

## TITLE 8

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## CHAPTER 8.04

### Garbage and Refuse

#### 8.04.010 Compliance required.

All garbage and refuse, defined in Section 8.04.020, in the corporate limits of the City, shall be kept, accumulated and disposed of in accordance with the provisions of this Chapter. (Ord. 669 §1, 1973)

#### 8.04.020 Definitions.

The following words and phrases, except where the context clearly indicates a different meaning, shall mean:

(1) *Ashes* includes the solid waste products of coal, wood or other fuels used for heating and cooking from all public and private establishments and from all residences.

(2) *Collector* means a person, firm, partnership or corporation hired or franchised by the City for the purpose of collecting garbage within the City.

(3) *Containers* mean all garbage and refuse shall be placed in containers or bins meeting the following specifications:

a. Containers shall be not more than thirty-two-gallon capacity, and the combined weight of the contents and container shall not exceed sixty (60) pounds.

b. The container shall be a watertight receptacle of a durable grade of metal or plastic and shall be provided with suitable handles on the outside and tightly fitting cover equipped with a handle. It must not have any inside structures such as bands and reinforcing angles to prevent free discharge of the contents.

c. Throw-away bags made of plastic or specially treated paper may be used as garbage containers if contents do not exceed the design limits.

d. Bins shall be of a standard metal construction authorized by the City as capable of pickup by the garbage truck. Bins may be of one-, one-and-one-half- and two-yard capacity.

e. Containers that have deteriorated so as to cause injury to garbage collectors or so as to result in loose-fitting lids will be condemned by the City Manager.

(4) *Dwelling unit* means one (1) or more rooms designed for occupancy by one (1) family and not having more than one (1) cooking facility. For the purposes of this Chapter, a trailer house is a dwelling unit and a residence is a dwelling or structure building for dwelling purposes.

(5) *Garbage* includes all putrescible wastes, except sewage and body wastes, including vegetable wastes, animal offal and carcasses of dead animals and every refuse accumulation of animal, fruit or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking,

dealing in or storing of meat, fish, fowl, fruits and vegetables, except coffee grounds, but not including recognized industrial byproducts, and shall include all such substances from all public and private establishments and residences.

(6) *Person* means any natural person, firm, partnership, association, institution or corporation. The term also means the occupant or owner of the premises for which service mentioned in this Chapter is rendered.

(7) *Refuse* includes garbage, rubbish, ashes and all other putrescible and nonputrescible wastes, except sewage, from all public and private establishments and residents.

(8) *Rubbish* includes all nonputrescible wastes, except ashes, from all public and private establishments and residences. (Ord. 669 §2, 1973)

#### **8.04.030 Responsibility of owner to keep sufficient number of containers.**

Every owner, lessor or agent of any business establishment and of a dwelling where housekeeping, cooking or eating is done shall provide and keep at all times suitable and sufficient vessels for receiving and holding without running over or leaking garbage and refuse which may accumulate. (Ord. 669 §4, 1973)

#### **8.04.040 Container placement for collection.**

Every person shall place all containers accessible to the garbage collector in the morning of normal collection day; if there is no alley, every person shall place the containers near the curblin in front of his or her residence. Containers shall not be placed behind fences or protectors which require the collector to raise or lower a can more than twenty-four (24) inches. (Ord. 669 §5, 1973)

#### **8.04.050 Responsibility for disposal.**

(a) Any owner or occupant of any dwelling or building where housekeeping, cooking or eating is done or where any business is carried on in the City shall dispose of garbage and refuse which may accumulate as provided in this Chapter.

(b) In all cases of dispute or complaint concerning the place where garbage or refuse shall be removed, when the same is not specifically fixed by this Chapter, the City Manager shall determine any disputed point above referred to, and his or her decision shall be final. (Ord. 669 §6, 1973)

#### **8.04.060 Disturbing containers.**

No person shall handle or otherwise disturb the containers or contents which have been placed for servicing by the garbage collector except the owner or tenant of a dwelling or building or his or her employees and agents. (Ord. 669 §7, 1973)

**8.04.070 Storage restricted.**

It is unlawful for any person having garbage or refuse in the City to throw and deposit the same or cause the same to be thrown or deposited upon any street, alley, gutter, park or other public place, or to throw or deposit the same upon any vacant lot or back yard or to store or keep the same otherwise than in cans or receptacles as required by this Chapter; and it is unlawful to have, store, deposit or keep garbage or refuse where rats can have access thereto or feed thereon. Each day's violation of this Section shall be treated and considered and shall be a separate and distinct offense. (Ord. 669 §8, 1973)

**8.04.080 Container use required.**

It is unlawful to keep, place or deposit garbage on any private grounds or premises whatsoever, except in cans or receptacles required by the terms of this Chapter. (Ord. 669 §9, 1973)

**8.04.090 Collection restricted.**

No person, except the employees of the City or persons under contract with it for said purpose, shall collect any garbage or refuse within the City unless such person first has obtained special permission from the City Manager. (Ord. 669 §10, 1973)

**8.04.100 Collection agreement; lien for collections of unpaid fees.**

The City Council may enter into an exclusive contract or agreement with any person for the collection and removal of garbage or refuse throughout the City, or it may at its discretion make provisions for the collection and removal of garbage and refuse throughout the City by its own employees or agent. In either case, and in all instances where garbage or refuse is accumulated or kept at any business establishment, dwelling or building where housekeeping, cooking or eating is done, the owner or owners of such property shall be held personally liable for any and all charges imposed under the provisions of this Chapter from the time such are due, and such charges shall become and remain a lien upon any such buildings or lots, until such charges are paid and such charges may be collected from any owner or owners by an action at law or in equity, such action to be in the name of the jurisdiction and said action may be for the enforcement of said lien. Any such lien shall attach to such buildings or lots upon which said garbage or refuse is produced, accumulated or kept. (Ord. 669 §11, 1973)

