

## CHAPTER 7

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## **ARTICLE I**

### **Administration and Abatement of Nuisances**

#### **Sec. 7-1. Public nuisance defined.**

A public nuisance is a substance, act, occupation, condition or use of property which is of such nature and continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
- (2) In any way render the public insecure in life or in the use of property; or
- (3) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way. (Prior code 9.46.010)

#### **Sec. 7-2. Common law and statutes adopted.**

In all cases where no provision is made defining what are nuisances and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and state statutes as nuisances may, in case the same exist within the Town, be treated as such and proceeded against as provided in this Article, or in accordance with any other provisions of law. (Prior code 9.46.020)

#### **Sec. 7-3. Responsibility for nuisances.**

(a) Where a nuisance exists upon private property and is the outgrowth of the usual, natural or necessary use of the property, the owner thereof or his or her agent is declared the author thereof; but where any such nuisance arises from the unusual use to which any such property may be put, or from any business thereon conducted, the occupant shall also be deemed the author thereof; and any person who, by himself, herself or an agent, causes or creates the same shall be deemed the author of such nuisance.

(b) In the event a nuisance must be abated by the Town, no provision of this Section should be construed to relieve any property owner from any of the provisions contained in Section 7-9. (Prior code 9.46.030)

#### **Sec. 7-4. Complaints of nuisances.**

Complaints of nuisances may be made to the Town Administrator, Chief of Police or any other Town official. Whenever possible, any complaint shall state the nature of such nuisance, the location including street address, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant. (Prior code 9.46.040)

#### **Sec. 7-5. Abatement authorized.**

(a) Each and every nuisance mentioned, declared or defined by any ordinance of the Town or the laws of the State is prohibited, and the Mayor or the Chief of Police is authorized, in his or her

discretion, to cause the same to be summarily abated in such manner as he or she may direct, subject to the limitations of Subsection (b) of this Section.

(b) Upon authorization and only upon authorization by the Mayor or the Chief of Police, if any nuisance found to exist causes such imminent danger to the life, limb, property or health as to require immediate abatement, any such nuisance may summarily be abated by action of the Chief of Police, a police officer, police officers or the Building Official, as may be directed by the Chief of Police or Mayor.

(c) Action for summary abatement shall be taken only where the Chief of Police or Mayor determines that there is imminent danger to life, limb, health or property which cannot await abatement of the nuisance by any other means available under this Chapter. (Prior code 9.46.060)

#### **Sec. 7-6. Notice of abatement.**

In the case of any nuisance not requiring summary abatement in the judgment of the Mayor or Chief of Police, it shall be the duty of said officials, or one (1) of them, to cause notice to be served upon the person responsible for any nuisance which may be found, requiring the person to abate the same in a reasonable time and in such reasonable manner as prescribed, and such notice may be given or served by any officer directed or deputized to give or make the same. In causing notice to be served, the Mayor or Chief of Police may authorize Town officials, inspector or any other appropriate Town employee to issue a notice of abatement. The reasonable time for abatement shall not exceed fourteen (14) days unless it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) days or that a good faith attempt at compliance is being made. Such notice shall be in writing, signed by the official issuing the same and shall be personally served upon the person responsible for the nuisance if the person occupies the premises upon which the nuisance exists, but if not occupied by the responsible person, then by posting the same prominently at some place on the premises upon which the nuisance exists. If service is by posting as aforesaid, then a copy of the notice shall also be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the County tax rolls at the address of such owner as therein shown. (Prior code 9.46.070)

#### **Sec. 7-7. Abatement procedures.**

(a) Upon notification, if the person so notified neglects or refuses to comply with the requirements of the notice to abate the nuisance within the time specified, such person is guilty of a violation of this Chapter, and the Mayor, Chief of Police and Town Attorney, or their authorized agent, may proceed at once, upon the expiration of the time specified in such notice, to commence appropriate legal action to cause such nuisance to be abated; provided that, if the owner or person responsible for the nuisance is unknown or cannot be found, the Chief of Police may proceed to abate such nuisance after notice has been posted for the period equal to the time specified to abate the nuisance. In either case, the expense of such abatement shall be collected from the person who caused, created, continued or suffered the nuisance to exist.

(b) When any person has responsibility for a nuisance as provided in Section 7-3 and such nuisance exists or is found and the responsible person fails to abate the same after the giving of such notice as provided for in Section 7-6 within the time limited therein or as extended, then the Town Attorney is authorized to institute proceedings in a court of competent jurisdiction to obtain a judicial

determination that such nuisance exists, to abate such nuisance, to enjoin the same, and for such other and further relief as may seem necessary or proper, including but not limited to collection of the costs and expenses of abatement, including reasonable attorney's fees.

(c) Upon a judicial determination that a nuisance exists, the Town Administrator may be authorized to abate the nuisance or cause the same to be abated employing such forces and persons as may be necessary to abate the same, including Town employees by contract or otherwise. The Town Administrator and all other Town officials and employees are authorized and directed to render such assistance to the Chief of Police as may be required for the abatement of such nuisance and in connection with the enforcement thereof.

(d) Any officer or employee of the Town who is authorized herein to abate any nuisance specified in this title shall have authority to engage the necessary assistance and incur the necessary expenses thereof. In any case where a nuisance is to be abated by the Town, it shall be the duty of the authorized person to employ such assistance and adopt such means as may be necessary to effect abatement of the nuisance. It shall also be the duty of the Town to proceed in all abatement cases with due care and without any unnecessary destruction of property. (Prior code 9.46.080)

#### **Sec. 7-8. Costs and charges.**

(a) The person or persons responsible for any nuisance within the Town shall be liable for and pay and bear all costs and expenses of the abatement of the nuisance, including reasonable attorney's fees for costs of collection, which costs and expenses may be collected by the Town Attorney on a contingency basis in his or her discretion, collected in connection with an action to abate a nuisance, or assessed against the property as hereinafter provided.

(b) The notice required in Section 7-6 shall, in addition to the requirements of that Section, state that if the nuisance is not abated within the time stated in the notice, the costs of such abatement may be assessed as a lien against the property (describing the same) pursuant to the terms of this Chapter, referring to this Chapter, together with an additional five percent (5%) assessment for inspection and incidental costs and an additional ten percent (10%) assessment for costs of collection, and collected in the same manner as real estate taxes against the property. If the owner of the property is not personally served with a copy of such notice, then a true copy of such notice shall be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the County tax rolls at the address of such owner as therein shown.

(c) If, after the expiration of the period of time provided for in the notice, or as extended, costs or expenses are incurred by or on behalf of the Town in the abatement or in connection with the abatement of the nuisance, and the costs are not otherwise collected, then the Chief of Police may thereafter certify to the Town Clerk the legal description of the property upon which such work was done, together with the name of the owner thereof as shown by the County tax rolls, together with a statement of the work performed, the date of performance and the costs thereof.

(d) Upon receipt of such a statement from the Chief of Police, the Town Clerk shall mail a notice to the owner of the premises as shown by the tax roll at the address shown upon the tax rolls, by first class mail, postage prepaid, notifying such owner that work has been performed pursuant to this Chapter, stating the date of performance of the work, the nature of the work and demanding payment of the costs thereof (as certified by the Chief of Police), together with five percent (5%) assessment

for inspection and other incidental costs in connection therewith. Such notice shall state that, if said amount is not paid within thirty (30) days of mailing the notice, it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against such property, together with the ten percent (10%) assessment for costs of collection, and the above-mentioned assessments will be collected in the same manner as real estate tax upon property.

(e) If the Town Clerk does not receive payment within the period of thirty (30) days following the mailing of such notice, the Town Clerk shall inform the Board of Trustees of such fact and the Board of Trustees shall thereupon enact an ordinance assessing the whole cost of such work, including a charge of five percent (5%) of the whole costs for inspection and other incidental costs in connection therewith, and together with a charge of ten percent (10%) of the whole costs for costs of collection upon the lots and tracts of land upon which the nuisance was abated.

