

# CHAPTER 1

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## ARTICLE I

### Code

#### **Sec. 1-1. Adoption of Code.**

The published code known as the *Buena Vista Municipal Code*, of which one (1) copy is now on file in the office of the Town Clerk and may be inspected during regular business hours, is enacted and adopted by reference as a primary code and incorporated herein as if set out at length. This primary code has been promulgated by the Town of Buena Vista, Colorado, as a codification of all the ordinances of the Town of Buena Vista of a general and permanent nature through Ordinance No. 26-1992 for the purpose of providing an up-to-date code of ordinances, properly organized and indexed, in published form for the use of the citizens and officers of the Town. (Ord. 26-1992 §1)

#### **Sec. 1-2. Purpose.**

The Board of Trustees finds, determines and declares that the ordinance codified in this Chapter is necessary for the general health, safety and welfare of the community. (Ord. 26-1992 §1)

#### **Sec. 1-3. Title and scope.**

This Code shall be known as the *Buena Vista Municipal Code*. This Code constitutes the adoption, compilation, revision and codification of all the ordinances of the Town of Buena Vista, of a general and permanent nature. (Ord. 26-1992 §1)

#### **Sec. 1-4. Adoption of codes by reference.**

Secondary codes may be adopted by reference, as provided by state law. (Ord. 26-1992 §1)

#### **Sec. 1-5. Repeal of ordinances not contained in Code.**

Ordinances and portions of ordinances of a general and permanent nature which are inconsistent with any provision of this Code, to the extent of such inconsistency, are repealed as of the effective date of the ordinance adopting this Code, except as hereinafter provided. (Ord. 26-1992 §1)

#### **Sec. 1-6. Matters not affected by repeal.**

The repeal of ordinances and parts of ordinances of a permanent and general nature by Section 1-5 above shall not affect any offense committed or act done, any penalty or forfeiture incurred or any contract, right or obligation established prior to the time said ordinances and parts of ordinances are repealed. (Prior code 1.01.080)

#### **Sec. 1-7. Ordinances saved from repeal.**

The continuance in effect of temporary and/or special ordinances and parts of ordinances, although omitted from this Code, shall not be affected by such omission therefrom, and the adoption of the Code shall not repeal or amend any such ordinance or part of any such ordinance. Among the ordinances not repealed or amended by the adoption of this Code are ordinances:

- (1) Which are of a special or temporary nature.

- (2) Accepting, establishing, locating relocating, creating, opening, dedicating, vacating or closing any street or public way specific streets, alleys and other public ways.
- (3) Naming or changing the names of specific streets and other public ways.
- (4) Establishing the grades of specific streets and other public ways.
- (5) Establishing the grades or lines of specific sidewalks.
- (6) Authorizing or relating to specific issuances of general obligation or special revenue bonds or other evidences of indebtedness.
- (7) Creating specific sewer and paving districts and other local improvement districts.
- (8) Authorizing the issuance of specific local improvement district bonds.
- (9) Making special assessments for local improvement districts and authorizing refunds from specific local improvement district bond proceeds.
- (10) Annexing territory to or excluding territory from the Town.
- (11) Dedicating or accepting any specific plat or subdivision.
- (12) Calling or providing for a specific election.
- (13) Authorizing specific contracts for purchase of beneficial use of water by the Town.
- (14) Approving or authorizing specific contracts with the State, with other governmental bodies or with others.
- (15) Authorizing a specific lease, sale or purchase of property.
- (16) Granting rights-of-way or other rights and privileges to specific railroad companies or other public carriers.
- (17) Granting a specific gas company or other public utility the right or privilege of constructing lines in the streets and alleys or of otherwise using the streets and alleys.
- (18) Granting a franchise to a specific public utility company or establishing rights for or otherwise regulating a specific public utility company.
- (19) Setting rates, tolls and charges for water, sewer, any utility or proprietary fee, unless otherwise specifically set forth in this Code.
- (20) Promising, guaranteeing or authorizing the payment of money by or for the Town.
- (21) Appropriating money.
- (22) Levying a temporary tax or fixing a temporary tax rate.
- (23) Relating to salaries.