**8.04.110 Collection fees.**

The fees set forth as Attachment A attached to the ordinance codified in this Chapter and on file in the office of the City Clerk fixed as the charges for removal and hauling of garbage and refuse in the City. The fees set forth may be changed from time to time by resolution regularly adopted by the City Council. (Ord. 669 §12, 1973)

**8.04.120 Billing.**

The collection fees set forth shall be billed monthly in advance, from and after February 28, 1973, as part of the utility bill for each month. Should garbage or refuse collection bills become delinquent,

utility service shall be discontinued at the discretion of the City Manager, and the amount of such charges shall be a lien against the property for which such collection service was rendered in accordance with law. (Ord. 669 §13, 1973)

#### **8.04.130 Violation; penalty.**

Any person violating any Section or Sections of this Chapter relating to the collection and disposal of garbage and refuse shall be deemed guilty of a misdemeanor and subject to a fine of not less than ten dollars (\$10.00) or more than two thousand dollars (\$2,000.00) and each day of such violation shall constitute a separate offense. (Ord. 1081 §§44, 45, 1992; Ord. 669 §14, 1973)

## **CHAPTER 8.08**

### **Weeds and Rubbish**

#### **8.08.010 Definitions.**

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word *shall* is always mandatory and not merely directory.

(1) *Garbage* is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(2) *Litter* is *garbage*, *refuse* and *rubbish* as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare

(3) *Refuse* is all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and parts thereof and solid market and industrial wastes.

(4) *Rubbish* is nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials. (Ord. 923, 1986)

#### **8.08.020 Litter on occupied private property.**

No person shall throw or deposit litter on any occupied private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property. (Ord. 923, 1986)

**8.08.030 Owner to maintain premises free of litter.**

The person in control of any private owner or property shall at all times maintain the premises free of litter and weeds. Provided however, that this Section shall not prohibit the storage of litter in authorized private receptacles for collection. (Ord. 923, 1986)

**8.08.040 Litter on vacant lots.**

No person shall throw or deposit litter on any open or vacant private property within the City, whether owned by such person or not. (Ord. 923, 1986)

**8.08.050 Clearing of litter from private property by City.**

(a) Legislative intent. It is hereby determined by the City Council that weeds, brush, rubbish and/or litter may be dangerous to the public health, safety and welfare of the citizens within the community of the City.

(b) Complaints. The Director of Public Safety shall be empowered to accept complaints from citizens of the City or to make independent observations concerning compliance with the provisions herein.

(c) Notice to remove. Upon receipt of a complaint verified by the Director of Public Safety, the City Clerk is hereby authorized and empowered to notify the owner of any private property within the City, or the agent of such owner, to properly dispose of weeds, brush, rubbish and/or litter located on such owner's property. Such notice shall be delivered by certified mail, addressed to said owner at said property owner's last known address as shown on the records of the County Assessor.

(d) Action upon noncompliance. Upon the failure, neglect or refusal of any owner or agent so notified to properly dispose of said weeds, brush, rubbish and/or litter within seven (7) days after receipt of written notice pursuant to Subsection (c) or within fifteen (15) days after the date of such notice, in the event the same is returned to the City because of its inability to make delivery thereof provided that the same was properly addressed to the last known address of such owner, the City is hereby authorized and empowered to pay an independent third party contractor for the disposing of such weeds, brush, rubbish and/or litter or the City may order its disposal by use of City resources. (Ord. 1384 §§1—4, 2004; Ord. 1015, 1990)

**8.08.060 Removal by City; assessment of costs.**

(a) The City Treasurer or Finance Officer shall assess the actual cost of removing the weeds, brush, rubbish and/or litter pursuant to Section 8.08.050, plus an additional sum of one hundred dollars (\$100.00) for inspection and administrative costs incurred in connection therewith, shall be assessed upon each lot or tract of land for each occurrence wherein the weeds, brush, rubbish and/or litter are removed.

(b) After the completion of the removal of all weeds, brush, rubbish and/or litter as specified in Section 8.08.050, the City shall prepare and file with the City Clerk a schedule showing:

- (1) The location of the lots and tracts of land from which the weeds, brush, rubbish and/or litter have been removed or caused to be removed;
- (2) The actual cost of the removal; and
- (3) One hundred dollars (\$100.00) for cost of inspection and administration. (Ord. 1015, 1990)

**8.08.070 Removal by City; collection of costs.**

(a) Upon receiving the schedule of property location and charges from the Finance Department, the City Clerk shall ascertain and provide to the Finance Department the following information:

- (1) The legal description of the lots and tracts of land from which the weeds, brush, rubbish and/or litter have been removed or caused to be removed; and
- (2) The names and mailing addresses of the owners thereon.

(b) The Clerk shall notify the owner of said lot or tracts of the amount of the assessment and the amount so assessed shall become a lien in the several amounts assessed against each lot or tract of land until the same is paid. Such assessment shall be due and payable to the Finance Department within ninety (90) days from the time the assessment notice is mailed (by regular mail) to the land owner. (Ord. 1015, 1990)

**8.08.080 Removal by City; lien for collection.**

(a) In case any assessment due and payable is not paid within the time of assessment (required pursuant to Section 8.08.070), the City Clerk shall certify the same to the County Treasurer to be placed by the County Treasurer upon the tax list for the next taxable year and to be collected in the same manner as other taxes are collected.