(f) Following the passage of such ordinance, the Town Clerk shall certify the same to the County Treasurer, who shall collect the assessment, including the ten percent (10%) charge for cost of collection, in the same manner as other taxes are collected.

(g) Each such assessment shall be a lien against each lot or tract of land until paid and shall have a priority over other liens except general taxes and prior special assessments. (Prior code 9.46.090)

**Sec. 7-9. Cumulative remedies.**

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge, conviction or violation of this Chapter in the Municipal Court of the Town, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist. (Prior code 9.46.100)

**Sec. 7-10. Concurrent remedies.**

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law. (Prior code 9.46.110)

**Secs. 7-11--7-30. Reserved.**

**ARTICLE II**

**Nuisances**

**Sec. 7-31. Flammable liquids; storage or parking of tank vehicles.**

It is unlawful to store or cause to be stored or parked, except for unloading, any vehicle used for the purpose of storage of flammable liquids, gases, explosives or toxicants upon any streets, ways or avenues of the Town, or any other part of the Town except those areas zoned for such use. (Prior code 9.42.010)

**Sec. 7-32. Abandoned containers.**

(a) It is unlawful for any person to discard, abandon or leave in any place accessible to children any refrigerator, icebox, deep-freeze locker, stove, oven, trunk or any self-latching container having a capacity of one and one-half (1½) cubic feet or more, which is no longer in use, and which has not had the door removed or the hinges and such portion of the latch mechanism removed as to prevent latching or locking of the door, or for any owner, lessee or manager to knowingly permit such a refrigerator, icebox, deep-freeze locker, stove, oven, trunk or self-latching container to remain on premises under his or her control without having the door removed or the hinges and such portion of the latch mechanism removed as to prevent latching or locking of the door.

(b) The provisions of this Section shall not apply to any vendor or seller of refrigerators, iceboxes, deep-freeze lockers, stoves, ovens, trunks or self-latching containers, who keeps or stores them for sale purposes in a showroom or salesroom ordinarily watched or attended by sales personnel during business hours and locked to prevent entry when not open for business, or if such vendor or seller takes reasonable precaution to effectively secure the door of any such refrigerator, icebox, deep-freeze locker, stove, oven, trunk or self-latching container so as to prevent entrance by children small enough to fit therein. (Prior code 9.44.010)

**Sec. 7-33. Stagnant water, contaminated or impure wells or cisterns.**

(a) A contaminated or impure well or cistern is a nuisance when the water therein is used for human consumption.

(b) Any well or cistern on any property within the limits of the Town, whenever a chemical analysis or other proper test or the location of the same shows that the water of the well or cistern is probably contaminated, impure or unwholesome, is a nuisance.

(c) Every owner, tenant, occupant, lessee or other person in possession of any premises or any part thereof, upon which there is located a well containing contaminated, impure or unwholesome water, shall abandon the use of the same and cause the same to be filled with earth or such other material as may be designated by the Chief of Police. (Prior code 9.48.010)

**Sec. 7-34. Offensive and dangerous business, trade or condition.**

(a) Any offensive or unwholesome business or establishment, or any business or establishment carried on in an offensive or unwholesome manner within the Town, is a nuisance and prohibited, and the Chief of Police shall have power to abate the same.

(b) Whenever any trade, business or manufacture, or the maintenance of any substance, condition or things, is dangerous to the public health, the same constitutes a nuisance and shall be abated as such. (Prior code 9.48.020)

**Sec. 7-35. Scattering debris.**

Dumping, throwing or placing any rubbish, cans, boxes, debris, grass clippings or other waste materials on any public place in the Town is a nuisance and prohibited. Dumping of waste materials in a public dump specifically designated by order of the Chief of Police as a dump in compliance with

such regulations as the Chief of Police may direct shall not be deemed a violation of this Section. (Prior code 9.48.030)

**Sec. 7-36. Piling of rubbish.**

It is unlawful and constitutes a nuisance for any person to pile, store or allow to accumulate any rubbish, trash, garbage or animal feces on any lot or real estate within the Town which could harbor and conceal harmful vermin, rodents or insects, or which are unsafe, unhealthy or unsightly to the public. (Prior code 9.48.040)

**Sec. 7-37. Dead animals.**

When any animal dies in this Town, it shall be the duty of the owner or keeper thereof to remove the body of such animal forthwith beyond the limits of the Town. If such body shall not forthwith be removed, the same shall be deemed a nuisance, and such owner or keeper shall cause a nuisance to exist and shall be subject to the terms and provisions of this Chapter. When the body of any such dead animal is in any street, highway or public grounds in this Town, it shall be the duty of the Chief of Police to cause such body to be removed forthwith beyond the limits of the Town. (Prior code 9.48.050)

**Sec. 7-38. Trailers and mobile homes in residence districts.**

All trailers or mobile homes are prohibited from human habitation except in areas where zoning is such to allow such habitation and appropriate sanitation regulations are complied with. (Prior code 9.48.060)

**Sec. 7-39. Junked or wrecked vehicles and trailers and junked vehicle or machinery parts.**

It is unlawful and shall constitute a public nuisance for any person to place, keep, store, display or maintain any junked or wrecked vehicle or trailer, or junked or wrecked vehicle or machinery part, on any lot or parcel within the Town unless the same is fully enclosed in a garage or other building; except when the placement, storage or maintenance of such vehicle, trailer or part is carried out pursuant to the operation of a duly licensed business being conducted in conformity with all applicable zoning regulations. *Junked or wrecked vehicle* shall have the meaning as provided in Article III of Chapter 8 of this Code. (Ord. 5-2000 §1)

**Sec. 7-40. Nonresidential property maintenance.**

(a) Any person, or the agent thereof, owning, leasing or having charge or possession of any nonresidential properties in the Town shall keep and maintain such properties and the rights-of-way abutting such properties in a safe, clean, orderly, sanitary and aesthetic condition. For the purpose of this Section, *vacant* shall mean any nonresidential building not in use or occupied for commercial activity.

(1) Any person, or the agent thereof, owning, leasing or having charge or possession of vacant nonresidential property in the Town shall be required to submit a landscaping, fencing and maintenance plan to the Town Administrator for approval.

(2) As a condition of any approval of the landscaping, fencing and maintenance plan by the Town Administrator, the plan must be accompanied by an agreement with the Town, wherein the vacant nonresidential property owner or person having lawful control of the vacant nonresidential property agrees to landscape, fence and maintain the property in accordance with the plan and the provisions of this Code and to provide for reasonable exterior security of the vacant property.

(3) The maintenance of a vacant property shall conform to the maintenance plan approved the Town Administrator.

(b) Conditions prohibited on vacant nonresidential properties. The following conditions do not comport with a safe, clean, orderly, sanitary and aesthetic condition on vacant nonresidential properties, and are prohibited:

(1) Buildings which are abandoned, boarded up, partially destroyed or partially constructed or incomplete after building permits have expired;

(2) Improperly maintained landscaping which is visible from streets, including but not limited to:

a. Lawns with non-native vegetation in excess of six (6) inches in height;

b. Dying trees, shrubbery, lawns and other plant life due to lack of water or inadequate maintenance; and

c. Overgrown vegetation and dead, decayed or diseased trees, weeds and other vegetation.

(3) Lumber, junk, trash, debris or salvage material stored upon vacant nonresidential properties, which is visible from a public street, alley or adjoining property;

(4) Vacant nonresidential properties having a topography, geology or configuration which, as a result of grading operations or improvements to the land, causes erosion, subsidence, unstable soil conditions or surface or subsurface drainage problems that are potentially injurious to adjacent properties;

(5) Vacant nonresidential properties with mounds of soil, dry grass, weeds, dead trees, tin cans, abandoned asphalt or concrete, rubbish, refuse or waste or other unsanitary material of any kind;

(6) Any unsightly, partly completed or partly destroyed buildings, structures or improvements on vacant nonresidential properties, which endanger neighboring properties or the public health, safety or general welfare; and

(7) Any other condition which adversely affects the public health, welfare or safety.