(24) Amending the Official Zoning Map. (Prior code 1.01.090; Ord. 26-1992 §1)

**Sec. 1-8. Changes in previously adopted ordinances.**

In compiling and preparing the ordinances of the Town for adoption and revision as part of the Code, certain grammatical changes and other changes were made in one (1) or more of said ordinances. It is the intention of the Board of Trustees that all such changes be adopted as part of the Code as if the ordinances so changed had been previously formally amended to read as such. (Ord. 26-1992 §1)

**Secs. 1-9—1-20. Reserved.**

**ARTICLE II**

**Definitions and Usage**

**Sec. 1-21. Definitions.**

The following words and phrases, whenever used in the ordinances of the Town of Buena Vista, and/or any codification of the same, shall be construed as defined in this Section, unless a different meaning is intended from the context or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

(1) *Board of Trustees* means the Board of Trustees of the Town of Buena Vista. *All its members or all Trustees* means the total numbers of Trustees holding office.

(2) *County* means the county of Chaffee, Colorado.

(3) *C.R.S.* means Colorado Revised Statutes, including all amendments thereto.

(4) *Law* denotes applicable federal law, the Constitution and statutes of the State of Colorado, the ordinances of the Town and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

(5) *May* is permissive.

(6) *Misdemeanor* means and is to be construed as meaning violation and is not intended to mean crime or criminal conduct.

(7) *Month* means a calendar month.

(8) *Must* and *shall*. Each is mandatory.

(9) *Oath* shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words *swear* and *sworn* shall be equivalent to the words *affirm* and *affirmed*.

(10) *Ordinance* means a law of the Town; provided that a temporary or special law, administrative action, order or directive may be in the form of a resolution.

(11) *Owner*, applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

(12) *Person* means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

(13) *Personal property* includes money, goods, chattels, things in action and evidences of debt.

(14) *Preceding* and *following* mean next before and next after, respectively.

(15) *Property* includes real and personal property.

(16) *Real property* includes lands, tenements and hereditaments.

(17) *Sidewalk* means that portion of a street between the curblines and the adjacent property line intended for the use of pedestrians.

(18) *State* means the State of Colorado.

(19) *Street* includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in the Town which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

(20) *Tenant* and *occupant*, applied to a building or land, includes any person who occupies all or a part of such building or land, whether alone or with others.

(21) *Town* means the Town of Buena Vista, Colorado, or the area within the territorial limits of the Town of Buena Vista, and such territory outside of the Town over which the Town has jurisdiction or control by virtue of any constitutional or statutory provision.

(22) *Written* includes printed, typewritten, mimeographed or multigraphed or otherwise reproduced in permanent visible form.

(23) *Year* means a calendar year. (Prior code 1.04.010; Ord. 26-1992 §1)

**Sec. 1-22. Computation of time.**

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day; but if the time for an act to be done shall fall on Saturday, Sunday or a legal holiday, the act shall be done upon the next regular business day following such Saturday, Sunday or legal holiday. (Prior code 1.04.070; Ord. 26-1992 §1)

**Sec. 1-23. Title of office.**

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the Town. (Prior code 1.04.020)

**Sec. 1-24. Interpretation of language.**

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning. (Prior code 1.04.030; Ord. 26-1992 §1)

**Sec. 1-25. Grammatical interpretation.**

The following grammatical rules shall apply to Town ordinances unless it is apparent from the context that a different construction is intended:

- (1) Any gender includes the other genders.
- (2) The singular number includes the plural and the plural includes the singular.
- (3) Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable. (Prior code 1.04.040; Ord. 26-1992 §1)

**Secs. 1-26—1-40. Reserved.**

**ARTICLE III**

**General**

**Sec. 1-41. Titles and headings not part of ordinances.**

Chapter and article titles, headings and titles of sections and other divisions in the Code or in supplements made to the Code are inserted in the Code, may be inserted in supplements to the Code for the convenience of persons using the Code, and are not part of the ordinances. (Ord. 26-1992 §1)

**Sec. 1-42. Authorized acts by agents, representatives.**

When an act is required by this Code or an ordinance, the same being such that it may be done as well by an agent or representative as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent or representative. (Prior code 1.04.050)

