

# Boulder, Colorado

## Landlord Handbook

### Local Laws on Residential Rental Property



Please note:

Laws and regulations are subject to change. The reader shall bear the risk and responsibility for checking for the latest versions of all laws and regulations.

**No part of this document shall be considered as legal advice. For legal advice, contact a competent, licensed attorney.**

City of Boulder laws and regulations are available on the city website at [www.ci.boulder.co.us](http://www.ci.boulder.co.us)

Landlords, property managers, real estate investors and businesses can find training, information, legal forms, leases, networking, meetings and vendors providing products and services at the **Boulder County Rental Housing Association (BCRHA)**. For more information on BCRHA look in the CAA Affiliates information section of the Colorado Apartment Association (CAA) website at [www.CAAHQ.org](http://www.CAAHQ.org).

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## Table of Contents:

Page	
1	Rental licenses required
4	Penalty for violation
5	Human rights
5	Discrimination in housing prohibited
9	Housing discrimination violation enforcement
11	Human relations
11	Landlord Tenant relations
11	Written lease required
11	Written disclosure required
11	Security deposits
12	Interest rate on security deposits
13	Employee drug testing
15	Housing Code
16	Plumbing standards
18	Water supply standards
18	Electrical service standards
18	Mechanical and heating standards
20	Lighting, ventilation, window and door standards
21	Minimum space, use and location requirements
22	Floors, foundations, walls and ceilings
22	Food preparation and storage areas
22	Safe maintenance of utilities and equipment
22	Stairways and guardrails
23	Occupant's Responsibilities
23	Owner's Responsibilities
24	Smoke detectors and fire alarms
26	Penalties for violating housing code
27	Abatement of Public Nuisances
30	Abatement Orders
32	Civil judgment for public nuisance

Chapter 3 Rental Licenses<sup>1</sup>

<sup>1</sup>Adopted by Ordinance No. 5798. Derived from Ordinance Nos. 3888, 4587, 4623, 5007, 5012, 5039, 5270, 5494, 5660.

10-3-1 Legislative Intent.

This chapter provides for comprehensive enforcement of Chapter 10-2, "Housing Code," B.R.C. 1981, by establishing a system of rental licenses for all dwelling and rooming accommodations in the city that are rented to tenants.

Ordinance No. 5798 (1996).

10-3-2 Rental License Required Prior to Occupancy and License Exemptions

(a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.

(b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.

(1) Any dwelling unit occupied by the owner, or members of the owner's family by marriage, adoption, or whole or half blood up to the second degree of consanguinity, and housing no more than two roomers who are unrelated to the owner or the owner's family.

(2) A dwelling unit meeting all of the following conditions:

(A) The dwelling unit constitutes the owner's principal residence;

(B) The dwelling unit is temporarily rented by the owner for a period of time no greater than twelve consecutive months in any twenty-four-month period;

(C) The dwelling unit was occupied by the owner immediately prior to its rental;

(D) The owner of the dwelling unit is temporarily living outside of Boulder County; and

(E) The owner intends to re-occupy the dwelling unit upon termination of the temporary rental period identified in subparagraph (b)(2)(B) of this section.

(3) Commercial hotel and motel occupancies which offer lodging accommodations primarily for periods of time less than thirty days, but bed and breakfast facilities are not excluded from rental license requirements.

(4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.

Ordinance No. 5798 (1996).

10-3-3 Terms of Rental Licenses.

(a) License terms shall be as follows:

(1) Rental licenses, other than reduced term licenses issued pursuant to Section 10-3-4, "Reduced Term Rental License," B.R.C. 1981, temporary licenses issued pursuant to Section 10-3-9, "Temporary Rental License Appeals," B.R.C. 1981, or accessory dwelling unit or owner's accessory unit licenses governed by paragraph (a)(2) of this section, shall be valid until the licensed property is sold unless:

(A) The license is revoked; or

(B) The licensee fails to submit to the city manager a completed safety inspection report, on forms provided by the city, within four years from the date of initial license issuance and within each successive four-year period thereafter. The safety inspection report shall:

(i) In the section of the report concerning fuel burning appliances, be executed by a qualified heating maintenance person certifying compliance with those portions of Subsection 10-2-10(e), B.R.C. 1981, for which the report form requires inspection and certification.

(ii) In the section of the report concerning smoke detectors, is executed by the operator certifying that the operator inspected the smoke detectors in the licensed property and that they complied with the requirements of Chapter 10-2, "Housing Code," B.R.C. 1981.

(iii) In the section of the report concerning trash removal, is executed by the operator certifying that the operator has a current valid contract with a commercial trash hauler for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-3(b), B.R.C. 1981.

(2) Accessory dwelling units, as defined in Chapter 9-1, "Intent, Scope, Definitions, Financial Guarantees, and Amendments," B.R.C. 1981, and owner's accessory units pursuant to Section 9-3.4-14, "Owner's Accessory Unit," B.R.C. 1981: twelve months from the date of license application for newly constructed units or from the date of prior license expiration for units for which the operator is renewing an unexpired rental license.

(b) The city manager shall issue separate rental licenses for individual buildings. Such licenses shall cover all dwelling units and rooming units within such buildings. In a building containing attached but individually owned dwelling units, or any other dwelling units which may be separately conveyed, the city manager shall issue separate rental licenses for each dwelling unit. A structure, or group of structures, shall be considered to be a single building if it has been assigned a single street address by the city. If a complex of buildings on one property is under common ownership, and this owner is willing to have a common expiration date for the rental licenses for all dwelling and rooming units, the city manager may consider the whole complex to be the equivalent of a single building for the purposes of licensing and the fee schedule in Section 4-20-18, "Rental License Fee," B.R.C. 1981.

(c) Whenever an existing rental license is being renewed, the renewal license shall be effective from the date of expiration of the last rental license, unless the operator provides documentation satisfactory to the city manager, or an affidavit subject to the law against perjury, that no portion of the subject property was rented during any of the time between

expiration of the old rental license and issuance of the new rental license, in which case the renewal license shall be effective as of the date of issuance.

Ordinance Nos. 5494 (1992); 5798 (1996); 5952 (1997); 7023 (1999); 7189 (2002).

#### 10-3-4 Reduced Term Rental License.

(a) The city manager shall issue a reduced term rental license whenever the city manager determines that violations of Chapter 10-2, "Housing Code," B.R.C. 1981, revealed during an inspection, individually or in combination, demonstrate a failure to maintain the rental property in a safe, sanitary, and clean condition so that the dwelling endangers the health and safety of the occupants, including, without limitation, violations of Section 10-2-3, "Unfit Dwelling and Vacation Thereof," B.R.C. 1981, involving property unfit for human habitation, and Subsections 10-2-7(a), B.R.C. 1981, involving open sewage, 10-2-7(b), B.R.C. 1981, involving use of a lavatory as a kitchen sink, 10-2-17(c), B.R.C. 1981, involving blocked chimney flues, and 10-2-20(b), B.R.C. 1981, involving cockroaches, or if the city manager determines that there is or has been a violation of a limitation on numbers of occupants or numbers of dwelling units found in Title 9, "Land Use Regulation," B.R.C. 1981, which demonstrates a failure to maintain the rental property in compliance with that title.

(1) For violations of Chapter 10-2, "Housing Code," B.R.C. 1981, the rental license term shall be reduced to twenty four months.

(2) For violations of Title 9, "Land Use Regulation," B.R.C. 1981, the rental license term shall be reduced to twelve months.

(b) If a person disagrees with the decision of the city manager to issue a reduced term rental license under subsection (a) of this section, such person may appeal the city manager's decision within thirty days after the issuance of the reduced term license, as follows:

(1) For reduced term licenses issued as a result of violations of the provisions of Chapter 10-2, "Housing Code," B.R.C. 1981, the appeal shall be made as provided in Section 10-2-5, "Appeals and Variances," B.R.C. 1981.

(2) For reduced term licenses issued as a result of violations of the provisions of Title 9, "Land Use Regulation," B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although the fee amount shall be as specified for an appeal to the board of building appeals.

Ordinance No. 5798 (1996).

#### 10-3-5 Rental License Procedure for Newly Constructed Rental Property.

Inspections to determine compliance with the provisions of Chapter 10-2, "Housing Code," B.R.C. 1981, are not required prior to issuance of the first rental license for newly constructed rental property if a rental license application is submitted no later than sixty days from the date of issuance of the first certificate of occupancy or temporary certificate of occupancy, in which case payment of license fees is not required.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-6 Rental License Application Procedure for Buildings Being Converted to Rental Property.