(c) This Section shall not be construed to limit the applicability of other provisions of this Code regulating maintenance of property within the Town. (Ord. 28 §1, 2010)

**Secs. 7-41—7-50. Reserved.**

## ARTICLE III

### Littering and Dumping

#### **Sec. 7-51. Dumping on private or public property.**

(a) It is unlawful to place, deposit or dump, or cause to be placed, deposited or dumped, any offal composed of animal or vegetable substance, any dead animal, excrement, garbage, sewage, trash, debris, rocks, dirt, scrap construction materials, nails, mud, snow, ice, waste fuel, oil or other petroleum-based products, paint, chemicals or other waste, whether liquid or solid, or dangerous materials that may cause a traffic hazard in or upon any public or private highway or road, including the right-of-way thereof, or to place, deposit or dump such materials in or upon any public grounds or upon any private property without consent of the owner, save and except property designated or set aside for such purposes. Such dumping upon any private property not zoned or designated by a visible sign or signs for dumping purposes shall be prima facie evidence of the lack of consent to such dumping by the owner of such property.

(b) It is an affirmative defense to any charges brought under this Article that the owner of the property upon which the waste material is placed has given his or her consent to the placement, depositing or dumping; provided that the placement, depositing or dumping is not in violation of any other ordinance or code provision of the Town. (Prior code 9.40.010)

#### **Sec. 7-52. Vehicles causing litter.**

(a) It is unlawful for any person to drive or move any truck or other vehicle within the Town, unless such vehicle is loaded or covered so as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place.

(b) It is unlawful for any person to operate or cause to be operated on any highway or public way in the Town any truck or vehicle transporting manure, garbage, trash, swill or offal unless such truck or vehicle is fitted with a substantial tight box or other container thereon so that no portion of such matter will be thrown or fall upon the highway or public way. (Prior code 9.40.020)

#### **Sec. 7-53. Storage of trash or garbage.**

Persons storing or placing trash, garbage, scrap construction materials, refuse, debris or waste of any nature whatsoever in any receptacle shall do so in such a manner as to prevent the trash, garbage, scrap construction materials, refuse, debris or waste from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property. (Prior code 9.40.030)

#### **Sec. 7-54. Covered containers required.**

(a) No person shall keep or store any trash, garbage, refuse, debris or waste of any nature that may cause a health or sanitation hazard by reason of being blown or scattered about by wind, children or animals or by reason of being exposed to insects or the elements, unless such trash, garbage, refuse, debris or waste is kept or stored in a covered or tightly closed weatherproof sack or inside a building.

(b) No person shall keep or store any waste or discarded paper or paper products, scrap construction materials or waste debris unless such waste or discarded paper or paper products, scrap construction materials or other waste debris is covered, secured or in some manner protected so as to prevent such materials or waste from being blown or scattered about by wind. (Prior code 9.40.040)

**Sec. 7-55. Construction materials covered or secured.**

No person shall keep or store any construction materials unless such materials are covered, secured or in some manner protected so as to prevent such materials from being blown, scattered about or otherwise moved by wind, water or other natural causes. (Prior code 9.40.050)

**Sec. 7-56. Snow or ice deposits.**

(a) No person shall deposit or cause any snow or ice to be deposited on or against any fire hydrant or traffic signal control device or appurtenance; nor shall any person deposit or cause to be deposited accumulations of snow or ice upon or adjacent to any sidewalk, street or roadway, loading and unloading area of a public transportation system, or designated emergency access land, such as may retard or in any way interfere with the safe and orderly flow of pedestrian or vehicular traffic by obstructing the view of such traffic on intersecting streets or drives or by any other means, or in any way obstruct or impede street or roadway drainage.

(b) The owners or occupants of property abutting upon or adjacent to sidewalks within the corporate limits of the Town shall at all times keep such sidewalks free and clear of snow and ice. In the event such owners or occupants fail to remove snow and ice from such sidewalks within twenty-four (24) hours after the accumulation of snow and ice thereon, the Town may have the sidewalks cleaned and cleared of snow and ice, and the cost thereof, including inspection and other incidental costs and an additional cost for administration not to exceed ten percent (10%), shall be assessed against the property in accordance with the assessment provisions hereinafter set forth. (Prior code 9.40.060; Ord. 26-1992 §1)

**Sec. 7-57. Unlawful use of trash receptacle.**

(a) As used in this Section:

(1) *Refuse* means any solid waste, including but not limited to, trash, garbage, rubbish, waste and similar material.

(2) *Refuse container* means an outdoor receptacle designed and intended to be used to hold refuse. A refuse container includes, but is not limited to, trash cans, trash dumpsters and similar containers.

(b) It shall be unlawful for any person to intentionally or knowingly deposit, or to cause to be deposited, any refuse in a refuse container located on the property of another, or on public property, without the prior permission of the owner or person in lawful possession of such refuse container.

(c) Any person convicted of violating this Section shall be punished as provided in Section 1-72 of this Code. (Ord. 6-1993 §1)

**Secs. 7-58--7-70. Reserved.**

## **ARTICLE IV**

### **Weeds and Brush**

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

For the purpose of this Article, the following words and phrases shall have the following meanings, unless the context indicates otherwise:

(1) Brush means any unsightly, useless, troublesome or injurious volunteer growth of bushes or shrubbery, which shall include all cuttings from said bushes and shrubbery.

(2) Weed means any unsightly, useless, troublesome or injurious herbaceous plant in excess of twelve (12) inches in height. (Ord. 26-1992 §1)

#### **Sec. 7-72. Declaration of nuisance.**

Any weeds or brush found growing in any lot or tract of land in the Town is hereby declared to be a nuisance, and it shall be unlawful to permit any such weeds or brush to grow or remain in any such place. (Ord. 26-1992 §1)

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

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to cut to the ground all weeds and brush when said weeds and brush grow to a height of twelve (12) inches or more. (Ord. 26-1992 §1)

#### **Sec. 7-74. Removal from Town.**

All weeds and brush cut in accordance with Section 7-73 hereof shall, immediately upon being cut, be removed from the Town or otherwise entirely destroyed by the owner of the lot upon which the weeds and brush have been cut. (Ord. 26-1992 §1)

#### **Sec. 7-75. Designation of Undesirable Plant Management Advisory Commission.**

The Chaffee County Weed Control Advisory Board is appointed to act as the Undesirable Plant Management Advisory Commission for the Town and shall have the duties and responsibilities as provided by state statute. (Ord. 26-1992 §1)

*EDITOR'S NOTE: Section 3.5-5.5-101, C.R.S., establishes the requirements for undesirable plant management in the State.*

**Secs. 7-76--7-90. Reserved.**

## ARTICLE V

### Animals and Livestock

#### **Sec. 7-91. Definitions.**

As used in this Article, unless the context otherwise requires, the following words shall have the meanings given to them in this Section:

- (1) *Abandon* includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.
- (2) *Animal* or *animals* includes cattle, horses, sheep and rabbits.
- (3) *Fowl* includes ducks, geese, chickens and turkeys.
- (4) *Keep* means maintain, raise, house, stable or corral.
- (5) *Mistreatment* includes every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering.
- (6) *Neglect* includes failure to provide food, water, protection from the elements, opportunity for exercise or other care normal, usual and proper for an animal's health and well-being. (Prior code 6.08.010, 6.12.010)

#### **Sec. 7-92. Cruelty designated.**

(a) For the purpose of this Section only, *animal* means any living dumb creature.