(b) The amount so assessed shall become a lien by certification of the same to the County Treasurer for collection pursuant to the appropriate enabling state authority. Said lien shall have priority over all other liens except general taxes and prior special assessments. All costs of collection assessed by the County Treasurer shall be assessed on total sums collected by said Treasurer or in the manner ascribed by statute. (Ord. 1015, 1990)

**CHAPTER 8.09**

**Undesirable Plants and the Management Thereof**

**8.09.010 Plan creation.**

This Chapter shall constitute the creation of a management plan for the elimination of undesirable plants located on properties within the City. (Ord. 1040 §1, 1991)

**8.09.020 Advisory Commission.**

The City Council shall act as the Advisory Commission in conjunction with Section 35-5.5-107, C.R.S. The Tree Board shall assist the City Council with implementation of the Undesirable Plant Management Program. (Ord. 1126 §1, 1994; Ord. 1040 §2, 1991)

**8.09.030 Terms and responsibilities.**

The terms of appointment, manner of succession and responsibilities of the members of the Advisory Board shall be consistent in all aspects with the City Council's terms of office. The Mayor shall serve as the Advisory Commission Chairman and the Mayor Pro Tem shall serve as the Advisory Commission Secretary. (Ord. 1040 §3, 1991)

**8.09.040 Undesirable plants; designated.**

The City determines that the following plants are undesirable:

(1) The plant commonly known as leafy spurge, also known by the scientific name of *Euphorbia esula*;

(2) The knapweed plants commonly known as Diffuse, Russian and Spotted Knapweeds, and also by the scientific names of *Centaurea diffusa*, *Centaurea repens* and *Centaurea maculosa*. (Ord. 1040 §4, 1991)

**8.09.050 Adoption of rules and regulations.**

The City Council, through recommendations by the Tree Board, may adopt specific rules and regulations for the enforcement or implementation of this Chapter. (Ord. 1040 §5, 1991)

**8.09.060 Identification of undesirable plants.**

The City Manager shall utilize the City employees to assist in the identification of undesirable plants and to recommend use of undesirable plant management control methods which are authorized by the Colorado Department of Agriculture for such application or recommendation. (Ord. 1040 §6, 1991)

**8.09.070 Budget.**

The City Manager is authorized to budget sufficient sums for the purchase of undesirable plant management control agents to provide for the proper management of said undesirable plants from the public lands within this City. (Ord. 1040 §7, 1991)

**8.09.080 Right to enter upon any premises.**

Employees of the City may, upon notice to the owner of the premises, have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purpose of inspection of the existence of said undesirable weed infestations, when at least one (1) of the following circumstances has occurred:

- (1) The landlord or occupant has requested an inspection;
- (2) A neighboring landowner or occupant has reported a suspected weed infestation and requested an inspection; or
- (3) An authorized agent of the City has made a visual observation from a public right-of-way or has reason to believe that an infestation exists. (Ord. 1040 §8, 1991)

**8.09.090 Entry not permitted; inspection warrant.**

(a) No entry upon any premises, lands or places shall be permitted until the landowner or occupant has been notified, either orally or by certified mail, that such inspection is pending. Where possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(b) If, after receiving notice that an inspection is pending, the landowner or occupant denies access to the inspector, the inspector may seek an inspection warrant issued by a municipal, county or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation through its agent or employee or an affidavit stating: the information which gives the inspector reasonable cause to believe that any provision of this article is being or has been violated; that the occupant or landowner has denied access to the inspector; and a general description of the location of the affected land. No landowner or occupant shall deny access to such land when presented with an inspection warrant. (Ord. 1040 §9, 1991)

**8.09.100 Notification by City.**

The City shall notify the landowner or occupant of such lands, advising the landowner or occupant of the presence of undesirable plants. Said notice shall name the undesirable plants, advise the landowner or occupant to control the undesirable plants and specify the best available control methods of integrated management, including but not limited to biological management, chemical management, mechanical control or cultural control. Where possible, the City shall consult with the affected landowner or occupant in the development of a management plan for the control of the weeds on the premises or lands. (Ord. 1040 §10, 1991)

**8.09.110 Compliance; arbitration panel.**

(a) Within a reasonable time after receipt of notification, which at no time shall exceed ten (10) days, the landowner or occupant shall either:

- (1) Comply with the terms of the notification;
- (2) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance; or
- (3) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the City Council shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county and a third panel member chosen by agreement of the first two (2) panel members. The landowner or occupant shall be entitled to challenge any one (1) member of the panel and the City Council shall name a new panel member from the same category. The decision of the arbitration panel shall be final. (Ord. 1040 §11, 1991)

**8.09.120 Removal by City; assessment of costs; lien for collection; control of weeds on City property.**

(a) In the event the landowner or occupant fails to comply with the notice to control the identified undesirable plants or the management plan developed by the arbitration panel, the City has the authority to: provide for and compel the control of such plants at such time, upon such notice and in such manner as the local governing body shall prescribe by ordinance or resolution; and to assess the whole cost thereof, including up to fifteen percent (15%) for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the undesirable plants are located. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the County Treasurer and collected and paid over in the same manner as provided for the collection of taxes. However, any such assessment shall not be more than twenty percent (20%) of the assessed valuation of the entire contiguous tract of land in any one (1) year. Any amount in excess of the twenty-percent limitation remaining unpaid may be carried over and charged on the tax roll of the succeeding year, and any unpaid balance so carried over shall bear interest at the rate established by the commissioner of banking pursuant to Section 39-21-110.5, C.R.S., until paid.

(b) The City shall not compel the control of undesirable plants on private property pursuant to this Section without first applying the same or greater control measure to any land or rights-of-way owned or controlled by the City that are adjacent to the private property.