Every operator of a property who is converting the property to rental property shall follow the procedures in this section for procuring a rental license:

(a) Submit a written application for a rental license to the city, on official city forms provided for that purpose, at least thirty days prior to rental of the property.

(b) Pay all license fees prescribed by Section 4-20-18, "Rental License Fee," B.R.C. 1981, at the time of submittal of the rental license application.

(c) Cause an inspection of the property to be conducted at the operator's expense by a rental housing inspector licensed by the city for such work, and cause the inspector to return to the city manager, in the form provided by the manager, a certification of inspection showing compliance with Chapter 10-2, "Housing Code," B.R.C. 1981.

(d) Take all reasonable steps to notify any occupants of the property of the date of the housing code inspection. The operator, or an agent of the operator other than the inspector or any tenant of the unit, shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-7 Rental License Renewal Procedure for Buildings Occupied as Rental Property.

Every operator of a rental property shall follow the procedures in this section when renewing an unexpired rental license:

(a) Pay all license fees prescribed by Section 4-20-18, "Rental License Fee," B.R.C. 1981, prior to the expiration of the existing license.

(b) Cause an inspection of the property to be conducted at the operator's expense by a rental housing inspector licensed by the city for such work, and cause the inspector to return to the city manager, in the form provided by the manager, a certification of inspection showing compliance with Chapter 10-2, "Housing Code," B.R.C. 1981, as of a date no more than sixty nor less than fifteen days before the date of expiration of the existing license.

(c) Take all reasonable steps to notify all tenants of the rental property of the date and time of the scheduled housing code inspection. The operator, or an agent of the operator other than the inspector or any tenant of the unit, shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-8 Temporary Rental License.

If the inspection by the rental housing inspector shows that there are violations of Chapter 10-2, "Housing Code," B.R.C. 1981, in the building, and the operator cannot correct the deficiencies before the housing is to be occupied (in the case of new rental property) or the existing license expires (in the case of a renewal), the operator may apply, on forms

specified by the city manager, to the city for a temporary rental license. If the manager finds, based on the number and severity of violations, that such a temporary license would not create or continue an imminent health or safety hazard to the public or the occupants, the manager may issue a temporary rental license. The manager shall specify the duration of the temporary license, which shall be for a period reasonably necessary to make the needed repairs and changes. Upon submission to the manager by the operator of an additional certificate of inspection, on forms supplied by the manager, performed by a rental housing inspector, showing that the deficiencies have been corrected, and accompanied by an additional rental housing license fee, the manager shall issue the rental housing license.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-9 Temporary Rental License Appeals.

Any operator denied a temporary rental license, or aggrieved by the period of time allowed for correction, may appeal the denial or the period of time for correction, or both, to the board of building appeals within thirty days as provided in Section 10-2-5, "Appeals and Variances," B.R.C. 1981. As to an appeal of the time reasonably required to correct a violation, the board shall either affirm the city manager's originally prescribed time period or grant a longer time period to correct the alleged violation.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-10 Time of Rental License Expiration.

Every rental license expires upon the earliest of the following dates:

- (a) The expiration date on the rental license unless temporary authority to rent is allowed under the provisions of Section 10-3-8, "Temporary Rental License," B.R.C. 1981, of this chapter;
- (b) Thirty days after the date upon which transfer of ownership of the rental property occurs;
- (c) The effective date of any order or notice to vacate the rental property issued under any provision of law;
- (d) The expiration of the temporary certificate of occupancy for the rental property if a permanent certificate of occupancy has not been issued; or
- (e) The revocation of the certificate of occupancy for the rental property.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-11 Change of Rental Property Ownership, Agent, and Rental License Transfer.

(a) Upon transfer of ownership of the property for which a rental license has been issued and is still current and valid at time of transfer, the new operator of the property shall apply for a rental license within thirty days after the date of transfer of ownership of the rental property. The new operator shall:

- (1) Submit all license fees prescribed by Section 4-20-18, "Rental License Fee," B.R.C. 1981, with the application.

(2) Cause a baseline inspection of the property to be conducted at the operator's expense by a rental housing inspector licensed by the city for such work, and cause the inspector to return to the city manager, in the form provided by the manager, a certification of inspection showing compliance with Chapter 10-2, "Housing Code," B.R.C. 1981, as of a date no more than sixty days before the date of expiration of the existing license.

(3) Take all reasonable steps to notify all tenants of the rental property of the date and time of the scheduled housing code inspection. The operator, or an agent of the operator other than the inspector or any tenant of the unit, shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

(b) No operator shall transfer the ownership, or change the local agent, of a rental property for which a rental license is required, without notifying the city manager of the identity and mailing address of the buyer or new local agent within fifteen days after the transfer of the property or change of agent.

That portion of the inspection which covers subsections (c), (d), and (e) of Section 10-2-9, "Electrical Service Standards," B.R.C. 1981, shall be done by a licensed rental housing inspector who is also an ASHI certified rental housing inspector, an ICBO or ICC certified combination inspector, or an electrical contractor licensed by the city.

Ordinance Nos. 5798 (1996); 7189 (2002).

#### 10-3-12 Rental License Fees.

(a) Applicants for any rental housing license, and operators who are renewing an existing rental housing license, shall pay the license fees prescribed by Section 4-20-18, "Rental License Fee," B.R.C. 1981, upon submission of any rental housing license application.

(b) If an operator of rental property legally changes the use of a structure by adding units for which such operator receives a rental license under this chapter separate from the rental license for the remainder of the rental property, the operator shall apply for a single rental license to cover the entire property no later than thirty days before the expiration date of the rental license that first expires. There shall be no additional fee assessed for the dwelling units or rooming units that were added to the structure at the time the separate rental licenses are consolidated.

(c) If an operator of rental property reduces the number of dwelling units or rooming units within a rental property, the operator is not entitled to a refund of any fee previously paid.

(d) The city manager shall charge no license fee for the following rental dwelling units, so long as such units have also been individually certified to the city manager as low income rental property by the housing authority of the city of Boulder, and such certification is valid at the time the fee would otherwise be due:

(1) Units owned by or leased and operated by the housing authority of the city of Boulder;

(2) Units owned by or leased and operated by an entity which has a current valid tax status determination by the United States Internal Revenue Service as a Section 501(c)(3) tax exempt organization and

such units are permanently affordable, as that term is defined in Chapter 9-6, "Residential Growth Management System," B.R.C. 1981; or

(3) Units covered by an assistance payment contract pursuant to 49 U.S.C. 1437(b), "Lower-income housing assistance - authorization for contracts for assistance payments for existing dwellings."

(4) If a housing complex under common ownership operates a fixed number or percentage of units as qualifying units under this subsection, but the individual units occupied by low income tenants vary over time, the license and fee waiver allowed by this subsection shall be applied pro rata to the total amount.

Ordinance Nos. 5798 (1996); 7023 (1999).

#### 10-3-13 Posting of Rental License.

No operator who holds a rental license shall fail to post the license, or a true copy thereof, conspicuously upon the premises for which such license has been issued.

Ordinance No. 5798 (1996).

#### 10-3-14 Local Agent Required.

Whenever any rental property is required to be licensed under this chapter, and neither the owner nor the operator is a natural person domiciled within Boulder County, Colorado, the owner shall appoint a natural person who is domiciled within Boulder County, Colorado, to serve as the local agent of the owner and the operator for service of such notices as are specified in Sections 10-2-3, "Unfit Dwellings and Vacation Thereof," 10-2-4, "Enforcement of the Housing Code," 10-3-15, "City Manager May Order Premises Vacated," and 10-3-16, "Administrative Remedy," B.R.C. 1981, and notices given to the local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the city manager in writing of the appointment within five days of being required to make such an appointment, and shall thereafter notify the city manager of any change of local agent within fifteen days of such change.

Ordinance No. 5798 (1996).

#### 10-3-15 City Manager May Order Premises Vacated.

(a) Whenever the city manager determines that any rental housing is in violation of this chapter or of Chapter 10-2, "Housing Code," B.R.C. 1981, and has caused a summons and complaint requiring the operator to appear in municipal court to answer the charge of violation to issue, and the summons cannot be served upon the operator despite reasonable efforts to do so, or, having been served, the operator has failed to appear in the municipal court to answer the charges or at any other stage in the proceedings, or, having been convicted or entered a plea of guilty or no contest, the operator has failed to satisfy the judgment of the court or any condition of a deferred judgment, then the city manager may, after thirty days' notice and an opportunity for a hearing to the tenants and the operator, require that the premises be vacated, and not be reoccupied until all of the requirements of the housing code and the rental licenses code have been satisfied and a rental housing license is in effect. No person shall occupy any premises as a tenant after that person receives actual or constructive notice that the premises have been vacated under this section.