(b) A person commits cruelty to animals if, except as authorized by law, he or she knowingly or with criminal negligence overdrives, overloads, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, needlessly mutilates, needlessly kills, carries in or upon any vehicle in a cruel manner, or otherwise mistreats or neglects any animal, or causes or procures it to be done; or, having the charge and custody of any animal, fails to provide it with proper food, drink or protection from the weather, or abandons it. (Prior code 6.08.010, 6.08.020)

#### **Sec. 7-93. Permit; required.**

No person shall keep animals or fowl within the corporate limits of the Town unless such person has a valid permit to do so, and no animal or fowl shall be allowed to run or fly at large. (Prior code 6.12.020)

#### **Sec. 7-94. Permit application and annual fee.**

Applications for a permit under this Article shall be made to the Town Clerk on forms provided therefor. Except for Special Permits as provided for in Section 7-97, each permit shall be valid through the end of the calendar year in which it was issued, and no permit shall be issued absent the payment of a nonrefundable fee in an amount established by the Board of Trustees. (Prior code 6.12.030; Ord. 6-1998, §6)

**Sec. 7-95. Permit; conditions.**

Prior to the issuance of any permit, and at all times thereafter when animals or fowl are kept within the Town, the owner or keeper thereof shall comply with the following requirements:

(1) All enclosures designed for the keeping of an animal or animals shall be secure enclosures and shall encompass not less than one thousand (1,000) square feet per horse; one thousand (1,000) square feet per head of cattle and one thousand (1,000) square feet per sheep.

(2) No animal or fowl shall be kept in such a manner as to constitute a public or private nuisance.

(3) Upon complaint, either verbal or written, to the Mayor, Town Administrator or Chief of Police, any animal or fowl being kept shall be kept in a secure enclosure located not less than three (3) feet from all property lines of the owner. (Prior code 6.12.040)

**Sec. 7-96. Prohibition against commercial use.**

Nothing contained in this Article shall in any way be deemed to vary or alter the terms of Chapter 16 of this Code. No commercial activity or enterprise involving the keeping of animals shall be permitted in those areas zoned as residential under the provisions of Chapter 16 of this Code. (Prior code 6.12.050)

**Sec. 7-97. Special permits.**

Permission to keep horses, cattle, sheep, rabbits and/or fowl in Town on a temporary basis, for a period not to exceed twenty-four (24) hours in duration, may be obtained without the payment of a permit fee by calling the Town Hall during business hours on weekdays or the Police Department on weekends or holidays and requesting that such permission be given. Such permission must be obtained prior to the time when the temporary keeping is to commence. (Prior code 6.12.060)

**Sec. 7-98. Revocation or denial of permits.**

(a) The Mayor, Town Administrator or Chief of Police may recommend the revocation of any permit upon satisfactory evidence that the permittee is violating, or has violated, any of the conditions set forth in this Article. Upon such recommendation being filed with the Town Clerk, the Town Clerk shall cause written notice thereof to be mailed to the permittee notifying said permittee that a hearing on such recommendation will be held at a Board of Trustees meeting in not more than twenty (20) days from the date of the mailing of such notice, specifying the time and place of said hearing. If, upon such hearing, said Board of Trustees finds that the permittee has violated conditions provided in this Article for such permit, the Board of Trustees may forthwith revoke said permit and the permittee shall be allowed ninety-six (96) hours within which to correct the problem or rid the premises of such animals or fowl being kept.

(b) Upon the denial of a permit under the provisions of this Article, the Town Clerk shall cause written notice of such denial to be mailed to the applicant, notifying said applicant thereof. An applicant desiring to appeal such denial shall, within twenty (20) days of receipt of notice of such denial, so notify the Town Clerk in writing, requesting a hearing before the Board of Trustees. Upon

receipt of such request for hearing, the Town Clerk shall give notice of hearing to the applicant in the manner provided for in Subsection (a) above for hearings upon revocation. Upon any such hearing of a denial of permit hereunder, the Board of Trustees shall, following such hearing, either direct that such permit be issued or affirm the denial of the permit. (Prior code 6.12.070)

**Sec. 7-99. Sanitary regulations.**

The premises upon which animals or fowl are to be kept shall be maintained in sanitary conditions and shall comply with all sanitary regulations adopted by the Board of Trustees or the County Health Department. Said premises shall be at all reasonable hours subject to inspection by representatives of the Town or the County Health Department. It shall be unlawful for any person to refuse to allow such inspection. (Prior code 6.12.080)

**Secs. 7-100—7-120. Reserved.**

**ARTICLE VI**

**Dogs**

**Sec. 7-121. Title for citation.**

This Article shall be known and may be cited as the "Town of Buena Vista Dog Control Ordinance of 1980." (Prior code 6.04.010)

**Sec. 7-122. Definitions.**

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

*Dog* means any animal of the canine species, regardless of sex.

*Dog, assistance* means a dog that has been specially trained, or is being specially trained, to guide and/or assist a blind, visually impaired, deaf, hearing impaired or physically or mentally disabled or impaired person.

*Dog, female* means a dog of the female gender on which no surgery of the genital organs has been performed.

*Dog, guard* means a dog professionally trained and disciplined to protect persons or property by attacking or threatening to attack a person found within the area designated to be patrolled or protected by the dog.

*Dog, male* means a dog of the masculine gender, either castrated or not castrated.

*Dog owner* means a person who owns, possesses, controls, maintains, keeps or harbors a dog, or knowingly permits a dog to remain for seven (7) consecutive days on or about property or premises owned, controlled or occupied by him or her. A kennel is not a dog owner within the purview of this definition.

*Dog, spayed female* means a female dog on which an ovariectomy or overhysterectomy has been performed by a licensed veterinarian.

*Dog, stray* means a dog which does not appear to have an owner or whose owner is unknown, and which is unlicensed or does not appear to be licensed, and/or found unattached or loose anywhere within the Town.

*Dog, vicious* means a dog that unprovokedly attacks or bites a person or another animal on public or private property, or in a threatening manner approaches a person or another animal in an obvious attitude of attack; provided, however, that a dog shall not be deemed a *vicious dog* solely by reason of having bitten or attacked the following:

- a. A person engaged in an unlawful entry into or upon the dog owner's property where the dog is kept.
- b. A person engaged in the unlawful entry into or upon the dog owner's automobile or other vehicle wherein the dog is confined.
- c. A person engaged in a physical attack upon the dog's owner or some other person.
- d. A person engaged in attempting to stop an altercation between the subject dog and another animal.
- e. A person who willfully provokes, incites or encourages the subject dog to bite or attack such person or another person or animal.

*Kennel* means a person, entity or operation which is licensed or permitted by the State and/or the Town and which keeps and maintains dogs for sale, resale, boarding, breeding, show, hunting or other commercial or recreational purposes.

*License year* means January 1 through December 31 of each calendar year.

*Rabies* means a communicable disease of both wild and domestic animals, especially dogs, transmittable to humans as defined by the U.S. Department of Agriculture.

*Vaccination, inoculation or vaccination for rabies* means the inoculation of a dog with vaccine approved by the U.S. Department of Agriculture for use in the prevention of rabies. (Prior code 6.04.020; Ord. 4-2003 §1)

### **Sec. 7-123. License required and rabies inoculation.**

No dog over the age of six (6) months shall be kept, maintained or harbored within the Town for seven (7) or more consecutive days unless the dog owner shall have had the dog vaccinated against rabies and obtained a Town dog license and tag. (Prior code 6.04.030; Ord. 6-1998 §7)

### **Sec. 7-124. Application for license and tag; fees.**

Applications for dog licenses and tags shall be made to the Town Clerk on forms provided therefor. No license or tag shall be issued absent presentation of a valid rabies vaccination certificate.