**Sec. 1-43. Interpretation of unlawful acts.**

Whenever in this Code any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Prior code 1.04.060; Ord. 26-1992 §1)

**Sec. 1-44. Purpose of ordinances.**

The provisions of Town ordinances, and all proceedings under them, are to be construed with a view to effect their objectives and to promote justice. (Prior code 1.04.080)

**Sec. 1-45. Repeal of ordinances.**

The repeal of an ordinance shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby. (Prior code 1.04.090)

**Sec. 1-46. Publication of ordinances.**

All ordinances, as soon as may be after their passage, shall be recorded in a book kept for that purpose and authenticated by the signature of the Mayor and Town Clerk. All ordinances of a general or permanent nature, and those imposing any fine or forfeiture, shall be published in a newspaper published

within the Town. Such ordinances shall not take effect until thirty (30) days after such publication, except for ordinances calling for special elections or necessary for the immediate preservation of the public peace, health and safety and containing the reasons making the same necessary in a separate section. The excepted ordinances shall take effect upon their final passage, adoption and the approval and signature of the Mayor, if they are adopted by an affirmative vote of three-fourths ( $\frac{3}{4}$ ) of the members of the Board of Trustees. (Ord. 26-1992 §1)

**Sec. 1-47. Severability.**

The provisions of this Code are declared to be severable, and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this Code shall continue in full force and effect, it being the legislative intent that this Code would have been adopted even if such unconstitutional matter had not been included therein. It is further declared that, if any provision or part of this Code, or the application thereof to any person or circumstances, is held invalid, the remainder of this Code and the application thereof to other persons shall not be affected thereby. (Ord. 26-1992 §1)

**Sec. 1-48. Amendments to Code.**

Ordinances and parts of ordinances of a permanent and general nature, passed or adopted after the adoption of this Code, may be passed or adopted either in the form of amendments to the Code adopted by this Code or without specific reference to the Code. However, in either case, all such ordinances and parts of ordinances shall be deemed amendments to the Code, and all of the substantive, permanent and general parts of said ordinances and changes made thereby in the Code shall be inserted and made in the Code as provided in Section 1-51 hereof. (Ord. 26-1992 §1)

**Sec. 1-49. Copy of Code on file.**

At least one (1) copy of the Code shall be kept in the office of the Town Clerk at all times, and such Code may be inspected by any interested person at any time during regular office hours, but may not be removed from the Town Clerk's office except upon proper order of a court of law. (Ord. 26-1992 §1)

**Sec. 1-50. Examination of Code.**

The Mayor and Town Clerk shall carefully examine at least one (1) copy of the Code adopted by this ordinance to see that it is a true and correct copy of the Code. Similarly, after each supplement has been prepared, printed and inserted in the Code, the Mayor and Town Clerk shall carefully examine at least one (1) copy of the Code as supplemented. The copy of the Code as originally adopted or amended shall constitute the permanent and general ordinances of the Town and shall be so accepted by the courts of law, administrative tribunals and all others concerned. (Ord. 26-1992 §1)

**Sec. 1-51. Supplementation of Code.**

(a) The Town Clerk shall cause supplementation of the Code to be prepared and printed from time to time as he or she may see fit. All substantive, permanent and general parts of ordinances passed by the Board of Trustees or adopted by initiative and referendum, and all amendments and changes in ordinances or other measures included in the Code prior to the supplementation and since the previous supplementation, shall be included.

(b) It shall be the duty of the Town Clerk, or someone authorized and directed by the Town Clerk, to keep up to date the copy of the book containing the Code required to be filed in the office of the Town Clerk for the use of the public. (Ord. 26-1992 §1)

**Sec. 1-52. Sale of Code copies.**

The Town Clerk shall maintain a reasonable supply of copies of this Code to be available for purchase by the public at a moderate price. (Prior code 1.01.130)

**Sec. 1-53. Altering or tampering with Code; penalties for violation.**

Any person who shall alter, change or amend this Code, except in the manner prescribed in this Article, or who shall alter or tamper with the Code in any manner so as to cause the ordinances of the Town to be misrepresented thereby shall, upon conviction thereof, be punishable as provided by Section 1-72. (Ord. 26-1992 §1)