(c) The City shall not assess the cost of providing for or compelling the control of undesirable plants on private property and until such control has successfully achieved the level of control called for in the notice to control the identified undesirable plants or the management plan developed by the arbitration panel. (Ord. 1126 §1, 1994; Ord. 1040 §12, 1991)

**8.09.130 Penalty.**

Violations of this Section will also constitute an offense punishable under this Code and shall be punishable by fines not to exceed those established by the City Charter, and shall also be punishable by imprisonment in an amount of time not to exceed those allocable by the City Charter, or both fine and imprisonment. (Ord. 1040 §13, 1991)

## **CHAPTER 8.12**

### **Nuisances**

#### **8.12.010 Stagnant or impure water.**

If any cellar, vault, lot, sewer, drain, place or premises with the City is damp, unwholesome, offensive, filthy, covered any portion of the year with stagnant and impure water or in such condition to produce unwholesome or offensive exhalation, the City may cause the same to be drained, filled up, cleaned, amended or purified or may require the owner, occupant or person in charge of such lot, premises or place to perform such duty, and may require the owner or occupant of any building, fence or structure which may be ruinous or liable to fall and injure persons or property to pull down or remove the same. (Ord. 708 §8.1, 1976)

#### **8.12.020 Notice to abate.**

No person shall permit any cellar, vault, private drain, pool, privy, sewer or grounds upon any premises belonging to or occupied by him or her to become nauseous, foul or injurious to the public health or allow the same to so remain after notice from the City to abate such nuisance. (Ord. 708 §8.2, 1976)

#### **8.12.030 City abatement.**

If any person neglects to remove or abate any nuisance or to perform any requirement made by or in accordance with Section 8.12.010 or any regulation by resolution of the City for the protection of the health of the inhabitants of the City and if any nuisance or causing such be done, such expense may be recovered by the City in an action of debt or assumpsit against such person. In all cases when the City incurs any expense for the draining, filling, cleaning or purifying of any lot, place or premises, the City may, in addition to all other remedies provided for the recovery of such expense, charge the same or such part thereof as they deem proper upon the lot or premises upon which the nuisance exists, and cause the same to be assessed against such lot or premises and collect the same as a special assessment. (Ord. 1126, §§2, 9, 1994; Ord. 708 §8.3, 1976)

## **CHAPTER 8.16**

### **Noise**

#### **8.16.010 Purpose.**

It is declared that at certain levels, noise is detrimental to public health, comfort, convenience, safety and welfare of the citizens of the City. This Chapter is enacted to protect, preserve and promote the health, welfare, peace and quiet of the citizens of the City through the reduction, prohibition and regulation of noise. It is the intent of this Chapter to establish and provide for sound levels that will eliminate unnecessary and excessive noise, reduce traffic and community noise and establish noise standards and sound levels that will promote a comfortable enjoyment of life, property

and conduct of business, and prevent sound levels which are physically harmful and detrimental to individuals and the community. (Ord. 798(part), 1980)

#### **8.16.020 Territorial limits.**

This Chapter shall apply to all property, both public and private, located within the corporate limits of the City. (Ord. 798(part), 1980)

#### **8.16.030 Definitions.**

For the purpose of this Chapter, certain words and phrases used in this Chapter are defined as follows:

(1) All technical terminology used in this Chapter, unless the context otherwise requires, shall be defined in accordance with American National Standards Institute (ANSI) publication S1.1-1960, revised 1971, or successor publications of ANSI, or its successor bodies.

(2) *Ambient noise level* means the sound pressure level of the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources. The A weighted sound pressure level exceeded ninety percent (90%) of the time based on a one-hour period.

(3) *A weighted sound pressure level* means the sound pressure level as measured with a sound level meter using the A weighting network. The standard unit notation is dB(A).

(4) *Business district* means any district zoned business in Title 17 of this Code.

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

(6) *Continuous noise* means a steady, fluctuating or impact noise which exists, essentially without interruption, for a period of one (1) hour or more.

(7) *Cyclically varying noise* means steady, fluctuating or impulsive noise which may or may not contain a pure tone, which varies in sound pressure level such that the same level is obtained repetitively at reasonably uniform intervals of time.

(8) *Disturbance* means any sound which annoys, disturbs or perturbs reasonable persons with normal sensitiveness; or which injures or endangers the comfort, repose, health, hearing, peace or safety of other persons.

(9) *Device* means any mechanism which is intended to or which actually produces audible sound when operated or handled.

(10) *Dynamic braking device* means a device used, primarily on trucks, to convert the motor from an internal combustion engine to an air compressor for the purpose of vehicle braking.

(11) *Emergency work or vehicle* means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from an imminent exposure to danger. A motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

(12) *Fluctuating noise* means the sound pressure level of a fluctuating noise, which varies more than six (6) dB(A) during the period of observation when measured with the slow meter characteristic of a sound level meter and does not equal the previously existing ambient noise level more than once during the period of observation.

(13) *Impulsive noise* means a noise containing excursions usually less than one (1) second of sound pressure level twenty (20) dB(A) over the ambient sound pressure level, using the *fast* meter characteristic.

(14) *Industrial district* means any district zoned as defined in Title 17.

(15) *Level, ninetieth percentile* means the A weighted sound pressure level that is exceeded ninety percent (90%) of the time, or the level that is exceeded for fifty-four (54) minutes in one (1) hour, denoted L90.

(16) *Level, tenth percentile* means the A weighted sound pressure level that is exceeded ten percent (10%) of the time or the level that is exceeded six (6) minutes in one (1) hour, denoted L10.

(17) *Motor vehicle* means any vehicle such as but not limited to a passenger vehicle, truck, truck-trailer, trailer or semi-trailer, propelled or drawn by mechanical power and shall include motorcycles, snowmobiles, mini-bikes, go-carts and any other vehicle which is self-propelled.

(18) *Muffler* means any apparatus consisting of baffles, chambers or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one (1) end. To qualify, such an apparatus must cause a reduction in sound pressure level of at least ten (10) dB(A) upon insertion into the system for which it is intended.