A nonrefundable fee established by the Board of Trustees shall be paid for each license issued. (Prior code 6.04.040; Ord. 6-1998 §7)

**Sec. 7-125. Duration of license.**

A dog license shall expire at the end of the calendar year in which it was issued. (Prior code 6.04.050; Ord. 6-1998 §7)

**Sec. 7-126. Information on license.**

A dog license shall state the following information:

- (1) Name and address of the dog owner;
- (2) Breed, sex, age and description of the licensed dog;
- (3) Date of vaccination or inoculation against rabies;
- (4) Amount of license fee paid;
- (5) Date of issuance of license; and
- (6) Number of the license. (Prior code 6.04.060)

**Sec. 7-127. Issuance procedure for tag.**

A dog tag shall be issued with the dog license to the dog owner and shall be regarded as a part of the license. The tag will be made of a durable material, shall be suitable to be attached to a dog collar or harness, and will state the year of issuance and the number of the dog license. (Prior code 6.04.070)

**Sec. 7-128. Tag not transferable.**

Dog tags shall not be transferable from one (1) dog to another, and no refunds shall be made for any dog license fee because of the death of the licensed dog or due to the licensed dog's permanent removal from the Town prior to the expiration of the license year. (Prior code 6.04.080)

**Sec. 7-129. License and tag; use restricted.**

It is unlawful to knowingly possess and/or fix a license and respective tag to or for any dog other than that specific animal for which the respective license and tag have been issued. (Prior code 6.04.090)

**Sec. 7-130. Fees for licenses and tags.**

Licenses and other fees as required to be paid under this Article shall be established by the Board of Trustees; except that no license fees or charges shall be charged to a person with a disability for the licensing of an assistance dog. (Prior code 6.04.100; Ord. 6-1998 §7; Ord. 4-2003 §2)

**Sec. 7-131. Receipt for license and tag; duplicate tag.**

Upon payment of the license fee as provided in Section 7-130, the official receiving said license fee shall issue to the applicant a receipt for the payment received for each dog licensed. The receipt shall contain the number of the license as shown on the tag. Said receipt shall be retained by the respective owner for inspection as may be reasonably required by the authorized enforcement authorities of the Town. In the event a dog tag is lost, destroyed or mutilated, a duplicate tag may be issued by the appropriate official, upon presentation of the receipt showing the payment of the license fee for the current year, and upon the additional payment of a fee in the amount of two dollars (\$2.00) for such duplicate tag. (Prior code 6.04.110)

**Sec. 7-132. Registration.**

(a) Dogs over the age of six (6) months shall be licensed by January 1 of each year, or within thirty (30) days after having attained the age of six (6) months.

(b) Late registration shall be permitted after January 1 of each year, subject to the payment of the late registration fee.

(c) With respect to a dog brought into the Town subsequent to January 1 of each year, within thirty (30) days after the entry of such dog, the dog owner shall obtain a license for the dog and the regular fee shall apply to the registration. After such thirty (30) days, the late registration fee shall be paid. (Prior code 6.04.120; Ord. 6-1998 §7)

**Sec. 7-133. Vaccination, inoculation by veterinarian.**

(a) The vaccination or inoculation against rabies required in order to obtain a dog license must be performed by a licensed veterinarian.

(b) The dog owner shall obtain from the veterinarian a vaccination certificate which states the type of vaccination with which the dog was inoculated, date of the inoculation and recommended year of renewal of inoculation. (Prior code 6.04.130)

**Sec. 7-134. Display of license and tag.**

(a) A dog owner who obtains a dog license shall retain it during the license year and is required to present it for inspection by the authorized enforcement authorities of the Town in connection with the enforcement of this Article.

(b) A dog owner who obtains a dog tag in conjunction with the dog license shall attach the tag to the collar or harness of the licensed dog, and said collar or harness must be worn by said dog at all times. (Prior code 6.04.140)

**Sec. 7-135. Kennel exemption for license.**

Dogs kept or maintained by a licensed kennel need not be licensed pursuant to the provisions of this Article while they are within the confines of the kennel premises. (Prior code 6.04.150)

**Sec. 7-136. Running at large.**

(a) It is unlawful for a dog owner to permit his or her dog to run at large; a dog shall be deemed to be running at large when off or away from the property or premises of the dog owner and not under the direct control of the owner, a responsible member of the owner's family or an employee or agent of the owner, either by leash, rope or chain not more than twenty (20) feet in length.

(b) The provisions of this Section shall not apply to dogs while actually working livestock, locating or retrieving wild game in season for a licensed hunter, assisting law enforcement officers or actually being trained for any of these pursuits. (Prior code 6.04.160)

**Sec. 7-136.5. Harassment of assistance dogs prohibited.**

(a) No person shall distract, harass, strike, injure, seize, entice, intimidate, frighten or otherwise interfere with any assistance dog that is accompanying, guiding, leading or physically in the control of a disabled person, or that is engaged in training with a handler.

(b) No dog owner, or person charged with the custody or control of a dog shall allow their dog, or a dog over which they are to have control, to attack, injure, harass, frighten or otherwise interfere with an assistance dog that is guiding, leading, accompanying or being controlled by a disabled person or an assistance dog training handler.

(c) For purposes of this Section, *disabled person* shall mean a blind, visually impaired, deaf, hearing impaired or physically or mentally handicapped or impaired person. (Ord. 04-2003 §3)

**Sec. 7-137. Impounding.**

(a) It shall be the duty of the Chief of Police or other person authorized by the Board of Trustees to apprehend any stray dog or any dog found running at large contrary to the provisions of Section 7-136 and to impound such dog in the Town animal shelter or other suitable place; and, upon receiving any dog, to make a complete registry entering the breed, sex and color of such dog and whether licensed; and if licensed, to enter the name and address of the owner and the date and number of the dog tag.

(b) Not later than seven (7) days after the impounding of a dog, the dog owner, if known, shall be given notice by the U.S. certified mail, return receipt requested. If the owner of the dog is unknown or the dog is a stray dog, notice shall be published once or posted at one (1) or more conspicuous places in the Town for three (3) days, describing the dog and the place and time of taking. The owner of the dog so impounded may reclaim said dog upon payment of the license fee, if unpaid, and of all costs and charges incurred by the Town for the impounding and maintenance of said dog. Said charges shall be in addition to any penalties imposed on the dog owner under other provisions of this Article. (Prior code 6.04.170; Ord. 6-1998 §7)

**Sec. 7-138. Quarantine.**

(a) A dog which is known to have bitten or injured any person so as to cause an abrasion of the skin or a dog which, in the opinion of the Chief of Police or a licensed veterinarian, appears to be afflicted with rabies, shall be closely confined by the dog owner in accordance with the directions of

the Chief of Police for a period of not less than ten (10) days. If said dog dies while confined or impounded as provided in this Section, proper medical tests shall be conducted at the expense of the dog owner upon said dog to determine whether the animal was suffering from rabies at the date of death.

(b) If the owner of a dog referred to in the preceding Subsection (a) cannot be determined or located, the Town shall confine said dog for a period of not less than five (5) days. If the owner of said dog is not determined or located or the dog claimed from confinement within said five (5) days, the Chief of Police may order such dog destroyed. If said dog is determined by a veterinarian to be suffering from rabies, it shall be destroyed immediately.

(c) It is unlawful for a dog owner, knowing or reasonably suspecting that a dog has rabies, to allow such dog to be taken off his or her property or premises or beyond the limits of the Town without the written permission of the Chief of Police. Every dog owner or other person, upon ascertaining that a dog is rabid, shall immediately notify the Chief of Police who shall either remove the dog to an animal shelter or other suitable place or, if necessary for the protection of the public, immediately destroy the dog. (Prior code 6.04.180)

#### **Sec. 7-139. Disposition of unclaimed or diseased dogs.**

(a) With respect to a dog which has been impounded or quarantined pursuant to the provisions of Sections 7-137 and 7-138, and which has not been claimed, released or disposed of in accordance with said sections, the Chief of Police shall keep said dog in an animal shelter or other suitable place for not less than five (5) days, after which said custodian may have said dog destroyed, except as provided in this Section.

(b) After said five (5) days, in lieu of having the dog destroyed, the Chief of Police may release such dog, if unclaimed and not diseased, to a bona fide humane society; or with respect to a stray dog, to a person having no previous interest in said dog in accordance with the provisions of this Article and upon the payment of an adoption fee. Upon payment of said adoption fee, there shall be neither additional charge for the current year's license nor any charges for daily boarding; provided, however, that at the time of adoption, a deposit shall be paid to the Town Clerk to guarantee that the subject animal shall be spayed or neutered. If within six (6) months from the time of adoption satisfactory written evidence is presented to the Animal Control Officer that the subject animal has been spayed or neutered, said deposit shall be returned to the respective person by the Town Clerk. (Prior code 6.04.190; Ord. 6-1998, §7)

#### **Sec. 7-140. Quarantine and destruction of rabid dogs.**

Dogs known to have been bitten by or exposed to a rabid animal:

(1) Shall be placed in suitable quarantine for a period of not less than ten (10) days at the expense of the dog owner. If said dog dies while quarantined, a medical test shall be conducted upon said dog at the expense of the dog's owner to determine whether the animal was suffering from rabies at the time of death.