**Secs. 1-54—1-70. Reserved.**

**ARTICLE IV**

**General Penalty**

**Sec. 1-71. Violations.**

It is a violation of this Code 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 Code. (Ord. 26-1992 §1)

**Sec. 1-72. General penalty for violation.**

(a) No person shall violate any of the provisions of the ordinances of the Town or of this Code. Except in cases where a different punishment or penalty is prescribed by specific ordinance, any person who violates any of the provisions of the ordinances of the Town or of this Code shall be punished by payment of a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment, except as hereinafter provided in Section 1-73; and provided further that no indigent person shall be punished by imprisonment unless he or she has been given the opportunity to be represented by counsel. In addition, such person shall pay all court costs and surcharges imposed by the court or other law.

(b) Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the Town or of this Code is committed, continued or permitted by any such person, and he or she shall be punished accordingly. (Prior code 1.16.010; Ord. 12-1991 §1; Ord. 26-1992 §1; Ord. 12-1998, §1)

**Sec. 1-73. Application of penalties to juveniles; subpoena of parents; driver's license.**

A juvenile ten (10) years of age or older shall be subject to the penalties set forth in this Article for violations of this Code subject to the following limitations:

(1) A juvenile shall not be confined in a jail, lockup or other place used for the confinement of adults, but may be held in a juvenile detention facility operated by or under contract with the Department of Human Services, or a temporary holding facility operated by or under contract with the Town for the care of juveniles.

(2) In imposing penalties for a violation of probation conditions or for contempt of court in connection with a violation or alleged violation of the Code, including a failure to comply with a

lawful order of the court, the Municipal Court may order confinement of a juvenile for up to forty-eight (48) hours in a juvenile detention facility operated by or under contract with the Department of Human Services pursuant to Section 19-2-508, C.R.S.

(3) A juvenile may not be sentenced to a term of confinement in excess of ten (10) days for a violation of the Code, and the Municipal Court does not have authority to order a sentenced juvenile confined in a juvenile facility operated or contracted by the Department of Human Services.

(4) Upon the request of the Municipal Court Judge, the Town Prosecutor, or a defendant, the Clerk of the Municipal Court shall issue a subpoena for the appearance, at any and all stages of the court's proceedings, of the parent, guardian, or lawful guardian of any juvenile who is charged with a municipal offense. A failure to comply with a subpoena without good cause may subject a person to contempt proceedings.

(5) The Municipal Court shall notify the Colorado Department of Revenue whenever (i) a judgment entered against a person for a violation of any municipal ordinance which occurred when such person was under eighteen (18) years of age, excluding traffic code violations relating to parking, remains outstanding, or (ii) a bench warrant issued against any person for failure to appear to answer a summons and/or complaint for a violation of any municipal ordinance which occurred when such person was under eighteen (18) years of age, excluding traffic code violations relating to parking, remains outstanding, in order that such person shall not be allowed or permitted to obtain or renew a driver's license as provided for in Section 42-4-1709(7)(a)(IV) and (V), C.R.S. (Ord. 26-1992 §1; Ord. 12-1998 §2)

**Sec. 1-74. Fines and penalties; plea of guilty or nolo contendere.**

Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. (Ord. 26-1992 §1)

**Sec. 1-75. Penalty for violations of ordinances adopted after adoption of Code.**

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in the Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-72 or 1-73, unless another penalty is specifically provided for the violation. (Ord. 26-1992 §1)

**Sec. 1-76. Public work in lieu of penalty.**

In lieu of the penalties provided in this Article, the Municipal Judge may require any person convicted of any offense to engage in public work for the Town or for any charity, the terms and conditions thereof to be set forth by the Municipal Judge. (Prior code 9.52.050)

**Sec. 1-77. Probation.**

Except where a specific ordinance or penalty provision may specify otherwise, the Municipal Judge may suspend the sentence or fine of a person found to have violated a provision of this Code and place him or her on probation for a period not to exceed one (1) year upon such terms and conditions as the Municipal Judge may determine. (Prior code 1.16.020; Ord. 10-2003 §3)

**Sec. 1-78. Surcharge on fines.**

There is hereby levied on each fine or penalty imposed upon a conviction or finding of liability in the Municipal Court, whether by a verdict

after trial or the entry of a guilty or no contest plea on a deferred judgment and sentence, the following surcharges which shall be paid by the defendant to the Clerk of the Municipal Court unless the court determines that the defendant is indigent. The Municipal Judge shall include the surcharges on any fine or penalty schedule he or she may establish.