(b) Any notice required by this section to be given to an operator is sufficient if sent by first class or certified mail to the address of the last known owner of the property as shown on the records of the Boulder County Assessor as of the date of mailing. Any notice required by this section to be given to a tenant is sufficient if sent by first class or certified mail to or delivered to any occupant at the address of the premises and directed to "All Tenants."

(c) The remedy provided in this section is cumulative and is in addition to any other action the city manager is authorized to take.

Ordinance No. 5798 (1996).

#### 10-3-16 Administrative Remedy.

(a) If the city manager finds that a violation of any provision of this chapter or Chapter 10-2, "Housing Code," B.R.C. 1981, exists, the manager, after notice to the operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

(1) Impose a civil penalty according to the following schedule:

(A) For the first violation of the provision, \$150.00;

(B) For the second violation of the same provision, \$300.00; and

(C) For the third violation of the same provision, \$1,000.00;

(2) Revoke the rental license; and

(3) Issue any order reasonably calculated to ensure compliance with the provisions of this chapter and Chapter 10-2, "Housing Code," B.R.C. 1981.

(b) If notice is given to the city manager by the operator at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the building. If the manager finds that the violation has been corrected, the manager may cancel the hearing.

(c) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.

(d) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

Ordinance No. 5798 (1996).

#### 10-3-17 Penalty.

The penalty for violation of any provision of this chapter is a fine of not more than \$2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

Ordinance No. 5798 (1996).

City of Boulder  
TITLE 12 HUMAN RIGHTS

Chapter 1 Prohibition of Discrimination in Housing, Employment, and Public Accommodations<sup>1</sup>

<sup>1</sup>Adopted by Ordinance No. 4571. Amended by Ordinance Nos. 4574, 4646, and 7264. Derived from Ordinance No. 3824.

12-1-1 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

"Age" means age between forty and sixty-five years.

"Employer" means any person employing any person in any capacity.

"Employment agency" means any person undertaking, with or without compensation, to procure employees or opportunities to work for any person or holding itself out as equipped to do so.

"Gender identity" means a person's various individual attributes, actual or perceived, that may be in accord with, or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

"Gender variance" means a persistent sense that a person's gender identity is incongruent with the person's biological sex, excluding the element of persistence for persons under age twenty-one and including, without limitation, transitioned transsexuals.

"Genetic characteristics" means all characteristics of an individual that can be transmitted through the person's chromosomes.

"Genital reassignment surgery" means surgery to alter a person's genitals, in order to complete a program of sex reassignment treatment.

"Housing" means any building, structure, vacant land, or part thereof during the period it is advertised, listed, or offered for sale, lease, rent, or transfer of ownership, but does not include transfer of property by will or gift.

"Labor organization" means any organization, or committee or part thereof, that exists for the purpose in whole or in part of collective bargaining, dealing with employers concerning grievances, terms, or conditions of employment, or other mutual aid or protection in connection with employment.

"Marital status" means both the individual status of being single, divorced, separated, or widowed and the relational status of cohabitating and being married or unmarried.

"Minor child" means a person under eighteen years of age.

"Person" or "individual" means any individual, group, association, cooperation, joint apprenticeship committee, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trustee, and unincorporated organization and other legal, commercial, or governmental entity.

"Physical or mental disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. The term excludes current use of alcohol or drugs or other disabilities that prevent a person from acquiring, renting, or maintaining property, that would constitute a direct threat to the property or safety of others, or that would prevent performance of job responsibilities.

"Place of accommodation" means any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges, or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind.

"Sex" means biological sex, the sum of a person's physical characteristics.

"Sex reassignment treatment" means treatment to change a person's sex, based on medically recognized treatment protocols such as that published by the Harry Benjamin International Gender Dysphoria Association.

"Sexual orientation" means the choice of sexual partners, i.e., bisexual, homosexual, or heterosexual.

"Transitioning transsexual" means a person experiencing gender variance who is undergoing sex reassignment treatment.

"Transitioned transsexual" means a person who has completed genital reassignment surgery.

24-34-501(2), C.R.S.

24-34-401(6), C.R.S.

Ordinance Nos. 4969 (1986); 5061 (1987); 7040 (2000).

12-1-2 Discrimination in Housing Prohibited.

(a) It is an unfair housing practice, and no person:

(1) Who has the right of ownership or possession or the right of transfer, sale, rental, or lease of any housing or any agent of such person shall:

(A) Refuse to show, sell, transfer, rent, or lease or refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease or otherwise to deny to or withhold from any individual such housing because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of that individual or such individual's friends or associates;

(B) Discriminate against any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the individual or such individual's friends or associates in the terms, conditions, or privileges pertaining to any facilities or services in connection with a transfer, sale, rental, or lease of housing; or

(C) Cause to be made any written or oral inquiry or record concerning the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of an individual seeking to purchase, rent, or lease any housing or of such individual's friends or associates, but nothing in this section prohibits using a form or making a record or inquiry for the purpose of required government reporting or for a program to provide opportunities for persons who have been traditional targets of discrimination on the bases here prohibited;

(2) To whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing shall:

(A) Make or cause to be made any written or oral inquiry concerning the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of an individual seeking such financial assistance, such individual's friends or associates, or prospective occupants or tenants of such housing, or

(B) Discriminate against any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual, such individual's friends or associates, or prospective occupants or tenants in the term, conditions, or privileges relating to obtaining or use of any such financial assistance;

(3) Shall include in any transfer, sale, rental, or lease of housing any restrictive covenant limiting the use of housing on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability or shall honor or exercise or attempt to honor or exercise any such restrictive covenant pertaining to housing;

(4) Shall print or cause to be printed or published any notice or advertising relating to the transfer, sale, rental, or lease of any housing that indicates any preference, limitation, specification, or discrimination based on race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability;

(5) Shall aid, abet, incite, compel, or coerce the doing of any act prohibited by this section or obstruct or prevent any person from complying with the provisions of this section or attempt either directly or indirectly to commit any act prohibited by this section;

(6) For the purpose of promoting housing sales, rentals, or leases in a geographic area, shall initiate, instigate, or participate in any representation, advertisement, or contract, directly or indirectly, within such geographic area that changes have occurred, will occur, or may occur in the composition of the geographic area with respect to race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the owners or occupants or that such changes will or may

result in lowering property values, in increased criminal or antisocial behavior, or in declining quality of schools in the geographic area;

(7) Shall discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this section;

(8) Shall:

(A) Offer, solicit, accept, use, or retain a listing of housing with the understanding that an individual may be discriminated against in the purchase, lease, or rental thereof on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual or such individual's friends or associates;

(B) Deny any individual access to or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting housing; or

(C) Discriminate against such individual on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual or such individual's friends or associates;

(9) Shall establish unreasonable rules or conditions of occupancy that have the effect of excluding pregnant women, parents, or households with minor children.

(b) The provisions of subsection (a) of this section do not apply to prohibit:

(1) Any religious or denominational institution or organization that is operated, supervised, or controlled by a religious or denominational organization from limiting admission or giving preference to persons of the same religion or denomination or from making such selection of buyers, lessees, or tenants as will promote a bona fide religious or denominational purpose.

(2) (A) An owner or lessee from limiting occupancy of a single dwelling unit occupied by such owner or lessee as his or her residence.

(B) An owner from limiting occupancy of rooms or dwelling units in buildings occupied by no more than two families living independently of each other if the owner actually maintains and occupies one of such rooms or dwelling units as his or her residence.

(C) An owner or lessor of a housing facility devoted entirely to housing individuals of one sex from limiting lessees or tenants to persons of that sex.

(3) The transfer, sale, rental, lease, or development of housing designed or intended for the use of the physically or mentally disabled, but this exclusion does not permit discrimination on the basis of race, creed, color, sexual orientation, gender variance, genetic characteristics, marital status, religion, ancestry, or national origin.

(4) Compliance with any provisions of Section 9-3.2-8, "Occupancy of Units," or Chapter 10-2, "Housing Code," B.R.C. 1981, concerning permitted occupancy of dwelling units.

