Chapter, the Building Inspector or a police officer is authorized to make inspections to determine whether solid fuel-fired heating devices are being operated on high pollution days. If any person refuses or restricts entry or free access to any part of the premises, or refuses inspection of any device, the Municipal Court may issue a warrant for inspection at a reasonable time, without interference, restriction or obstruction. The court shall have full power, jurisdiction and authority to enforce all orders issued under the provisions of this Article. (Ord. 363, § 1, 1993)

**Sec. 7-147. Violation; penalty.**

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Chapter is committed, continued or permitted, and upon conviction of any such violation such person shall be punishable by a fine as set forth in Section 1-72 of this Code. (Ord. 363, § 1, 1993)

**Sec. 7-148. Violation; injunctive relief.**

Notwithstanding any other penalties, any violation of this Chapter is deemed a public nuisance. Nothing in this Chapter shall prevent the Town Attorney from seeking appropriate legal or equitable relief from any court of competent jurisdiction. (Ord. 363, § 1, 1993)

**Sec. 7-149. Registration.**

(a) Within six (6) months of the effective date of the ordinance codified herein, the owners of all existing solid fuel-burning devices shall register such devices with the Town on registration forms provided by the Town.

(b) The Town shall provide all property owners within the Town with appropriate forms for registration of solid fuel-burning devices and shall provide notification to property owners of the requirements and provisions of this Article.

(c) Solid fuel-burning devices installed after the effective date of the ordinance codified herein shall be automatically registered and the fee paid at the time of mechanical permit issuance.

(d) After the registration period, it shall be unlawful to install, burn, use, operate or maintain any solid fuel-burning device which has not been registered with the Town. (Ord. 363, § 1, 1993)

**Sec. 7-150—7-160. Reserved.**

**ARTICLE VII**

**Right To Farm**

**Sec. 7-161. Definitions.**

For the purposes of this Article, certain words and phrases shall be defined as follows, unless the context otherwise requires:

*Agricultural land* means lands on which an agricultural operation has been maintained for more than one (1) year.

*Agricultural operation* means and includes, but is not limited to, the cultivation and tillage of the soil; dairying; grazing of livestock; the production, irrigation, frost protection, cultivation, growing, application of fertilizers and pesticides, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed as incidental to or in conjunction with such operations, including storage, preparation for market, delivery to storage or to market, or to carriers for transportation to market. (Ord. 711, § 1, 2003)

**Sec. 7-162. Purpose.**

(a) It is the declared policy of the Town to conserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When

nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operators are sometimes forced to cease operations or curtail their operations. Others may be discouraged from making investments in farm improvements to the detriment of the economic viability of the county's agricultural industry as a whole. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(b) An additional purpose of this Article is to promote a "good neighbor" policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residency. Such concerns may include, but are not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas. (Ord. 711, § 1, 2003)

#### **Sec. 7-163. Nuisance.**

(a) No agricultural activity, operation or facility, or appurtenances thereof, conducted or maintained on agricultural lands for commercial purposes, and in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, after the same has been in operation for more than one (1) year, if it was not a nuisance at the time it began, except that the provisions of this Section shall not apply in the case of a negligent operation, when a change in operation would result in a private or public nuisance, or when a substantial increase in the size of operations occurs.

(b) This Article is not to be construed as modifying or abridging existing or future law relative to nuisances, but rather is only to be utilized in the interpretation and enforcement of the provisions of this Article. (Ord. 711, § 1, 2003)

#### **Sec. 7-164. Disclosure.**

(a) Disclosure by subdivider. The subdivider of any property located within one thousand (1,000) feet of land zoned for agricultural use shall disclose through a notation on the final plat of the subdivision, and within its covenants, if prepared, and through the recordation of a separate acknowledgment statement, the presence of agricultural and appurtenant uses in the proximity of the subdivision through the following, or similar, statement:

"The property(ies) within this subdivision is (are) located within 1,000 feet of land utilized or zoned for agricultural operations and residents/occupants of the property may be subject to inconvenience or discomfort arising from such operations, including but not limited to, the storage and disposal of manure, the application by spraying or otherwise of agricultural chemical fertilizers, soil amendments, herbicides and pesticides, cultivation, plowing, spraying, pruning, harvesting, crop protection, shipping and processing, and the operation of machinery of any kind during any 24-hour period (including aircraft) which may generate dust, smoke, light, noise, odor and traffic. The Town of Frederick has determined that inconvenience and discomforts associated with such agricultural operations shall not be considered a nuisance if such operations are consistent with the accepted customs and standards. Residents/occupants of property(ies) within

this subdivision should be prepared to accept such inconvenience or discomfort as normal and necessary to agricultural operations."

(b) Disclosure prior to issuance of building permits. Where a new building intended for human occupancy is to be on property that is within one thousand (1,000) feet of land zoned for agricultural use, the owners of the property shall, prior to issuance of a building permit, be required to sign and record a statement in a form similar to that set forth in Subsection (a) above. In lieu of signing the statement required above, the owner may submit evidence that the statement set forth in Subsection (a) above has been made part of subdivision documents creating the parcel on which the building is to be constructed. (Ord. 711, § 1, 2003)

**Secs. 7-165—7-180. Reserved.**