(1) Except where a different surcharge is specifically provided for by ordinance for a given violation, a surcharge shall be levied and collected in the amount of twenty-five percent (25%) of the amount of the fine imposed. Where no fine or other financial penalty is imposed, then the surcharge will be twenty-five dollars (\$25.00). The proceeds of the surcharge imposed herein shall be collected by the Clerk of the Municipal Court and deposited into the Police and Court Education Fund established under Section 4-34 of this Code.

(2) A Victims and Witnesses Assistance Fund surcharge of five dollars (\$5.00). The proceeds of the surcharge shall be collected by the Clerk of the Municipal Court and deposited into the Victims and Witnesses Assistance Fund established under Section 4-36 of this Code. (Prior code 1.16.030; Ord. 8-1998 §1; Ord.10-2003 §3)

**Sec. 1-79. Insufficient fund check tendered as payment of fine.**

It is unlawful for any person to tender to the Court an insufficient fund check or draft in payment of a fine or costs, and an attempt to pay any fine or costs imposed by the Municipal Court with an insufficient fund check or draft shall result in the immediate issuance of a bench warrant for the arrest of the person signing such check or draft. (Prior code 1.16.040)

**Sec. 1-80. Restitution.**

In the event any violation of this Code involves injury to any person or destruction or damage to any property, the Municipal Court shall have the authority to suspend all or part of any penalty for such violation with a corresponding condition that restitution shall be required of any person so convicted to be made to any victim of such destruction, damage or injury. The Municipal Court may also impose a requirement of restitution even if there is no corresponding suspension of a sentence. (Prior code 1.16.050)

**Sec. 1-81. Additional civil remedies.**

In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any provisions of this Code or any law or ordinance of the Town shall be deemed a public nuisance and may be summarily abated as such, and each day that such condition continues shall be regarded as a new and separate violation. In addition, in any case of a failure to comply with any requirements of this Code or any law or ordinance of the Town, the Town or any person affected by such failure may, in addition to the penalties provided by law, initiate a civil action for injunction, mandamus, abatement or any other appropriate relief to prevent, enjoin, abate, remove or eliminate such violation of this Code or any law or ordinance of the Town. (Prior code 1.16.060)

**Secs. 1-82—1-100. Reserved.**

## **ARTICLE V**

### **Inspections**

#### **Sec. 1-101. Right of entry generally.**

Whenever it is necessary to make an inspection for the purpose of enforcing any ordinance, resolution, code or regulation of the Town, or whenever there is reasonable cause to believe that there exists or there is occurring in any building or upon any premises within the jurisdiction of the Town any violation of a Town ordinance, resolution, code or regulation, any peace officer of the Town may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon such peace officer by law; provided that, except in emergency situations or when the consent of the owner, occupant or other person having charge or control of such building or premises has been otherwise obtained, the provisions set forth in Sections 1-102 through 1-107 of this Code shall be followed. For the purposes of this Article the term *peace officer* shall include the designated enforcement officials for the Town's various building and technical codes, as well as any police officer of the Town. (Prior code 1.20.010)

#### **Sec. 1-102. Presentation of credentials required; refusal of entry.**

If a building or premises are occupied, the peace officer shall first present proper credentials and request entry. If a building or premises are unoccupied, the peace officer shall first make a reasonable effort to locate the owner, occupant or other person having charge or control of the building or premises and, upon locating the owner, occupant or other person or persons, shall present proper credentials and request entry. If such entry is refused, the peace officer shall give the owner, occupant or person in charge or control of the building or premises a twenty-four (24) hours' written notice of the peace officer's intention to inspect. (Prior code 1.20.020)