(5) Discrimination on the basis of pregnancy, parenthood, or custody of a minor child in:

(A) Any owner-occupied lot containing four or fewer dwelling units;

(B) Any residential building in which the owner or lessor publicly establishes and implements a policy of renting or selling exclusively to persons fifty-five years of age or older, but only as long as such policy remains in effect;

(C) Any residential institution, as defined in Section 9-1-3, "Definitions," B.R.C. 1981;

(D) Any dwelling unit rented, leased, or subleased for no more than eighteen months while the owner or lessee is temporarily absent, when the owner or lessee leaves a substantial amount of personal possessions on the premises;

(E) Any residential building located on real estate whose title was, as of November 17, 1981, encumbered by a restrictive covenant limiting or prohibiting the residence of minor children on such property, but only so long as such covenant remains in effect; and

(F) Up to one-third of the buildings in a housing complex consisting of three or more buildings; for purposes of this subparagraph, housing complex means a group of buildings each containing five or more units on a contiguous parcel of land owned by the same person or persons.

(c) The provisions of subsection (a) of this section shall not be construed to require an owner or lessor of property to make any improvement to a housing facility beyond minimal building code standards applicable to the housing facility in question and approved by a state or local agency with responsibility to approve building plans and designs.

See 42 U.S.C. §§3604-3606.

24-34-502(1)(c), C.R.S.

24-34-502(1)(e), C.R.S.

Ordinance Nos. 4803 (1984); 5061 (1987); 5117 (1988); 7040 (2000).

12-1-3 Discrimination in Employment Practices Prohibited.

(a) It is a discriminatory or unfair employment practice, and no person:

(1) Shall fail or refuse to hire, shall discharge, shall promote or demote, or shall discriminate in matters of compensation, terms, conditions, or privileges of employment against any individual otherwise qualified or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates; but with regard to mental or physical disability, it is not a discriminatory or unfair

employment practice for a person to act as provided in this paragraph if there is no reasonable accommodation that such person can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

(2) Shall refuse to list and properly classify for employment or refer an individual for employment in a known available job for which such individual is otherwise qualified because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for an employment agency to refuse to list and properly classify for employment or refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

(3) Shall exclude or expel any individual otherwise qualified from full membership rights in a labor organization, otherwise discriminate against any members of such labor organization in the full enjoyment of work opportunity, or limit, segregate, or classify its membership or applicants for membership, or classify or fail or refuse to refer for employment such individual in any way that deprives such individual of employment opportunities, limits employment opportunities, or otherwise adversely affects such individual's status as an employee or applicant for employment because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates;

(4) Shall print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification, or discrimination on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability or intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification;

(5) Shall establish, announce, or follow a policy of denying or limiting, through a quota system or otherwise, opportunities for employment or membership in a group on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability;

(6) Shall aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice, obstruct or prevent any person from complying with the provisions of this section, or attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(7) That is an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs shall discriminate against any individual on the basis of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates in admission to or employment in any program established to provide apprenticeship or other training; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice to withhold the right to be admitted to or to participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the individual from the program, and the disability has a significant impact on participation in the program;

(8) Shall use in the recruitment or hiring of individuals any employment agency, placement service, training school or center, labor organization, or any other employee referral source known by such person to discriminate on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability;

(9) Shall use in recruitment, hiring, upgrading, or promoting any test that such person knows or has reason to know tends to discriminate on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability; but it is not a discriminatory or unfair employment practice to provide employment opportunities for classes of individuals that have been the traditional targets of discrimination or to use a form or make a record or inquiry for the purpose of required government reporting, and with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as prohibited in this subsection if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job; and

(10) Seeking employment, shall publish or cause to be published an advertisement with a specification or limitation based upon race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability, unless based upon a bona fide occupational qualification.

(b) The provisions of subsection (a) of this section do not apply to prohibit a religious organization or institution from restricting employment opportunities to persons of the religious denomination or persons of other defined characteristics and advertising such restriction if a bona fide religious purpose exists for the restriction.

(c) The provisions of subsection (a) of this section concerning discrimination based on marital status do not apply to the provision of employee health or disability insurance.

(d) Notwithstanding any other provision of this chapter, a workplace supervisor may require that a worker not change gender presentation in the workplace more than three times in any eighteen-month period.

See 42 U.S.C. 2000e.

Ordinance Nos. 5061 (1987); 5468 (1992); 7040 (2000).

#### 12-1-4 Discrimination in Public Accommodations Prohibited.

(a) It is a discriminatory practice, and no person shall:

(1) Refuse, withhold from, or deny to any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, or mental or physical disability of such individual or such individual's friends or associates, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation; or

(2) Publish, circulate, issue, display, post, or mail any written or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that such individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, or mental or physical disability of such individual or such individual's friends or associates.

(b) The provisions of subsection (a) of this section do not apply to prohibit:

(1) Persons from restricting admission to a place of public accommodation to individuals of one sex if such restriction bears a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation; or

(2) Any religious or denominational institution that is operated, supervised, or controlled by a religious or denominational organization from limiting admission to persons of the same religion or denomination as will promote a bona fide religious or denominational purpose.

(c) Notwithstanding any other provision of this chapter, transitioned transsexuals may use the locker rooms and shower facilities of their new sex and shall be protected by Section 12-1-4, "Discrimination in Public Accommodations Prohibited," B.R.C. 1981, from any discrimination in their use of such locker rooms and shower rooms.

(d) Notwithstanding any other provision of this chapter, transitioning transsexuals shall be granted reasonable accommodation in access to locker rooms and shower facilities.

See 42 U.S.C. 2000a.

24-34-601(1), C.R.S.

24-34-601(3), C.R.S.

Ordinance Nos. 5061 (1987); 7040 (2000).

#### 12-1-5 Prohibition on Retaliation for and Obstruction of Compliance with Chapter.

(a) No person shall use a threat, communicated by physical, oral, or written means, of harm or injury to another person, such other person's reputation, or such person's property, or discriminate against any person

because such person has entered into a conciliation agreement under this chapter, because the final or any other ruling in any proceeding brought under this chapter has been in such other person's favor, because such other person has opposed a discriminatory practice, or because such other person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing before a person charged with the duty to investigate or hear complaints relating to problems of discrimination, but this section does not apply when the threat involves knowingly placing or attempting to place a person in fear of imminent bodily injury by use of a deadly weapon;

(b) No person shall willfully obstruct, hinder, or interfere with the performance or the proper exercise of a duty, obligation, right, or power of the city manager, the municipal court, or other official or body charged with a duty, obligation, right, or power under this chapter.

#### 12-1-6 Provisions of this Chapter Supplement Other Code Sections.

Anything to the contrary notwithstanding, the substantive terms of this chapter and the remedies herein provided supplement those terms and remedies contained in this code and other ordinances of the city.

#### 12-1-7 City Manager may Appoint Person to Assist in Enforcement.

The city manager may appoint a person to carry out any or all of the duties, obligations, rights, or powers under the provisions of this chapter, who may have such job title as the manager designates.

#### 12-1-8 Administration and Enforcement of Chapter.

(a) Any person claiming to be aggrieved by a violation of this chapter may file a written complaint under oath with the city manager:

(1) Within one year of any alleged violation of Section 12-1-2, "Discrimination in Housing Prohibited," B.R.C. 1981; within one hundred eighty days of any alleged violation of Section 12-1-3, "Discrimination in Employment Practices Prohibited," B.R.C. 1981; or within sixty days of any alleged violation of Section 12-1-4, "Discrimination in Public Accommodations Prohibited," B.R.C. 1981; and

(2) The complaint shall state:

(A) The name of the alleged violator, or facts sufficient to identify such person;

(B) An outline of the material facts upon which the complaint is based;

(C) The date of the alleged violation;

(D) That any conduct of the complainant was for the purpose of obtaining the housing, employment, or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made; and

(E) That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without a final judgment on the merits.

(b) The city manager shall furnish a copy of the complaint to the person against whom the complaint is made.

(c) Before conducting a full investigation of the complaint, the city manager may attempt to negotiate a settlement of the dispute between the parties, if the manager deems that such an attempt is practicable.

(d) If the city manager does not deem it practicable to attempt a preinvestigation settlement or if such settlement attempt is unsuccessful, the manager shall conduct an investigation to determine whether there is probable cause to believe the allegations of the complaint.

(1) If the city manager determines there is no probable cause, the manager shall dismiss the complaint and take no further action thereon other than that of informing the concerned persons that the complaint has been dismissed.

(2) If the city manager determines that there is a sufficient basis in fact to support the complaint, the manager shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the manager, whereunder the alleged violation is eliminated and the complainant is made whole to the greatest extent practicable.

(3) The city manager shall furnish a copy of such signed conciliation agreement to the complainant and the person charged. The terms of a conciliation agreement may be made public, but no other information relating to any complaint, its investigation, or its disposition may be disclosed without the consent of the complainant and the person charged.