(19) *Noise* means any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

(20) *Person* means any individual, firm, corporation or group of people.

(21) *Plainly audible* means that the information content of sound is unambiguously transferred to the auditor, such as but not limited to understanding of spoken speech, comprehension of raised or normal voices or comprehension of musical rhythms.

(22) *Property boundary* mean an imaginary line exterior to any enclosed structure at the ground surface which separates the real property owned by one (1) person from that owned by another person and its vertical extension.

(23) *Public right-of-way* means any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a public governmental entity.

(24) *Residential district* means any district zoned as defined in Title 17.

(25) *Sound amplifying equipment* means any machine or device used for the amplification of a human voice, music or any other sound or by which the human voice, music or any other sound is amplified.

(26) *Sound level meter* means an instrument or apparatus, including a microphone, an amplifier, an output meter and weighting networks for the measurement of sound pressure. The output meter reads sound pressure level when properly calibrated and the instrument is of type two (2) or better, as specified in the American National Standards Institute Publication S1.4-1971 or successor publications.

(27) *Sound pressure level* means twenty (20) times the logarithm to the base ten (10) of the ratio of the root mean square pressure of a sound to the reference pressure, which is  $10 \times 10^6$  Newtons per meter squared.

(28) *Stationary noise source* means any equipment or facility, fixed or movable, capable of emitting sound beyond the property boundary of the property on which it is used.

(29) *Steady noise* means the sound pressure level of a steady noise remains essentially constant during the period of observation, i.e., it does not vary more than six (6) dB(A) when measured with the *slow* meter characteristic of a sound level meter.

(30) *Unnecessary noise* means any excessive or unusually loud sound or any sound which disturbs the peace and quiet of any neighborhood or which does annoy, disturb, injure or endanger the comfort, repose, health, hearing, peace or safety of any person or causes damage to property or business. (Ord. 798(part), 1980)

#### **8.16.040 Unnecessary noise; unlawful.**

It is unlawful for any person to willfully make or continue or cause to be made or continued any unnecessary noise within the City as heard without measurement or as heard and measured in the manner prescribed in Sections 8.16.100 and 8.16.110. (Ord. 798 §1, 1980)

#### **8.16.050 Unnecessary noise; designated.**

The following acts enumerated in this Section are declared to cause unnecessary noises in violation of this Chapter; provided, however, that the following enumeration shall not limit Section 8.16.040 and shall not be deemed to be exclusive:

(1) Radios, television sets, phonographs and similar devices. It is unlawful for any person to use, operate or permit to be played any radio receiving set, musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound in such a manner as to cause to be made or continued any unnecessary noise as heard without

measurement or as heard and measured in the manner described under Sections 8.16.100 and 8.16.110. The operation of any such set, instrument, television, phonograph, machine or other device at any time in such a manner as to be plainly audible at either the property line, or twenty-five (25) feet in the case of a vehicle on public rights-of-way, shall be prima facie evidence of a violation of this Section.

(2) Exhausts, mufflers. No person shall discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, air compressor equipment, motor boat, motor vehicle or other power device except through a muffler or other noise-reducing device which is in good order and free of defects.

(3) Bells and chimes. Between the hours of 10:00 p.m. and 7:00 a.m., it is unlawful for any person to use, operate, cause or permit to be sounded any bell or chime or any device for the production or reproduction of the sounds of bells or chimes, from any church, clock or school.

(4) Quiet zone. The creation of any unnecessary noise is prohibited within the vicinity of any school, institution of learning, church or court while the same are in use or session, which unreasonably interferes with the workings of such institution or within the vicinity of any hospital, nursing home or home for the aged, or which disturbs or unduly annoys patients in the hospital or residents in the nursing home or home for the aged, provided that conspicuous signs are displayed in adjacent, surrounding or contiguous streets indicating that the same is a school, hospital, nursing home, home for the aged, church or court.

(5) Truckloading operations. Between the hours of 10:00 p.m. and 7:00 a.m., the loading, unloading, opening or otherwise handling of boxes, crates, containers, garbage containers or other objects in such a manner as to cause a disturbance and the loading of any garbage, trash or compactor truck, or any other truck whereby the loading, unloading or handling of boxes, crates, equipment or other objects is conducted within a residential area or within three hundred (300) feet of any hotel or motel is unlawful.

(6) Vehicle repair or testing. It is unlawful to repair, rebuild, modify or test any truck, automobile, motorcycle or other motor vehicle in such a manner as to cause a disturbance and such activities shall, in all cases, be subject to the maximum permissible sound pressure level for the district in which the source is located, as set forth in this Chapter.

(7) Machinery, motors, fans, air conditioners and other mechanical equipment. It is unlawful to operate any machinery, equipment, pump, fan, air conditioning apparatus or similar mechanical device within the City in excess of the maximum permissible sound pressure level for the district in which the source is located, as set forth in this Chapter.

(8) Commercial power equipment. Between the hours of 10:00 p.m. and 7:00 a.m., no person shall operate on any property within a residential or business district or on any public way within a residential or business district any power equipment rated more than five (5) horsepower, such as but not limited to chain saws, pavement breakers, log chippers, riding tractors or powered hand tools. Construction equipment used for construction activities are regulated under Subsection (10) below and are therefore excluded from the restrictions of this Subsection.

(9) Domestic power equipment. Between the hours of 10:00 p.m. and 7:00 a.m., no person shall operate or permit to be operated on private property or on the public way within any residential or business district any power equipment rated five (5) horsepower or less and used for home or building repair or grounds maintenance. Such power equipment shall include but not be limited to lawnmowers, garden tools, snow removal equipment, electric or chain saws or any other power equipment used for home or building repair or grounds maintenance.