#### **Sec. 1-103. Notice of intention to inspect; required when.**

If the owner, occupant or other person or persons in charge or control of the building or premises cannot be located after a reasonable effort, the peace officer shall leave, at the building or premises, a twenty-four (24) hours' written notice of the peace officer's intention to inspect. (Prior code 1.20.030)

#### **Sec. 1-104. Notice of intention to inspect; contents; search warrant required when.**

The written notice of intention to inspect given to the owner, occupant or other person in charge or control or left at the building or premises as set forth in Sections 1-102 and 1-103 shall state that the property owner, occupant or person in charge or control of the building or premises has the right to refuse entry. In the event such entry is refused, inspection may be made only upon the issuance of a search warrant pursuant to Section 1-105. (Prior code 1.20.040)

#### **Sec. 1-105. Issuance of search warrant.**

After the expiration of the twenty-four (24) hour period from the giving or leaving of such notice, the peace officer may appear before the Municipal Judge of the Town or any other judge having applicable jurisdiction and, upon a showing of probable cause, which shall be made in writing and under oath, shall obtain a search warrant entitling the peace officer to enter into the building or upon the premises. (Prior code 1.20.050)

**Sec. 1-106. Entrance permitted on presentation of search warrant.**

Upon presentation of the search warrant and proper credentials, or possession of the search warrant and proper credentials in the case of an unoccupied building or premises, the peace officer may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry therein. (Prior code 1.20.060)

**Sec. 1-107. Basis of probable cause for search warrant.**

For the purposes of Sections 1-101 through 1-107, a determination of "probable cause" shall be based upon a reasonableness as the ultimate standard and, if a valid public interest justifies the entry contemplated, then there is probable cause to issue a search warrant. The standard necessary to determine probable cause will vary with the municipal law being enforced, but may be based upon the passage of time, the condition of the building, premises, structure or entire area, or the need to inspect in order to enforce the provisions of a Town ordinance, resolution, code or regulation. The peace officer shall not be required to demonstrate specific knowledge of the condition of the particular building, premises or structure in order to obtain a search warrant under this Article. (Prior code 1.20.070)

**Sec. 1-108. Return of search warrant; inventory of property taken required.**

After a search or inspection under authority of any search warrant issued from the Municipal Court or from any other court of competent jurisdiction, the return of such search warrant shall be made promptly and within ten (10) days after the date of the warrant. It shall be accompanied by a verified written inventory of any property taken under the warrant, which may consist of a true copy of the receipt referred to in Section 1-112. If a copy of such receipt is returned to the court as the inventory, it shall be verified by the peace officer who made the search or inspection and seizure. (Prior code 1.20.080)

**Sec. 1-109. Issuance authority of search warrant.**

The Municipal Judge, or any other judge of any court of applicable jurisdiction, shall have the power to issue a search warrant, upon a showing of probable cause for the implementation of the inspection as provided for in Sections 1-101 through 1-107. (Prior code 1.20.090)

**Sec. 1-110. Applicability of notice required.**

The provisions of this Article shall supersede all provisions pertaining to the right of entry contained in any Town ordinance, resolution, code or regulation. It is the specific intent of this Article that all entries of peace officers and designated enforcement officials shall be subject to the notice requirements and procedures contained in this Article, except where there is an emergency or consent has otherwise been obtained. (Prior code 1.20.100)

**Sec. 1-111. Emergency entry.**

Whenever an emergency situation exists in relation to the enforcement of any of the provisions of any Town ordinance, resolution, code or regulation, a peace officer of the Town may enter into any building or upon any premises within the jurisdiction of the Town, upon a presentation of proper credentials in the case of an occupied building or premises, or possession of the proper credentials in the case of an unoccupied building or premises. In an emergency situation, the peace officer may use such reasonable force as may be necessary to gain entry into any building or upon any premises. For the purposes of this Section, an emergency situation includes but is not limited to any situation where there is imminent danger of loss of life, limb and/or property caused by explosive materials, disease, fire, structural

weakness or any other condition which could cause such imminent danger, whether similar or dissimilar. (Prior code 1.20.110)