(4) A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred.

(5) A conciliation agreement may provide for dismissal of the complaint without prejudice.

(e) If a person who has filed a complaint with the city manager is dissatisfied with a decision by the manager to dismiss the complaint under paragraph (d)(1) of this section or if conciliation attempts as provided in paragraph (d)(2) of this section are unsuccessful to resolve the complaint, the aggrieved party may request a hearing before the City of Boulder Human Relations Commission, which shall hold a hearing on the appeal. If the commission finds violations of this chapter, it may issue such orders as it deems appropriate to remedy the violations, including, without limitation, orders:

(1) Requiring the person found to have violated this chapter to cease and desist from the discriminatory practice;

(2) Providing for the sale, exchange, lease, rental, assignment, or sublease of housing to a particular person;

(3) Requiring an employer to: reinstate an employee; pay backpay for discriminatory termination of employment, layoff, or denial of promotion opportunity; make an offer of employment in case of discriminatory refusal of employment; make an offer of promotion in the case of discriminatory denial of promotion opportunity; or take other appropriate equitably remedial action;

(4) Requiring that a person make available a facility of public accommodation in the case of discriminatory denial of the use of such facility;

(5) Requiring that a person found to have violated this chapter report compliance with the order or orders issued pursuant to this section; and

(6) Requiring that a person found to have violated any provisions of this chapter make, keep, and make available to the commission such reasonable records as are relevant to determine whether such person is complying with the commission's orders.

(f) No person shall fail to comply with an order of the human relations commission.

(g) The city manager may initiate and file a complaint pursuant to this section based on the information and belief that a violation of this chapter has occurred. The manager may file such a complaint pursuant to the following standards:

(1) The manager has supervised any investigative testing used;

(2) Any investigative testing is not designed to induce a person to behave in other than such person's usual manner; and

(3) The case is not brought for the purpose of harassment.

(h) No complaint shall be accepted against the city or a city-appointed agency unless there is no state or federal protection for the human rights violation set forth in the complaint.

Section 2-3-6, "Human Relations Commission," B.R.C. 1981.

Ordinance Nos. 4879 (1984); 7040 (2000).

12-1-9 Judicial Enforcement of Chapter.

(a) The city manager may file a criminal complaint in municipal court seeking the imposition of the criminal penalties provided in Section 5-2-4, "General Penalties," B.R.C. 1981, for violations of this chapter.

(b) The city manager may seek judicial enforcement of any orders of the human relations commission.

(c) Any party aggrieved by any final action of the human relations commission may seek judicial review thereof in the District Court in and for the County of Boulder by filing a complaint for review within thirty days after the date of the final action under the Colorado Rules of Civil Procedure 106(a)(4).

12-1-10 City Contractors Shall not Discriminate.

The city manager shall require that all contractors providing goods or services to the city certify their compliance with the provisions of this chapter.

12-1-11 Authority to Adopt Rules.

The city manager and the human relations commission are authorized to adopt rules to implement the provisions of this chapter.

12-1-12 Gender Variance Exemptions.

Competitive sports and sports-related records and sex-segregated housing for persons under age twenty-five shall be exempt from the gender variance discrimination provisions of this chapter.

Ordinance No. 7040 (2000).

12-1-13 Elements of Proof.

Proof of the characteristics of the victim, while admissible to prove intent, and to determine reasonable accommodation for disabilities and for transitioning transsexuals, shall not otherwise be required as an element of proof in and of itself. The essential elements of proof shall be of discriminatory intent and of a nexus between such intent and an action or refusal or failure to act identified in this chapter.

Ordinance No. 7040 (2000).

## TITLE 12 HUMAN RIGHTS

### Chapter 2 Landlord-Tenant Relations<sup>1</sup>

1Adopted by Ordinance No. 4957.

#### 12-2-1 Legislative Intent.

The purpose of this chapter is to supplement the provisions of state law governing the rights and duties of landlords and tenants of residential property in the city.

#### 12-2-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Bank" means a bank, credit union, or similar institution that accepts deposits of money and insures such funds through the Federal Deposit Insurance Corporation, the National Credit Union Association, or similar institution.

"Interest" means simple interest on the full amount of the security deposit on deposit.

"Security deposit" means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.

Ordinance No. 7320 (2004).

#### 12-2-3 Leases to be Provided.

Any person renting residential property for thirty days or more shall enter into a written lease relating to such rental within thirty days of the commencement of such rental, and the lessor shall provide a copy of such lease to each lessee thereof within seven working days of final execution of the lease or within fifteen working days of the signature thereof by any lessee, whichever is sooner. Prior to issuance of a summons and complaint under this section, the complaining witness or a peace officer of the city must first request a copy of the lease, and the person renting the residential property shall have five working days from the date of mailing or personal delivery of such request to provide a copy of the lease.

Ordinance No. 4969 (1986).

#### 12-2-4 Written Disclosures Required.

No operator shall allow any person to occupy a rental property as a tenant or lessee or otherwise for valuable consideration unless and until that operator has satisfied each of the following conditions:

(a) The operator has executed and provided to the tenant a copy of a written lease, rental agreement, set of site rules, or other written instrument containing the following information:

(1) The maximum occupancy levels permitted in the rental unit;

(2) Notice of the provisions contained in Sections 5-3-11, "Nuisance Party Prohibited," 5-6-6, "Fireworks," and Chapter 5-9, "Noise," B.R.C. 1981;

(3) Notice of the provisions contained in Sections 6-2-3, "Growth or Accumulation of Weeds Prohibited," 6-3-3, "Trash Accumulation Prohibited," paragraph 7-6-13(a)(1), concerning parking prohibited on sidewalks, and Section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981, relating to the responsibility of every owner, manager, or operator of rental property to maintain a valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property;

(4) The names of those individuals permitted, pursuant to the tenancy agreement, to occupy the rental unit;

(5) Notification to tenants that violation of the city's noise regulation requirements or residency within the rental unit of persons other than those lawfully occupying the unit pursuant to the tenancy agreement is cause for the termination of the tenancy; and

(6) Notification that interest must be paid to tenants upon any security deposit collected pursuant to the provisions of Sections 12-2-2, "Definitions," and 12-2-7, "Interest Rate on Security Deposits," B.R.C. 1981.

(b) The city manager shall approve a form that, if fully executed, will satisfy the requirements of subsection (a) of this section. Use of the approved form shall not be mandatory and individual operators may utilize other writings in lieu of such form so long as those writings satisfy the requirements of subsection (a).

(c) The operator has established and maintained an accurate listing of the identities of each of the persons who are authorized to reside in the subject rental unit.

(d) The maximum penalty for any violation or violations of this section that are charged as part of a single court proceeding shall be \$500.00.

Ordinance Nos. 7158 (2002); 7320 (2004).

#### 12-2-5 Ownership of Security Deposit and Payment of Interest.

Any security deposit for residential property subject to regulation under state law shall be and remain the sole property of the tenant advancing same, and such security deposit plus interest shall not be retained by the person having custody of it after the termination of the tenancy except for actual cause, pursuant to the provisions of state law dealing with retention of security deposits. This section does not create a fiduciary relationship between the parties, but creates a duty to account for interest upon the termination of the tenancy.

Ordinance No. 7158 (2002).

#### 12-2-6 Return of Accrued Interest - Enforcement.

(a) No person having custody of a security deposit for residential property shall fail to return accrued interest on the security deposit within one month after termination of the lease or surrender and acceptance of the premises, whichever occurs last, and according to the provisions of state law concerning the return of the related security deposit, notice of any

deductions therefrom, and the legality of such deductions. Any additional accrued interest shall be returned at the time of the return of the related security deposit, subject to the same provisions of state law.

(b) Failure of any person having custody of a security deposit to provide the same notice required by state law for the retention of a security deposit with respect to the interest thereon shall work a forfeiture of such person's right to withhold any portion of the interest.

(c) The willful and wrongful retention of interest on a security deposit in violation of this chapter shall render the person having custody of the security deposit liable to the tenant for \$100.00 or treble the amount so retained, whichever is greater, together with reasonable attorneys' fees and court costs; except that the tenant has the obligation to give notice to such persons of the tenant's intention to file legal proceedings a minimum of seven days prior to filing the action.<sup>1</sup>

(d) In any court action brought by a tenant under this chapter, the person having custody of the security deposit shall bear the burden of proving that retention of the interest on a security deposit or any portion thereof was not in violation of this chapter.