(2) May be immediately destroyed where, in the reasonable discretion of the Chief of Police, said dog is endangering the life or person of another or inflicting death or injury to livestock or

wildlife.

(3) Shall be released if not diseased upon proof of immunization and "booster" injections given by a licensed veterinarian at the expense of the dog owner. (Prior code 6.04.200)

**Sec. 7-141. Vicious dogs prohibited; confinement.**

(a) It is unlawful for any person to own, keep, harbor or possess a vicious dog anywhere in the Town, and such dog shall constitute a public nuisance that may be abated in accordance with the terms of this Chapter.

(b) It shall be the responsibility of a police or animal control officer to seize and impound a vicious dog running at large. If an officer determines that a vicious dog cannot be seized without exposing the officer or other persons to immediate danger of injury from the vicious dog, it shall be lawful for the officer to destroy the dog with or without notice to the dog's owner, keeper or possessor. Additionally, and upon a showing that reasonable efforts to determine or locate the owner of a vicious dog have failed, the Municipal Court may order the destruction of the animal.

(c) The Municipal Court may order the owner of or a person possessing a vicious dog to destroy or dispose of the dog upon a conviction under this Section, and the refusal or failure of such owner or person to comply with the order shall constitute a separate offense of this Section. Further, upon the failure of an owner or person to comply with the court order, the Police Department shall, upon order of the court, impound the vicious dog and shall cause it to be humanely destroyed, with the owner or person failing to comply with the order to pay all fees, costs and expenses of the impoundment and destruction of the animal.

(d) This Section shall not apply to *guard dogs* acting in performance of their duties; provided that the premises wherein such dogs are patrolling are in full compliance with the requirements of Subsection (e) below.

(e) It is unlawful for any person to place or maintain a *guard dog* in any area for the protection of persons or property unless the dog is physically confined to a specific enclosed area and the area or premises in which a *guard dog* is confined is conspicuously posted with one (1) or more warning signs bearing letters not less than two (2) inches high stating the following:

"WARNING—THESE PREMISES PATROLLED BY GUARD DOGS TRAINED TO ATTACK."

The sign shall also depict a decal or a logo that provides pictorial warning of a guard dog. (Prior code 6.04.210; Ord. 04-2003 §5)

**Sec. 7-142. Muzzling and confinement.**

(a) Whenever it becomes necessary to safeguard the public from the dangers of rabies, the Board of Trustees, if it deems it necessary, shall issue a proclamation ordering every person owning or keeping a dog to confine it securely on his or her property or premises unless such dog has a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog running at large during the

time of the proclamation shall be seized and impounded, and if noticeably infected with rabies and displaying vicious propensities, shall be destroyed by the Chief of Police.

(b) A dog impounded during the first two (2) days of such proclamation shall, if claimed within five (5) days after being impounded, be released to the owner, unless infected with rabies, upon payment of the charge provided for in Section 7-137. If unclaimed within five (5) days after said period, such dog may be immediately destroyed.

(c) A dog impounded during the first two (2) days of such proclamation shall, if claimed within five (5) days after being impounded, be released to the owner, unless infected with rabies, upon payment of all impoundment fees or charges. If unclaimed within five (5) days after said period, such dog may be immediately destroyed. (Prior code 6.04.220; Ord. 6-1998 §7)

**Sec. 7-143. Noise, dog.**

(a) It shall be unlawful for any person to harbor any dog which, by barking, howling, baying, yelping, crying, whining or other utterance, disturbs the peace and quiet of the neighborhood. For purposes of this Section, the following definition shall apply:

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

(b) Any noise emitted by a dog which is audible from the boundary of the animal harborer's property shall be presumed to disturb the peace and quiet of the neighborhood, if any peace officer for the Town investigates the report thereof and determines that such noise is occurring as defined herein, taking into consideration the proximity of the complainant's residence or place of business with respect to the point of origin of the noise, and determining that such noise would disturb the senses of the average citizen or resident of the neighborhood under the circumstances complained of. Such presumption shall be rebuttable by the defendant.

(c) Prior to issuance of a citation for violation of this Section, the Animal Control Officer shall issue a written warning to the harborer of the dog causing the noise and request that the dog be silenced. If the same dog is a repeat offender of the offense defined in this Section, and such repeat offense occurs within sixty (60) days of the issuance of the warning, a citation shall be issued to the harborer of the offending dog.

(d) It is an affirmative defense to a charge under this Section that the dog was barking due to provocation. (Prior code 6.04.230; Ord. 4-1991 §1; Ord. 7-2005 §1)

**Sec. 7-144. Effect of provisions on existing licenses.**

The enactment of the ordinance codified in this Article, regardless of its repeal of other dog control ordinances of the Town, shall not in any way affect the validity of an unexpired dog license heretofore issued by the Town. Any such license then in effect will continue to have efficacy until the expiration date thereof. (Prior code 6.04.240)

**Sec. 7-145. Enforcement.**

The provisions of this Article shall be enforced by the Chief of Police or other persons so authorized by the Board of Trustees. (Prior code 6.04.250)

**Sec. 7-146. Minimum fines.**

(a) A person convicted of violating any provision of this Article shall be punished in accordance with the general penalty provisions set forth in this Code; provided, however, that the minimum penalty for any such violation shall be as follows:

- (1) Upon first conviction within any three-year period, a fine of twenty-five dollars (\$25.00);
- (2) Upon second conviction within any three-year period, a fine of fifty dollars (\$50.00); and
- (3) Upon third or subsequent conviction within any three-year period, a fine of one hundred dollars (\$100.00).
- (4) Notwithstanding any other provision to the contrary contained in this Section, the minimum penalty for a violation of Section 7-136.5 shall be a fine not less than five hundred dollars (\$500.00).

(b) Such minimum fines may be exceeded in the discretion of the Municipal Judge. (Prior code 6.04.260; Ord. 04-2003 §5)

**Secs. 7-147—7-160. Reserved.**

**Article VII**

**Noise**

**Sec. 7-161. Intent and scope.**

This Article is enacted to protect, preserve and promote the health, safety, welfare, peace and quiet of the citizens of the Town through the reduction, control and prevention of noise. It is the intent of this Article to establish standards that will eliminate and reduce all unnecessary and excessive noise that is physically harmful and otherwise detrimental to individuals and the community in the enjoyment of life, property and the conduct of business. The regulations contained in this Article will apply to all noise originating within the Town. (Ord. 5-2002 §1)

**Sec. 7-162. Definitions.**

As used in this Chapter, the following words are defined as follows:

- (1) *A-weighted sound pressure level* means the sound pressure level as measured with a sound level meter using the A-weighting network. The standard notation is dB(A) or dBA.
- (2) *Ambient sound pressure level* means the A-weighted sound pressure level of all noise

associated with a given environment; usually a composite of sounds from many sources.

(3) *Commercial district* means the B-1 "General Business District" and B-2 "Highway Business District."

(4) *Commercial power equipment* shall mean any equipment or device rated at more than five (5) horsepower and used for building repairs or property maintenance, excluding snow removal and lawn care equipment.

(5) *Construction* means any site preparation, assembly, erection, excavation, substantial repair, demolition, alteration or similar action with regard to any public or private rights-of-way, buildings, structures, utilities or similar property.

(6) *Construction activities* means any and all activities incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereto, including land clearing, grading, excavation and filling.

(7) *Construction equipment* means any device or mechanical apparatus operated by fuel, electric or pneumatic power in the excavation, repair, maintenance or demolition of any building, structure, lot, parcel, street, pipeline or appurtenance thereto.