(10) Construction activities. Between the hours of 9:00 p.m. and 6:00 a.m., no person shall operate or cause to be used or operated any equipment used in construction activities within any residential or business district. Construction projects shall be subject to the maximum permissible noise level specified for industrial districts for the period within which construction is to be completed pursuant to any applicable building permit.

(11) Amplified sounds prohibited.

(12) Car stereo/radio noise: Sounds emanating from a stereo, sound system, boom box, radio or other device located within a motor vehicle, whether stationary or not, wherein the sounds may be heard within a proximity exceeding twenty-five (25) feet from the noise source. (Ord. 1343 §A, 2003; amended during 1980 codification; Ord. 798 §2, 1980)

#### **8.16.060 Prohibited activities.**

(a) It is unlawful for any person to install, use or operate a loudspeaker or sound amplifying equipment in a fixed or movable position or attached to or mounted upon any motor vehicle, within a residential district of the City, for the purpose of giving instructions, directions, talks, addresses or lectures or for transmitting music or sound to any person or assemblages of persons except passengers within the vehicle; provided however, that a permit as described in Subsection (f) below may be applied for activities such as, but not limited to, concerts, speeches or lectures held in public parks in the City.

(b) It is unlawful for any person to install, use or operate a loudspeaker or sound amplifying equipment in a fixed or movable position or attached to or mounted upon any motor vehicle within a business or industrial district of the City for the purposes of giving instructions, directions, talks, addresses or lectures or for transmitting music or sound to any persons or assemblages of persons without first obtaining a permit from the City as described in Subsection (f) below.

(c) The provisions of this Section shall not apply to authorized emergency vehicles as defined in this Chapter when such authorized emergency vehicles are responding to an emergency call or when in pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm.

(d) The provisions of this Section shall not apply to any bell or chime or any device for the production or reproduction of the sound of bells or chimes from any church, clock or school so long as such sounds comply with Subsection (3) of Section 8.16.050.

(e) Regulation governing sound amplifying equipment. Commercial and noncommercial use of sound amplifying equipment shall be subject to the following regulations:

(1) The sound amplifying equipment shall be operated only between the hours of 7:30 a.m. and 6:00 p.m. of each day except on Sundays and legal holidays. The operation on Sundays and legal holidays shall be permitted only between the hours of 10:00 a.m. and 4:00 p.m.

(2) The maximum sound emanating from sound amplifying equipment shall not exceed the sound pressure levels established in Section 8.16.100 as measured at least twenty-five (25) feet from the noise source.

(3) In any event, the sound shall be so controlled that it will not be unreasonably loud, raucous, annoying, disturbing or a nuisance to any person or persons.

(f) Permit information. An application for a permit shall be made to the City Manager and shall include the following information:

(1) The name, address and telephone number of both the owner and user of the sound amplifying equipment;

(2) The license number of the sound truck which is to be used;

(3) The general description of the sound amplifying equipment which is to be used;

(4) Whether the sound amplifying equipment will be used for commercial or noncommercial purposes; and

(5) The dates upon which, and streets over which, the equipment is proposed to be operated.

(g) Permit issuance.

(1) Conditions. Any permit granted by the City Manager shall contain all conditions upon which said permit has been authorized and shall specify the time that the permit shall be effective.

(2) Appeal. The applicant may appeal decisions of the City Manager to the City Council. (Ord. 798 §3, 1980)

#### **8.16.070 Vendors.**

It is unlawful for any person engaged in the sale of newspapers, magazines or other goods or merchandise to make any unnecessary noise, to obstruct any sidewalk or other public place, or to disturb or impede others. (Ord. 798 §4, 1980)

#### **8.16.080 Places of public entertainment.**

Operating or permitting to be operated any loudspeaker or other source of sound in any place of public entertainment that exceeds those shown in the following table at any point that is normally occupied by a person is prohibited:

<u>Duration, Hours per Day</u>	<u>Sound Pressure Level dB(A) Slow Response</u>
--------------------------------	-----------------------------------------------------

8	90
6	92
4	95
3	97
2	100
1½	102
1	105
½	110
¼ or less	115

(Ord. 798 §5, 1980)

**8.16.090 City related activities.**

Any written agreement, purchase order or instrument whereby the City is committed to the expenditure of funds in return of work, labor, services, supplies, equipment, materials or any combination of the foregoing, shall not be entered into unless such agreement, purchase order or instrument contains provisions requiring that any equipment or activities which are subject to the provisions of this Chapter will be operated, constructed, conducted or manufactured in accordance with the provisions of this Chapter. (Ord. 798 §6, 1980)

**8.16.100 Maximum permissible continuous sound pressure levels.**

It is unlawful for any person to operate or permit to be operated any stationary, continuous source of noise in such a manner as to create a sound pressure level which exceeds the limits set forth in the following table more than ninety percent (90%) of any hour when measured at the property boundary or at any point within the property affected by the noise. When a noise source can be identified and its noise measured in more than one (1) land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories.

Sound Pressure Level Limit		
dB(A)		
Use District	Day 7 a.m.--7 p.m.	Night 7 p.m.--7 a.m.
Residential	55	50
Business	60	55
Industrial	75	75

Noise levels for PUD shall conform with this table, and shall be determined by the predominant land use as set forth in the PUD plan. (Ord. 798 §7, 1980)

**8.16.110 Duration correction.**

(a) It is unlawful for any person to operate, or to be operated, any stationary source of noise within any land use category which creates fluctuating noise or is intermittent, and in which the tenth percentile noise level, measured in accordance with Section 8.16.080 when the source making noise is more than fifteen (15) dB(A) greater than the ambient noise, measured when the source is quiet, but in no case shall the tenth percentile levels exceed fifteen (15) dB(A) greater than the levels prescribed

in Sections 8.16.080 and 8.16.090.