(e) Nothing in this chapter shall preclude a tenant from filing a claim under Part 1, Article 12, Title 38, C.R.S., and a claim under this chapter in the same lawsuit.

(f) This section and Section 12-2-5, "Ownership of Security Deposit and Payment of Interest," B.R.C. 1981, do not apply to any security deposit paid to a mobile home park on account of the lease of a mobile home space.

<sup>1</sup>If a landlord deliberately fails to return a security deposit during the additional seven-day notice period set forth in the State Security Deposit Act, Section 38-12-103(3)(a), C.R.S., the retention of the deposit is "willful" under the State Act. *Turner v. Lyon*, 539 P.2d 1241 (Colo. 1975).

Ordinance Nos. 4969 (1986); 7158 (2002).

#### 12-2-7 Interest Rate on Security Deposits.

(a) The rate of interest to be paid upon the refund of security deposits shall be determined by the manager by averaging the interest rates being paid on one-year certificates of deposit by three banks doing business within the city that, in the view of the manager, provide indicia of being significant participants in the local banking industry. This average interest rate will be calculated as of December 15 of each year or, if that date falls on a weekend or holiday, on the first business day thereafter. The manager's determination of the rate shall be final. The rate shall be published in a newspaper of general circulation or posted on a city internet site that is accessible to members of the general public. The average interest rate so determined shall be rounded no more than two places to the right of the decimal point. It shall become the rate of interest paid on any security deposit that is provided to a landlord during the calendar year starting on January 1 of the year immediately following the date of the manager's determination.

(b) For the year 2004, the rate of interest shall be determined by the manager using the method set forth in Subsection 12-2-7(a), B.R.C. 1981, within ten days of March 19, 2004. Within three days of that determination, the interest rate so determined shall be published or posted and shall, thereafter, apply to any security deposit provided to a

landlord as a consequence of a lease or rental agreement that is entered into after the date on which the manager's determination is published or posted. In every subsequent year, the manager's determination shall be made pursuant to the provisions of Subsection 12-2-7(a), B.R.C. 1981.

(c) Interest on security deposits for multi-year tenancies shall be calculated separately each year of tenancy in the manner provided in this section. The manager shall retain and make available a list of all prior year interest rates and shall provide a standard formula for the calculation of interest rates on multi-year tenancies.

(d) Payments of interest on security deposits made pursuant to lease or rental agreements entered into prior to March 19, 2004, shall be paid at the rate of five and one-half percent per annum simple interest on the full amount of the security deposit.

Ordinance No. 7320 (2004).

#### 12-2-8 Waiver Void.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived shall be deemed to be against public policy and shall be void.

Ordinance No. 7158 (2002).

TITLE 12 HUMAN RIGHTS  
Chapter 3 Drug Testing1

1Adopted by Ordinance No. 5195.

12-3-1 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

“Commercial vehicle” means any vehicle which meets the definition set forth in the Colorado Department of Public Safety Minimum Standards for the Operation of Commercial Vehicles.

“Employee” means a person treated as an employee for purposes of federal income tax withholding (a) who is assigned or anticipated to be assigned to an immediate supervisor located in the city and does not have a principal out of home office located outside of the city or (b) who is assigned or anticipated to be assigned more than thirty-three percent of the time on the job for a period of more than three months to a job located in the city.

“Employer” means a person who pays wages or salary to an employee, an agent of such a person, or a person in a position of authority over an employee.

Ordinance No. 5688 (1994).

12-3-2 Post-Employment Drug Testing Requirements.

Except as provided in Section 12-3-4 below, no employer shall request or require from an employee any urine, blood, or other bodily fluid or tissue test for any drug or alcohol or determine an employee’s eligibility for promotion, additional compensation, transfer, disciplinary, or other personnel action, or the receipt of any benefit, based in whole or in part on the result of such test, unless all of the following conditions are met:

(a)At the time of the request or requirement, the employer has individualized reasonable suspicion, based on specific, objective, clearly expressed facts, to believe that the employee is under the influence of a drug or alcohol on the job, or his or her job performance is currently adversely affected by use of a drug or alcohol, or the employee has agreed to the test as a part of an employee assistance program after a finding or admission of prior drug or alcohol abuse;

(b)Prior to the administration of any drug or alcohol test, the employer adopts a written testing policy and makes it available to all employees. But a copy need not be provided directly to each employee, so long as a copy is made available freely for inspection by employees at any reasonable time during working hours, without personal identification of the employees. Such testing policy must, as a minimum, set forth all of the following information:

(1)The employees subject to testing under the policy;

(2)The circumstances under which drug or alcohol testing may be requested or required;

(3)The right of an employee to refuse to undergo drug or alcohol testing and the consequence of refusal;

(4)Any disciplinary or other personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test;

(5)The right of an employee to obtain, immediately upon request to the employer’s custodian thereof, a copy of all records maintained of his or her initial positive confirmatory test results, and to submit written information explaining any such results;

(6)Any other appeal procedure available; and

(7)A copy of this chapter.

(c)The collection of any urine specimen is accomplished without direct observation of the genitals by any person other than the employee being tested;

(d)A sufficient specimen is collected to perform two tests, and the one untested specimen is maintained until a negative test result is obtained, or, in case of a positive result, for a period of not less than one year following the date on which the specimen is collected;

(e)No portion of any specimen is tested for pregnancy, and except for pre-employment physicals, no portion of any specimen is examined for evidence of any other medical condition, other than for the presence of alcohol or drugs;

(f)The collection, storage, and transportation of the specimen is accomplished in tamper-proof containers;

(g)Chain-of-custody documentation identifies how the specimen was handled, stored, and tested, at all times;

(h)Positive test results are confirmed by means of gas chromatography/mass spectrometry or an alternate method of equal or greater sensitivity and accuracy;

(i)The employer permits the employee, at the employee’s request and expense, to contract with a laboratory meeting the National Institute of Drug Abuse Standards to have a second confirmatory test performed on an untested portion of the original specimen, subject to the same chain-of-custody assurances provided for the original test; and

(j)The release of the test results is prohibited, except as authorized by the person tested, or to those employees of the employer with reasonable business need to know, or as required by a court of law.

Ordinance No. 5688 (1994).

12-3-3 Job Applicant Drug Testing Requirements.

Except as provided in Section 12-3-4 below, no employer shall conduct a drug or alcohol test as part of a pre-employment screening or pre-employment physical except under the following circumstances:

(a)The employer includes notice that a drug or alcohol test will be part of the pre-employment screening process or pre-employment physical in the application for employment, or if no application form is required, in all advertisements soliciting applicants for employment, and all applicants

for employment are personally informed of the requirement for a drug or alcohol test at the first formal interview;

(b)The drug or alcohol test is required only of Colorado residents who are the single finalist for the position or out-of-state resident finalists for the position who come to Colorado for an interview, if the same test is required of all finalists for that position; and

(c)Subsections 12-3-2(b) through (j), B.R.C. 1981, are complied with concerning job applicants as well as employees.

Ordinance Nos. 5271 (1990); 5688 (1994).

#### 12-3-4 Exemptions.

(a)The following are exempt from this chapter:

(1)United States government;

(2) Colorado state government;

(3) The University of Colorado;

(4) Boulder County government;

(5) Boulder Valley School District; and

(6)Testing of an employee operating a commercial vehicle weighing over 26,000 pounds and for which a Commercial Driver's License is required, or which transports sixteen or more passengers, including the driver, under the Controlled Substances Testing Provisions set forth in the U.S. Department of Transportation regulations for commercial vehicles.

Ordinance No. 5688 (1994).

#### 12-3-5 Employers' Rights.

(a)Nothing in this chapter restricts an employer's ability to prohibit the use of, possession of, or trafficking in, illegal drugs during work hours, or restricts an employer's ability to discipline an employee for being under the influence of, using, possessing, or trafficking in, illegal drugs during work hours or on the employer's premises. Nothing in this chapter restricts an employer's ability to prohibit the use of alcohol during work hours, or restricts an employer's ability to discipline an employee for being under the influence of alcohol during work hours or on the employer's premises.

(b)Nothing in this chapter prevents an employer from conducting routine medical examinations of employees or medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the work place or in the performance of an employee's job responsibilities. But no employer shall extend medical screening beyond the specific substance being monitored, and any inadvertently obtained information concerning drug or alcohol use shall be maintained in confidence in the medical record and not disclosed to any employer. No employer shall use any such evidence to determine promotion, additional compensation, transfer, termination, disciplinary or other personnel action or the receipt of any benefit.