(8) *Continuous noise* means any sound that exists essentially without interruption for a period of ten (10) minutes or more.

(9) *Decibel (dB)* means a unit measure of sound level.

(10) *Demolition* means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

(11) *Domestic power equipment* shall mean any equipment or device rated at five (5) horsepower or less and used for building repairs, excluding grounds maintenance and snow removal equipment.

(12) *Emergency vehicle* means a motor vehicle authorized to have sound warning devices such as sirens and/or bells which may lawfully be used when responding to an emergency or a police or fire activity.

(13) *Emergency work* means any work performed for the purpose of preventing or alleviating injury, or threatened injury, to persons or property caused by an emergency.

(14) *Engine compression braking device* (commonly referred to as Jacobs Brake or Jake Brake) means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

(15) *Grounds maintenance equipment* means equipment necessary to maintain yards, parks or lots, and includes, but is not limited to, lawn mowers, edgers, trimmers, tillers, chainsaws and leaf blowers.

(16) *Impulse noise* means sound of short duration, usually less than one (1) second and of high-intensity, with an abrupt onset and rapid decay, examples of which include explosions, air horns or the discharge of firearms.

(17) *Industrial district* means I-1 "Light Industrial District."

(18) *Motor vehicle* means every vehicle which is self-propelled by mechanical power including, but not limited to, passenger cars, trucks, truck trailers, campers, motorcycles, minibikes, mopeds, semi-trailers, go carts and snowmobiles.

(19) *Muffler and sound dissipative device* means a device for abating the sound of escaping gases from an internal combustion engine.

(20) *Noise* means sound that is unwanted and that annoys or disturbs humans or causes, or tends to cause, an adverse psychological or physiological effect on humans.

(21) *Nuisance* means the doing of or the failure to do something that allows or permits noise to be emitted from any source in excess of the standards contained in this Article.

(22) *Person* means any human being, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, owner or operator, including any municipal corporation, state or federal government agency, district, and any officer or employee thereof.

(23) *Property boundary or line* means an imaginary line normally drawn at the ground surface, and its vertical extension, which separates real property owned or occupied by one person from that owned or occupied by another person, including multiple dwelling units from adjoining units.

(24) *Public right-of-way* means any street, avenue, boulevard, highway, sidewalks, alley, public use easement, public trail or similar place owned or controlled by a governmental entity.

(25) *Residential district* means any parcel of land zoned as R-1, R-2, R-3 or a PUD zoned primarily for residential purposes.

(26) *Snow removal equipment* means any equipment used for removing snow from land or building surfaces and shall include snowplows, snowblowers, snowsweepers and snow shovels.

(27) *Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter which induces auditory sensation. A description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(28) *Sound level meter* means an instrument of a design and character of a Type 2 or better instrument as established by the American National Standards Institute, Publication S1.4-1971, entitled *Specification for Sound Level Meters*, or its successor publication, and that includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

(29) *Sound pressure* means the instantaneous difference between the actual pressure and the average or parametric pressure at any given point in space, as produced by sound energy.

(30) *Use district* means those zone districts established by the Town zoning ordinances. (Ord. 5-2002 §1)

**Sec. 7-163. Excessive noise prohibited.**

(a) It shall be unlawful and a public nuisance for any person to emit, cause or permit any noise that exceeds the decibel levels set forth in this Section. In determining whether a violation of the decibel levels established in this Section is occurring, the noise and/or noise source must be continuous for more than five (5) minutes, or occur for ten (10) or more minutes within any sixty (60) minute period, or be measured at a point or points along the property line enclosing the property on which the noise source is located. Periodic, impulse or shrill noises shall be deemed unlawful and a public nuisance when they are measured at a decibel level of five (5) dB(A) less than those levels contained in the table below.

**Maximum Permitted Noise Levels dB(A)**

<i>Use District</i>	<i>7:00 a.m. to 7:00 p.m.</i>	<i>7:00 p.m. to 7:00 a.m.</i>
Residential Districts	55	50
Commercial Districts	60	55
Light Industrial Districts	70	65

(b) When a noise source can be identified and its source is measured in more than one use district, the limits for the most restrictive district shall apply at the boundaries between the districts.

(c) In a PUD overlay/zone district, except as otherwise provided for in the approved applicable PUD zoning, the maximum permitted noise level shall be in conformance with the underlying zone district, or that zone district listed in the "Maximum Permitted Noise Levels" table most similar to the PUD district as determined by the Town Administrator. (Ord. 5-2002 §1)

**Sec. 7-164. Prohibited noise activity.**

Notwithstanding the maximum permitted noise levels as elsewhere set forth in this Article, the following noise creating activities are prohibited everywhere in the Town:

(1) *Vehicle horns and audible warning devices.* No person shall at any time sound any horn or other audible signal device of a motor vehicle in excess of ten (10) seconds unless it is necessary as a warning to prevent or avoid a traffic accident, or is reasonably necessary to inform or warn of a vehicle presence, inclusive of audible back-up safety warning devices.

(2) *Amplified sound devices in public parks, rights-of-way and recreation areas.* Except for an authorized public address system utilized to announce a sporting or recreational event, no noise shall be emitted from any radio, tape/CD player, electronic sound system, or similar electronic amplified sound reproduction or receiving device on or within any public street, right-of-way or sidewalk, or public park or recreational area at a volume plainly audible at a distance of twenty-

five (25) feet or greater from the noise source unless authorized under a permit as obtained under this Article.

(3) *Engine compression brake devices.* The operation or use of engine compression braking devices on trucks or other motor vehicles is prohibited within the Town except in circumstances of an emergency where the use of conventional braking equipment is insufficient to avoid a collision or other accident.

(4) *Construction equipment and activities.* No person shall operate any construction equipment, or conduct any construction activities, between the hours of 7:00 p.m. and 7:00 a.m. that exceeds the noise limits established in Section 7-163 of this Article, and further:

a. At no time shall construction noise exceed eighty (80) dB(A);

b. On Sundays in residential zone districts between the hours of 7:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 7:00 p.m., no construction noise shall exceed fifty (50) dB(A);

c. On Sundays in commercial zone districts between the hours of 7:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 7:00 p.m., no construction noise shall exceed fifty-five (55) dB(A);

d. On Sundays in light industrial zone districts between the hours of 7:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 7:00 p.m., no construction noise shall exceed sixty-five (65) dB(A).

e. The Town may grant variances from the construction noise restrictions if it can be demonstrated that a construction project will interfere with traffic if completed during daytime hours, or that other extenuating circumstances exist requiring relief from the prohibitions contained in this Section. (Ord. 5-2002 §1)

### **Sec. 7-165. Exemptions.**

The maximum permitted noise levels set forth in this Article shall not apply to the following noise emissions or activities:

(1) Any bell or chime from any building clock, school or church, but excluding any amplified bell or chime sounds emitted from loudspeakers.

(2) Any siren, whistle, bell or audible warning device lawfully used by an emergency vehicle or on construction equipment, or any other alarm system used in case of fire, collision, civil defense, police activity or imminent danger; provided, however, that burglar alarms or construction equipment alarms or warning devices not terminated within fifteen (15) minutes after being activated shall be deemed a nuisance and unlawful.

(3) Any aircraft in flight subject to federal law regarding noise control and any helicopter operating in an emergency, or in the act of landing or taking off at a helipad authorized by the Town so long as the helicopter is not landing or taking off in violation of any conditions or restrictions of the helipad's authorization.

(4) Any ground-based aircraft activity, including testing or engine run-up noise, provided,

however, that emission of such noise in excess of a noise level of eighty (80) dB(A) when measured upon an inhabited residential premises shall be deemed an unlawful nuisance.

(5) Any grounds maintenance equipment operated during the time period between 7:00 a.m. and 7:00 p.m.; provided, however, that the operation of such equipment between the hours of 7:00 p.m. and 7:00 a.m. shall not exceed the maximum noise levels specified in Section 7-163 above.

(6) Any construction equipment or activities in compliance with Section 7-164(4) above.