(b) Correction for character of sound. It is unlawful for any person to operate or permit to be operated any stationary, continuous source of noise which emits a pure tone, cyclically varying noise or repetitive impulsive noise which exceeds five (5) dB(A) less than the limits set forth in Sections 8.16.080 and 8.16.090. (Ord. 798 §8, 1980)

#### **8.16.120 Exclusions.**

The provisions of this Chapter shall not apply to the loading of any truck, domestic power equipment, except as provided in Subsection 8.16.050(9), and commercial power equipment, except as provided in Subsection 8.16.050(8). (Ord. 1343 §§B, C, 2003; Ord. 798 §9, 1980)

#### **8.16.130 New development and zoning changes.**

(a) Residential land use. No building permits for new residential construction will be issued if the exterior sound pressure levels as measured at the proposed site violate the provisions of this Chapter, unless adequate protective measures to produce compliance with the provisions of this Chapter are included as a part of the approved site development plans or building plans.

(b) Business or industrial land use. No building permits for new business or industrial construction will be issued unless it can be shown that the provisions of this Chapter can be met for all existing land use categories or unless adequate protective measures to produce compliance with the provisions of this Chapter are included as a part of the approved site development plans or building plans.

(c) New road construction. No new road construction will be approved, whether locally funded or not, for residential uses, unless necessary noise control measures are taken to insure that the cumulative sound pressure levels due to all the vehicles on the completed roadway do not exceed L10 of seventy (70) dB(A) at all points around any residences on a weekday.

(d) Zoning changes. All zoning changes which affect the land use categories shall be done so that the provisions of this Chapter will not be violated. (Ord. 798 §10, 1980)

#### **8.16.140 Noises permitted.**

(a) Emergencies. Noise created in the performance of emergency work for the immediate safety, health or welfare of the community or individuals of the community or to restore property to a safe condition following a public calamity shall not be subject to the provisions of this Chapter. Nothing in this Section shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such a noise is clearly unnecessary.

(b) Undue hardship.

(1) Permits. Applications for a permit for relief from the sound pressure levels designated in this Chapter or regulations designated in this Chapter on the basis of undue hardship may be made

to the City Manager. Any permit granted by the City Manager under this Chapter shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The City Manager may grant the relief as applied for only if he or she finds:

- a. That additional time is reasonably necessary for the applicant to alter or modify his or her activity or operation to comply with this Chapter;
- b. That the activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with this Chapter; and
- c. That no other reasonable alternative is available to the applicant.

The City Manager may prescribe any reasonable conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(2) Appeal. Upon being denied a permit or upon objecting to stipulations on an approved permit, applicants may appeal decisions of the City Manager to the City Council.

(c) Public events. Application for a permit to hold a public event which may violate the provisions of this Chapter shall be made to the City Manager. Such permit shall be valid only at the specified time and on the specific date noted in the permit. (Amended during 1980 codification; Ord. 798 §11, 1980)

#### **8.16.150 Enforcement.**

(a) Enforcement personnel. In addition to the employees and officers regularly required to enforce City ordinances generally, the City Manager shall assign duties of enforcement to personnel trained in noise control techniques and procedures and equipped with calibrated sound level meters.

(b) Method of enforcement.

(1) Violation of this Chapter in which the noise source is not self-propelled or if self-propelled not customarily used or designed for transportation upon a public right-of-way, shall be cause for summons and complaints to be issued forthwith; provided however, that in lieu of summons and complaint enforcement, personnel may issue a twenty-four-hour notice or other reasonable amount of time not to exceed five (5) days, signed by the City Manager, in writing, which may be served personally or by certified mail to the last known address of the person to whom addressed, with return receipt requested, directed to the owner, occupant, person or persons in charge of or in control of the machine, device, building or other premises to abate said violation of this Chapter. Failure to comply with the order so issued and served shall constitute a violation of this Chapter.

(2) Violation of this Chapter in which the noise source is a motor vehicle as defined in this Chapter shall be cause for a summons and complaint to be issued forthwith. This Subsection shall not apply to machines or devices not customarily used or designed for transportation.

(c) Additional remedy; injunction. As an additional remedy for the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this Chapter, and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be, a public nuisance, and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. (Ord. 798 §12, 1980)

#### **8.16.160 Rules and regulations.**

The City Manager is authorized to adopt and promulgate rules and regulations deemed necessary for the proper and effective enforcement of the provisions of this Chapter. Such rules and regulations shall be consistent with the provisions of this Chapter and the standards established in this Chapter. (Ord. 798 §13, 1980)

#### **8.16.170 Motor vehicle noise.**

(a) This Section shall apply to every street, alley, sidewalk area, driveway, park and every other public way or public parking area within the corporate limits of the City. The provisions of this Section shall not only apply to public places and ways, but also throughout this municipality.

(b) Mufflers; prevention of noise. It is unlawful for any person to operate, or for the owner to cause or knowingly permit the operation of any vehicle or combination of vehicles within this City which is not equipped with an adequate muffler, as defined in this Chapter, constant operation and properly maintained to prevent any unnecessary noise, and no such muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device. No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of such vehicle above that emitted by a muffler of the type originally installed on the vehicle.

(c) Motor vehicle noise. It is unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved within this City any motor vehicle which emits a sound pressure level in excess of the dB(A) established under Subsections (d) and (e) of this Section. Noise from a motor vehicle within the public right-of-way shall be measured at a distance at least twenty-five (25) feet from the near side of the nearest traffic lane being monitored and at a height of at least four (4) feet above the immediate surrounding surface on a sound level meter of standard design and operated on the A weighting scale. Noise from a motor vehicle which is located other than within the public right-of-way shall be measured at a distance at least twenty-five (25) feet from said motor vehicle and at a height of at least four (4) feet above the immediate surrounding surface on a sound level meter of type 2 or better, as specified in the American National Standards Institute Publication §1.4 1971, or successor publications and operated on the A weighting network.