(c)It is an affirmative defense that a person was required to conduct drug or alcohol testing or take disciplinary action against an employee based

on such testing in order to comply with a statute or regulation of the United States or the State of Colorado or any of their agencies or any agency interpretation of such statute or regulation. It is a specific defense that a person, based on specific, objective, clearly expressed facts, was reasonably required to conduct such testing or take such action in order to compete effectively to obtain a contract with the United States or the State of Colorado or any of their agencies.

Ordinance No. 5688 (1994).

#### 12-3-6 Enforcement.

(a)The penalty for violation of any provision of this chapter is a fine of not more than \$1,000.00 per violation. In addition, upon conviction of any person for violation of this chapter, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court under this section is a violation of this section and is punishable by a fine of not more than \$2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

(b)Any person who commits or proposes to commit an act in violation of this chapter also may be enjoined therefrom by the municipal court or by any other court of competent jurisdiction.

(c)An action for injunctive relief under this chapter may be brought by the city attorney, upon ascertaining that a violation is likely to occur. Nothing in this chapter shall be construed to create a private right of action for damages.

Ordinance Nos. 5195 (1989); 5639 (1994); 5688 (1994).

City of Boulder  
TITLE 10 STRUCTURES  
Chapter 2 Housing Code<sup>1</sup>

<sup>1</sup>Adopted by Ordinance No. 4587. Amended by Ordinance No. 4623.  
Derived from Ordinance Nos. 3383, 3390, 3721, 3809, 3908.

#### 10-2-1 Legislative Intent.

The purpose of this chapter is to protect, preserve, and promote the physical and mental health of the residents of the city, control communicable diseases by regulating privately and publicly owned dwellings, promote conservation and efficient use of energy in dwellings, protect safety, and promote the general welfare. This chapter establishes minimum standards for basic equipment and facilities for light, ventilation, and heating; for safety from fire; for the use and amount of space for human occupancy; and for safe and sanitary maintenance of dwellings.

Ordinance Nos. 4824 (1984); 5270 (1990).

#### 10-2-2 Inspection.

(a) The city manager may inspect dwellings and their adjacent premises in order to determine whether they comply with the provisions of this chapter.

(b) Every occupant of a dwelling shall, upon reasonable notice, give the operator, a rental housing inspector hired by the operator, and the city manager access to any part of such dwelling or its adjacent premises at all reasonable times for the purpose of making such inspection, repairs, or alterations as are necessary to effect compliance with the provisions of this chapter and Chapter 10-3, "Rental Licenses," B.R.C. 1981.

Ordinance Nos. 5270 (1990); 7023 (1999).

#### 10-2-3 Unfit Dwellings and Vacation Thereof.

(a) Whenever the city manager finds that a dwelling or portion thereof does not conform to the standards established by this chapter and presents an imminent hazard to public health or to the physical safety of the occupants therein, the manager may, without prior notice or hearing, designate such dwelling or portion thereof as unfit for human habitation. The manager shall post any dwelling or portion thereof so designated with a placard of reasonable size on each entry to the premises and shall order all occupants of the dwelling or portion thereof to vacate the premises within the time specified on the placard, which time shall be no fewer than ten days from the date of the posting. If the manager finds that, based on all the attendant circumstances, the violation presents an immediate and substantial hazard to the occupants, the manager may order the occupants to vacate the premises in fewer than ten days.

(b) Within three days after the designation prescribed by subsection (a) of this section, the city manager shall serve a notice of the designation of unfitness as provided in Subsection 10-2-4(a), B.R.C. 1981. However, notwithstanding paragraph 10-2-4(a)(3), B.R.C. 1981, the operator shall correct the violation immediately and may have no more than ten days after service of such notice to file an appeal with the building board of appeals. Such an appeal does not stay any order to vacate the premises under subsection (a) of this section, unless the board stays such an order.

(c) No person shall use, occupy, own and allow to be occupied, or let to another for occupancy or for human habitation any dwelling or portion thereof that has been designated as unfit for human habitation contrary to the terms of the placard until:

(1) The building board of appeals, after a hearing, or a court orders the city manager to remove the placard; or

(2) The manager authorizes in writing that the property may be occupied because the hazardous condition has been eliminated.

(d) No person shall destroy, deface, remove, or obscure any placard affixed under the provisions of this chapter, except after the orders set forth in subsection (c) of this section.

Ordinance Nos. 4969 (1986); 5270 (1990).

#### 10-2-4 Enforcement of the Housing Code.

(a) Except in those instances where Sections 10-2-3, "Unfit Dwellings and Vacation Thereof," 10-2-19, "Occupant's Responsibilities," or 10-2-20, "Operator's Responsibilities," B.R.C. 1981, apply or if a violation of Chapter 10-3, "Rental Licenses," B.R.C. 1981, is alleged, whenever the city manager determines that there is or has been a violation of any provision of this chapter, the manager shall give notice of such determination to the person responsible under this chapter to correct the violation that:

(1) Is in writing;

(2) Describes with reasonable detail the violation alleged to exist or to have been committed so that the alleged violator may properly correct it;

(3) Provides a reasonable time, in no event fewer than thirty days, for the correction of the violation alleged;

(4) Summarizes the appeal procedures in Subsection 10-2-5(b), B.R.C. 1981;

(5) Is signed by the manager or a duly authorized representative; and

(6) Is served as follows:

(A) A notice of violation of Chapter 10-2, "Housing Code," B.R.C. 1981, personally upon the operator, any member of the operator's family over eighteen years of age at the operator's home or the stenographer, bookkeeper, or chief clerk at the operator's usual place of business or by first class mail to the operator at the address of record with the office of the Boulder County Assessor; or

(B) A notice of violation issued under Chapter 10-3, "Rental Licenses," B.R.C. 1981, personally upon the operator, any member of the operator's family over eighteen years of age at the operator's home or the stenographer, bookkeeper or chief clerk at the operator's usual place of business or by first class mail at the address listed in the rental license application.

(C) Any notice of violation served by mail shall be deemed received three days after its date of mailing.

(b) If the city manager issues a notice of violation, no prosecution shall be filed in municipal court until after the time for correction provided in paragraph (a)(3) of this section. This restriction does not apply to violations of Sections 10-2-3, 10-2-19, or 10-2-20, C.R.S.

(c) No person shall fail to make corrections as required by a notice of violation within the time provided in the notice, or as extended by appeal.

(d) If there are practical difficulties involved in carrying out the provisions of this chapter, and if the operator establishes that the relevant portions of an existing building were in compliance with all applicable codes at some prior time, and have not thereafter been illegally modified, the city manager, upon written application, may grant a modification for individual cases, provided the manager shall first find that a special individual reason specific to the building makes the strict letter of this chapter impractical and that the modification is in conformity with the intent and purpose of this chapter and that such modification does not lessen any health or fire protection requirements or any degree of structural, electrical, mechanical, or plumbing integrity. The details of any action granting a modification shall be recorded and entered in the files of the city. Denial of a modification is not appealable except by way of an application for a variance after issuance of a notice of violation.

Ordinance No. 5270 (1990).

#### 10-2-5 Appeals and Variances.

(a) Any aggrieved person who believes the alleged violation to be factually or legally contrary to this chapter or rules and regulations issued pursuant to this chapter may appeal a notice of violation to the board of building appeals in a manner provided by the board under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, or may request that a variance be granted. An appeal and a request for variance may be filed in the alternative. An appellant shall file the appeal, request for variance, or both in the alternative with the board within thirty days from the date of service of the notice of alleged violation. The appellant may request enlargement of time to file if such request is made before the end of the time period. The city manager may extend for a reasonable period the time to file with the board if the applicant shows good cause therefor.

(b) Any operator aggrieved by a decision of the city manager upon a reinspection that any or all of the violations alleged in the notice of violation have not been adequately corrected may appeal such determination by filing a notice of appeal with the board of building appeals within ten days of the date of the reinspection.

(c) The appeal will be conducted under the procedures of Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The burden of proof is on the city manager to establish an alleged violation.

(d) If the board of building appeals affirms the determination by the city manager, it shall grant the operator a reasonable period of time to correct the violation appealed. Any subsequent determination by the manager as to whether the violations alleged in the notice of violation have been adequately corrected is final.

(e) Any operator may initiate proceedings for a variance by filing with the board of building appeals and the city manager a pleading setting forth the relevant facts, the applicable law, and the variance requested. The board shall hold a hearing and make a decision thereon.

(f) Except as provided in Section 10-3-4, "Procedure Upon Issuance of Notice of Violation," B.R.C. 1981, the board of building appeals has no jurisdiction to hear appeals regarding, nor requests for variances from, the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.