(7) Any domestic power equipment operated between 7:00 a.m. and 7:00 p.m., provided that such equipment does not exceed a noise level of seventy (70) dB(A) when measured twenty-five (25) feet from the property line of the property on which the equipment is being operated; and further provided that between the hours of 7:00 p.m. and 7:00 a.m., such equipment does not exceed the maximum noise levels as specified in Section 7-163 above.

(8) Any commercial power equipment operated between 7:00 a.m. and 7:00 p.m., provided that such equipment does not exceed a noise level of eighty (80) dB(A) when measured twenty-five (25) feet from the property lines of the property on which the equipment is being operated; and further provided that between 7:00 p.m. and 7:00 a.m., such equipment does not exceed the maximum noise levels as specified in Section 7-163 above.

(9) The musical instruments of any school marching band while performing at any sporting event, parade or marching band competition, and the musical instruments of any school marching band practicing on school grounds that do not exceed sixty-five (65) dB(A) when measured at the property line of any residential premises at which the band noise is audible.

(10) Snow removal equipment operated on any premises following a snowstorm between the hours of 5:00 a.m. and 9:00 p.m., provided that such equipment does not exceed noise limits of eighty (80) dB(A) for commercial power equipment, or seventy (70) dB(A) for domestic power equipment, when measured at a distance of twenty-five (25) feet from the property line of the property on which the equipment is being operated.

(11) The operation of lawn sprinklers.

(12) Any power generator providing emergency electrical power at any hospital, health clinic, nursing home or similar facility where the loss of electrical power poses an immediate risk to the health, safety or welfare of any person, or at any premises where such equipment is required by the Fire Department. Additionally, the noise emitted during the routine testing of emergency electrical power generators shall not exceed eighty (80) dB(A) at a distance of twenty-five (25) feet from the property line for the property on which the generator is operated. Routine testing shall not exceed one (1) hour in any one-week period, or two (2) hours in any six-week period, and shall be confined to the hours of 10:00 a.m. to 4:00 p.m., or as otherwise approved.

(13) Outdoor events and/or gatherings authorized by permit issued by the Town, or conducted by or directly sponsored by the Town or the School District, including, but not limited to, school sporting events, outdoor activities and performances, Fourth of July, Gold Rush Days, parades and other similar events/activities.

(14) Noise created or caused by employees, contractors or agents of the Town or another government agency while performing emergency work or activities necessary to address a natural or man-made disaster, calamity or emergency. (Ord. 5-2002 §1)

**Sec. 7-166. Motor vehicle noise prohibited.**

(a) No person shall operate, nor shall the owner permit the operation of, any motor vehicle or combination of motor vehicles at any time or place when such operation exceeds the noise levels for the category of motor vehicle specified in this Section. The noise levels shall apply to the total noise emitted from a motor vehicle, including any and all equipment thereon, and under any condition of acceleration, deceleration, idle, grade or load, and whether or not in motion; but excepting audible backup safety warning devices.

(b) It shall also be unlawful for any person to drive or move, or for the owner of any motor vehicle to permit to be driven or moved, any motor vehicle which is not equipped with an approved exhaust muffler satisfying the requirements of this Section; and/or to modify or change an approved exhaust muffler, air intake muffler or any other sound-reducing device in such a manner that the noise emitted from the motor vehicle exceeds the noise levels as established in this Section. Muffler cut-outs, by-passes or other devices which increase noise levels or change the original manufactured exhaust system of a motor vehicle shall be considered a violation of this Section. Additionally, all motor vehicles equipped with an engine compression brake device shall be required to have a muffler which will contain engine compression brake noise within the limits set forth below.

**Maximum Permissible Noise Levels for Motor Vehicles**

<i>Motor Vehicle Type</i>	<i>Maximum dB(A) at speed limit 35 mph or less</i>	<i>Maximum dB(A) at speed limit greater than 35 mph</i>
Vehicles operating on a public highway or street and weighing 6000 pounds or more manufacturer's gross vehicle weight and manufactured before January 1, 1973	88	90
Vehicles operating on a public highway or street and weighing 6000 pounds or more manufacturer's gross vehicle weight and manufactured on or after January 1, 1973	86	90
Any motorcycle operating on a public highway or street and manufactured before January 1, 1973	88	90
Any motorcycle operating on a public highway or street and manufactured on or after January 1, 1973	86	90
Any other motor vehicle or self-propelled recreational vehicle primarily designed for off-highway use operating on a public highway or street	82	86
Any vehicle motor being operated on private or public property not designated as a highway or street	78	78

(c) For the purpose of this Section, a truck, truck tractor or bus that is not equipped with an identification plate or marking bearing the manufacturer's name and manufacturer's gross vehicle weight rating shall be considered as having a manufacturer's gross vehicle weight rating of six thousand (6,000) pounds or more if the unladen weight is more than five thousand (5,000) pounds. (Ord. 5-2002 §1)

**Sec. 7-167. Noise level measurements.**

(a) Noise level measurements made pursuant to this Article shall be made in accordance with standards promulgated by the American National Standards Institute with a sound level meter of standard design using the A-weighting network/scale. Measurements shall be made when wind velocity at the time and place of the measurement is not more than five (5) mph, or with a wind screen when the wind velocity is greater than five (5) mph. Consideration shall also be given to the ambient sound pressure level at the time and place of any noise level measurement.

(b) Noise level measurements for a motor vehicle operating on a public highway or street shall be measured at a distance of fifty (50) feet from the center of the lane of travel.

(c) Noise level measurements for a motor vehicle operating on private property, or public property not designated as a highway or street, shall be measured at any point along the property line enclosing or delineating the property on which the vehicle is operating. (Ord. 5-2002 §1)

**Sec. 7-168. Noise permits.**

(a) A permit to vary or temporarily waive the maximum allowable noise levels as specified in this Article may be applied for and obtained from the Town for special events or activities, including, without limitation, musical performances or other entertainment events, fireworks displays, parades and seasonal commercial activities. Applications for a permit shall be made on approved forms and be submitted along with any application fee to the Town Clerk not less than seven (7) working days prior to the date for which the permit is sought. The application shall be promptly routed by the Town Clerk to the Town's zoning and police officials, who shall forward their comments concerning same to the Town Administrator.

(b) The Town Administrator may grant or deny a permit application taking into consideration the nature, volume and duration of the noise/activity sought to be permitted, the location of the proposed noise/activity, the anticipated impact of the proposed noise/activity on surrounding properties and neighborhoods, and whether the public health and safety will be injured or served by the issuance of the permit. The Town Administrator may also waive the permit application deadline set forth in Subparagraph (a) above for good cause shown.

(c) The Town Administrator may conduct a public hearing to consider a permit application if he or she deems it necessary or appropriate. Notice of the hearing must be sent to the permit applicant at least three (3) days in advance thereof by either telephone, telefacsimile, electronic mail, regular mail, or such other method as will likely and timely reach the applicant. Notice to the public of the hearing shall be timely posted at the places or locations annually designated by the Board of Trustees under Section 24-6-402(2)(c), C.R.S. of the Colorado Open Meetings Law.

(d) The Town Administrator may prescribe such permit conditions or requirements as he or she may deem necessary to minimize the adverse impacts the proposed noise/activity may have upon the community or surrounding neighborhood, including, but not limited to, the hours of operation, maximum decibels, the type of any sound amplification equipment, and the type of sound that may be amplified. A permit granted by the Town Administrator under this Section shall contain all conditions upon which the permit has been granted and shall specify the location and time that the permit shall be effective.

(e) An applicant dissatisfied with a decision of the Town Administrator may seek an appeal of same to the Board of Trustees by submitting a written notice of appeal to the Town Clerk within five (5) days from the date of the decision sought to be appealed. The Board of Trustees shall review the appeal and decision of the Town Administrator as soon as can be reasonably accommodated on the Board's meeting schedule/agenda. The Board of Trustees may reverse, modify or affirm the decision of the Town Administrator. The Board of Trustees' decision shall be final. (Ord. 5-2002 §1)