**Sec. 1-112. Requirements for seizure of property.**

If any property is seized incident to or as a result of an entry of search under this Article, the peace officer taking the property shall give to the person from whom or from whose premises the property was taken a copy of the search warrant issued and a receipt for the property taken, specifically describing the property. If the premises are unoccupied at the time of search or inspection, the peace officer shall leave such copy and receipt at the place from which the property was taken, posted or left in a conspicuous place within or upon the premises searched or inspected. If the person from whose possession or premises property is taken is present at the time of the seizure, the receipt shall be filled out in the presence of such person; provided, however, that if for any reason the receipt cannot be filled out in the presence of such person, or if the premises are unoccupied, then the receipt shall be filled out in the presence of at least one (1) peace officer other than the peace officer who is the applicant for the warrant. (Prior code 1.20.120)

**Secs. 1-113—1-130. Reserved.**

**ARTICLE VI**

**Unclaimed Property**

**Sec. 1-131. Purpose.**

The purpose of this Article is to provide for the administration and disposal of unclaimed property which is in the possession of or under the control of the Town. (Ord. 14-1992 §1)

**Sec. 1-132. Definitions.**

Unless otherwise required by context or use, words and terms used in this Article shall be defined as follows:

(1) *Administrator* shall mean the Mayor or his or her designee.

(2) In addition to the property included in the definition of *intangible property* in Section 38-13-102(7), C.R.S., the term *intangible property* shall also include, but shall not be limited to, the following: deposits for water service provided by the Town, street cut permit deposits; overpayment on water service provided by the Town; developer cost recovery agreements; monies unclaimed by beneficiaries in a pension fund; uncashed payroll checks; bonds posted for reasons other than Municipal Court; and uncashed court ordered restitution payments.

(3) *Owner* means a person or entity, including a corporation, partnership, association, governmental entity other than this Town, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property held by the Town.

(4) *Tangible property* shall include, but shall not be limited to, property left in safekeeping at a Town facility; weapons left with or seized by the police; money or property from police forfeiture or seizure; items held for evidence in connection with Town or other court proceedings; lost and found

money or personal property turned into the Town; and lost and found money or personal property found by an Town employee.

(5) *Unclaimed property* means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, held by or under the control of the Town and which has not been claimed by its owner for a period of more than one (1) year after it became payable or distributable. Unclaimed, abandoned or seized motor vehicles are excluded from this Article, as such property is governed by existing sections of this Code. Municipal Court bond forfeitures are also excluded, as said bonds are subject to the provisions of the Colorado Municipal Court Rules. (Ord. 14-1992 §1)

**Sec. 1-133. Notice of unclaimed property.**

(a) Prior to disposition of any unclaimed property having an estimated value of fifty dollars (\$50.00) or more, the Administrator shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the Town or any of its departments, or as determined by the Administrator. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make

inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Administrator with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(b) Subject to the provisions of Subsection (c) below, prior to disposition of any unclaimed property having an estimated value of less than fifty dollars (\$50.00) or having no last known address of the owner, the Administrator shall cause a notice to be published in a newspaper of general circulation in the Town. The notice shall include a description of the property, the owner of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Administrator with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(c) No notice shall be required prior to the disposition of any item which the Administrator has determined, after investigation, to be of insubstantial commercial value, and the Administrator may dispose of any such item as provided in Section 1-134(g). (Ord. 14-1992 §1)

**Sec. 1-134. Procedure for disposition of property.**

(a) If the Administrator receives no written claim within the above sixty (60) day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(b) If the Administrator receives a written claim within the above sixty (60) day claim period, the Administrator shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Administrator may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

(c) Any legal action filed challenging a decision of the Mayor shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Mayor pursuant to the order of the Court having jurisdiction over such claim.

(d) In the event there is more than one (1) claimant for the same property, the Administrator may, in the Administrator's sole discretion, resolve said claims, or may resolve such claims by depositing the disputed property with the registry of the District Court in an interpleader action.

(e) In the event all claims filed are denied, the property shall become the sole property of the Town and any claim of the owner of such property shall be deemed forfeited.