(d) Motor vehicles weighing less than ten thousand (10,000) pounds, manufacturer's gross vehicle weight (GVW). Any motor vehicle with a weight of less than ten thousand (10,000) pounds manufacturer's gross vehicle weight (GVW) or any combination of motor vehicles towed by such motor vehicle shall not emit a sound pressure level in excess of eighty (80) decibels in the A weighting network dB(A)

(e) Motor vehicles weighing ten thousand (10,000) pounds or more, manufacturer's gross vehicle weight (GVW). Any motor vehicle which weighs ten thousand (10,000) pounds or more, manufacturer's gross vehicle weight (GVW) or any combination of motor vehicles towed by such motor vehicle, shall not emit a sound pressure level in excess of eighty-eight (88) decibels in the weighting network dB(A).

(f) Standing motor vehicles. It is unlawful for any person to operate or cause or knowingly permit to be operated any motor vehicle which weighs ten thousand (10,000) pounds or more, manufacturer's gross vehicle weight (GVW), or any combination of motor vehicles towed by such motor vehicle, which remains stationary for a consecutive period longer than five (5) minutes when such vehicle is in a residential district.

(g) Horns and signaling devices. No person shall sound any horn or signalling device on any truck, automobile, motorcycle or other vehicle on any street or highway within this City except as a danger warning, and then only for a reasonable period of time.

(h) Defect in vehicle or load. It is unlawful for any person to operate or cause or permit to be operated or used, any automobile, truck, motorcycle or other motor vehicle so out of repair, so loaded or in such a manner as to cause disturbance or to cause to be made or continued any unnecessary noise as heard without measurement or as heard and measured in the manner described in this Section.

(i) Except as set forth in Subsection (j) below, it shall be unlawful for any semi-tractor vehicle weighing more than ten thousand (10,000) pounds, and considered or licensed by the State as a commercial tractor unit, to use its engines for purposes of braking by use of dynamic braking of the engine so as to slow the speed of the vehicle. It shall be unlawful for said trucks above described to "jake brake," "compression brake" or make use of any dynamic braking. It shall be sufficient for prosecution and conviction of a violation of this offense if the "jake braking," "compression braking" or "dynamic braking" is overheard and if the semi-tractor is observed to be operating in the general proximity of the occurrence of the noise.

(j) It shall be an affirmative defense to an alleged violation of Subsection (i) above if the semi-tractor/trailer vehicle is in an emergency situation and, in an effort to avoid collision with any other vehicle, stationary object or moving object, jake brake compression, compression brakes or any dynamic brake is required for purposes of avoiding said collision. Should the Municipal Court determine that dynamic braking, compression braking or jake braking was used in conjunction with the avoidance of a collision as anticipated in this Section, then the defendant shall be exonerated from any liability under Subsection (i) above as to the criminal offense anticipated therein. Nothing contained herein shall expand or limit any civil liability, if any should exist. (Ord. 1172 §§1--4, 1997; Ord. 1159 §1, 1996; Ord. 798, §14, 1980)

## **CHAPTER 8.20**

### **Animals and Fowls**

#### **8.20.010 Animals and fowls.**

(a) Animals and fowls prohibited. No animals or fowls should be kept or allowed in any room in which food or drink is kept or stored.

(b) Exceptions. The provisions of this Code shall not apply to a police dog or dogs accompanying blind or hearing impaired persons when such animals are in the areas normally frequented by the consuming public. (Ord. 933 §§1, 2, 1986)

## **CHAPTER 8.24**

### **Emergency Telephone Service**

#### **8.24.010 Determination of need.**

The City Council finds, determines and declares that it is necessary to protect and preserve the health, safety and welfare of the citizens of the City that the installation, construction, maintenance and continuation of adequate emergency telephone service be made available to the citizens of the City through the construction, installation, maintenance and use of a *911 Enhanced Emergency Telephone Service*. (Ord. 1038 §1, 1991)

#### **8.24.020 Assessment or charge by City Council.**

The City Council hereby establishes and authorizes the imposition of an assessment or charge as set forth and designated in Section 29-11-102, C.R.S., upon each exchange facility within the City. Said charge shall be set and determined from time to time by resolution of the City Council (based upon the recommendation of the Otero County Emergency Telephone Service Authority Board); however, said charge shall not be set or modified more frequently than annually. No charge shall be imposed upon any state or local governmental entity. (Ord. 1126 §1, 1994; Ord. 1038 §2, 1991)

#### **8.24.030 Assessment or charge by telephone service suppliers.**

Telephone service suppliers providing telephone service in the City are hereby authorized to collect emergency telephone charges imposed by this Chapter in accordance with Section 29-11-101 *et seq.*, C.R.S., and to pay that assessment directly to the Otero County Emergency Telephone Service Authority Board. (Ord. 1126 §1, 1994; Ord. 1038 §3, 1991)

#### **8.24.040 Mayor authorized to execute intergovernmental agreement.**

The Mayor is hereby further authorized to enter into and execute an intergovernmental agreement concerning the implementation and operation of an emergency telephone service system, which agreement shall be by and between the various organizations and entities within the 911 service area (which provide emergency response services). (Ord. 1038 §4, 1991)

**8.24.050 Board representatives.**

The City Council is hereby authorized to appoint by resolution from time to time, as necessary, a representative or representatives to sit on the Authority Board. Said appointment to be made at least annually. (Ord. 1038 §5, 1991)

**8.24.060 Severability.**

If any of the various provisions of this Chapter are determined by a court of law to be invalid, such determination shall not affect the remaining provisions of the ordinance codified herein. (Ord. 1038 §6, 1991)