(f) The Administrator may periodically cause any of such unclaimed property, other than money, to be sold at public sale or otherwise, or he or she may otherwise dispose of it, in the discretion of the Administrator, with the money collected to be paid into the General Fund of the Town. Without limiting the generality of the foregoing, the Administrator may return any lost and found money or personal property to the person who turned the money or property into the Town; provided that no such found money or personal property turned into the Town by a Town employee shall be returned to such employee. If the person who turned such money or property into the Town is under the age of eighteen (18) years, such money or property shall be delivered to such person's parent or legal guardian.

(g) If the Administrator determines after investigation that any forfeited unclaimed property has insubstantial commercial value, the Mayor may destroy, exchange, transfer or otherwise dispose of the property.

(h) No action or proceeding may be maintained against the Town or any officer or employee for or on account of any action taken by the Administrator pursuant to Subsections (f) and (g) above. (Ord. 14-1992 §1)

#### **Sec. 1-135. Sale of unclaimed property.**

(a) Any public sale of unclaimed property must be preceded by a single publication of notice at least three (3) weeks in advance of the sale, in a newspaper of general circulation within the limits of the Town. Said notice of sale shall describe the property and state where and when the sale shall take place.

(b) Property sold at public sale shall be sold to the highest bidder; however, the Administrator may decline the highest bid and reoffer the property for sale if in the judgment of the Mayor the bid is insufficient.

(c) The purchaser of property at any public sale conducted pursuant to this section takes the property free of all claims of the owner or previous holder thereof and all persons claiming through or under them. The Administrator shall execute all documents necessary to complete the transfer of ownership. (Ord. 14-1992 §1)

#### **Sec. 1-136. Mandatory destruction of certain property.**

The Chief of Police or a designee thereof shall destroy each and every article of the following described property which comes into his or her possession: burglary tools; firearms; cartridges; explosives; armor or bulletproof clothing; dangerous weapons; gambling apparatus; articles or medicines for the purpose of inducing abortion or preventing conception; beer, wine, spirituous liquors or fermented malt beverages; soiled, bloody or unsanitary clothing, solids or liquids of unknown or uncertain

composition; drugs or hallucinogenic substances, hypodermic syringes and needles; obscene pictures, prints, effigies or statues; and poisonous or noxious solids or liquids; or any other property which reasonably might result in the injury to the health or safety of the public or be the subject of unlawful use. Notice shall not be required prior to the destruction of any property which is subject to the provisions of this Section. (Ord. 14-1992 §1)

**Sec. 1-137. Promulgation of procedural regulations.**

The Administrator may promulgate reasonable procedural rules and regulations for the administration and disposition of unclaimed property consistent with this Article, including compliance requirements for other Town officers and employees in the identification and disposition of such property. (Ord. 14-1992 §1)

**Secs. 1-138—1-150. Reserved.**

**ARTICLE VII**

**Town Seal**

**Sec. 1-151. Seal adopted.**

A seal, the impression of which shall be as follows: In the center "clasped hands" with the words "United We Stand, Divided We Fall," and "Seal" and around the outer edge the words, "Buena Vista, Colorado, Incorporated Oct. 28, 1879," is declared to be the seal of the Town. (Prior code 1.08.010)

**Secs. 1-152—1-170. Reserved.**

**ARTICLE VIII**

**Reserved**

**Secs. 1-171—1-190. Reserved.**

**ARTICLE IX**

**Official Map**

**Sec. 1-191. Official map adopted.**

The map of the Town, prepared by Martin/Martin Consulting Engineers and dated February 27, 2001, is hereby declared to be the official map of the Town for general informational purposes. (Ord. 4, 1996 §1; Ord. 5-2001 §1)

**Sec. 1-192. Filing.**

A copy of the official map shall be filed for permanent record in the office of the County Clerk and Recorder. (Ord. 4, 1996 §1)

**Sec. 1-193. Nonliability of Town.**

The Town shall have no liability for any damages, losses or claims, of whatever kind or nature, arising from the adoption of the official Town map. Such map is declared to have been adopted for general informational purposes only, and is not intended to create or resolve any property or boundary line disputes or discrepancies. (Ord. 4, 1996 §1)