(g) The board of building appeals may authorize a variance from the terms of the housing code or the rules and regulations adopted pursuant thereto subject to terms and conditions fixed by the board that the board determines will not adversely affect the public health where, owing to exceptional and extraordinary circumstances, literal enforcement of applicable provisions will result in unnecessary hardship. The burden of proof is upon the applicant to show by clear and convincing evidence exceptional and extraordinary circumstances and unnecessary hardship, and that:

(1) The variance will not substantially or permanently injure the appropriate use of the other portions of the dwelling involved or other property;

(2) The variance will be in harmony with the spirit and purposes of this chapter and the rules and regulations adopted pursuant thereto; and

(3) The variance will protect, preserve, and promote the physical and mental health of the people of the city in the same manner and to the same effect as would literal enforcement of the provisions applicable to each particular case.

(4) The financial resources of the appellant shall not be considered as an exceptional or an extraordinary circumstance or as a hardship for an appeal. However, the cost of the required work may be considered relative to the benefit of compliance with this chapter to the public or occupants in making such a determination.

(h) The fee for filing an appeal or requesting a variance is that prescribed by Section 4-20-47, "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981.

(i) An aggrieved person seeking judicial review of a decision of the board of building appeals made under this section shall file a complaint for such review within thirty days after the date of the decision under Colorado Rule of Civil Procedure 106(a)(4).

(j) If no person appeals a notice of violation to the board of building appeals, the provisions of the notice becomes final when the time for filing an appeal with the board has expired. An order appealed to court is final unless a stay is in effect.

(k) If a person to whom the city manager has issued a notice of violation does not appeal to the board, such person may not raise as a defense to any subsequent prosecution in municipal court for a violation of Subsection 10-2-4(c), B.R.C. 1981, that the conditions alleged to be violations in the notice of violation were not in fact or law violations.

Ordinance No. 5270 (1990).

#### 10-2-6 Minimum Standards for Basic Equipment and Facilities.

No person shall occupy, own and allow to be occupied, or let to another for occupancy any dwelling that does not comply with the requirements in this chapter.

Ordinance No. 5270 (1990).

## 10-2-7 Plumbing Standards.

(a) Every plumbing fixture and water and waste pipe in a dwelling shall be installed as provided in the city plumbing code and maintained in sanitary and sound condition, free from all sewage leaks and obstructions, and free from potable water leaks that are a constant flow of water. It is a specific defense to a charge of plumbing code non-conformity that the installation was in conformance with the plumbing code in effect at the time of installation and the work was done with a permit and approved, but this specific defense shall not apply to any requirements specifically listed in this section.

(b) Every dwelling unit shall contain a kitchen sink in sound condition and properly connected to an approved water and sewer system.

(1)A kitchen sink shall be of seamless construction and impervious to water and grease. The internal surfaces shall be smooth with rounded internal angles and corners, easily cleanable, free from cracks or breaks that leak or that could cut or injure a person, and impervious to water and grease.

(2)A kitchen sink shall be no smaller than twenty inches by sixteen inches, with a minimum uniform depth of six inches and a maximum uniform depth of twenty inches. Stone, plastic, and concrete laundry tubs, lavatory basins, or bathtubs are not acceptable substitutes for required kitchen sinks.

(c) Every dwelling shall contain a room completely enclosed by partitions, doors, or opaque windows from floor to ceiling and wall to wall that is equipped with a flush water closet in sound condition and properly connected to an approved water and sewer system.

(1)Every flush water closet shall have an integral water-seal trap.

(2)Water closets shall have smooth, impervious, easily cleanable surfaces that are free from cracks or breaks, that leak or that could cut or injure a person, and from makeshift repairs and shall be equipped with seats and flush tank covers constructed of smooth materials that are impervious to water and are free of cracks and breaks that could cut or injure a person .

(d) Every dwelling shall contain a lavatory basin in sound condition and properly connected to an approved water and sewer system and located in the same room as the flush water closet or as near to that room as practicable. If a dwelling contains a flush water closet in more than one room, it shall also contain a lavatory basin in each room with the flush water closet or as near to each such room as practicable.

(1)The lavatory basin shall be designed, intended, and located for use exclusively for ablutionary purposes.

(2)Lavatory basin surfaces shall be smooth, easily cleanable, impervious to water and grease, and free from cracks and breaks that leak or that could cut or injure a person. Stone, plastic, and concrete laundry tubs, sinks used for kitchen purposes, and bath tubs are not acceptable substitutes for lavatory purposes.

(e) Every dwelling shall contain, within a room completely enclosed by partitions, doors, or opaque windows from floor to ceiling and wall to wall, a bathtub or shower in sound condition and properly connected to an approved water and sewer system.

(1)Every bathtub shall have a smooth, impervious, and easily cleanable inner surface free from makeshift repairs and free from cracks and breaks that leak or that could cut or injure a person.

(2)Every shower compartment or cabinet shall have a base with a leak-proof receptor that is made of materials such as precast stone, cement aggregates, plastic, preformed metals or materials of similar characteristics and whose pitch is sufficient to drain completely. The interior walls and ceiling surfaces of the shower cabinet or compartment shall be made of smooth, non-absorbent materials free of sharp edges that could cut or injure a person. Finishes of walls and ceilings that peel readily are not acceptable. The interior of every shower cabinet or compartment shall be watertight, maintained in sound condition, and easily cleanable. Repairs shall be required if more than 2 square feet of compartment wall is no longer waterproof or more than four linear feet of caulking has failed, or if the leak is causing an unsafe electrical condition.

(3)Built-in bathtubs with overhead showers shall have waterproof joints between the tub and adjacent walls and waterproof walls. Repairs shall be required if more than 2square feet of compartment wall is no longer waterproof or more than four linear feet of caulking has failed, or if the leak is causing an unsafe electrical condition.

(f) Every dwelling shall have at least one flush water closet, lavatory basin, and bathtub or shower for each eight occupants thereof or for every family related by marriage, adoption, or blood plus two roomers residing therein. To meet the requirement of this subsection for occupants not related by blood, marriage, or adoption, in dwellings with more than one sleeping room, all facilities shall be accessible to the occupants without passing through any sleeping room. Under no circumstances shall occupants be required to pass through another dwelling unit to reach facilities, and all facilities shall be in the same building and located so that the occupants are not required to go outside the building to reach facilities.

(g) Every kitchen sink, lavatory basin, bathtub, or shower required under this section shall be connected to both hot and cold water lines as provided in the city plumbing code.

(h) Shared toilet and bath facilities shall be located on the same or adjacent floor as the rooming unit that they serve.

(i) Plumbing fixtures, except those having integral traps, shall be separately trapped by a water seal trap that is located as near the fixture outlet as possible and readily accessible for inspection.

But one trap may be installed for a set of not more than three single compartment sinks or laundry trays or three lavatory basins immediately adjacent to each other in the same room, if the waste outlets are not more than thirty inches apart and if the trap is centrally located for the set of sinks.

(j) All exterior openings into the interior of the building, including without limitation those in crawl spaces, provided for the passage of piping shall be properly sealed with snug fitting collars of metal or other rat-proof material securely fastened into place.

Ordinance No. 5270 (1990).

### 10-2-8 Water Supply and Distribution Standards.

(a) Potable water shall be provided for all dwelling units. When the premises are connected to a private water supply system, the private system shall be tested and approved as a sanitary source of water supply by the County Health Department . The city manager may require additional testing of a private or public water supply, if there is a reason to believe contamination has occurred.

(b) Potable and non-potable water supplies shall be distributed through systems entirely independent of each other. There shall be no actual cross-connections between such supplies.

(c) Materials for water distributing pipes and tubing shall be brass, copper, cast iron, wrought iron, open-hearth iron, steel, or other approved material with fittings meeting the requirements of the city plumbing code.

(d) Water pressure shall at all times be adequate to permit a reasonable and proper flow of water into all plumbing fixtures.

Ordinance Nos. 4824 (1984); 5270 (1990).

### 10-2-9 Electrical Service Standards.

(a) Every dwelling shall be supplied with electricity and shall meet the following requirements:

(1) Every habitable room shall contain one electrical convenience outlet for each twenty linear feet or major fraction thereof, measured horizontally around the room at the baseboard line, except that in each habitable room, one electric light fixture may be installed in lieu of one of the required electrical convenience outlets, if each habitable room contains at least one electrical convenience outlet.

(2) Every water closet compartment, bathroom, laundry room, furnace room, space containing a heating appliance, stairway, and public hall shall contain at least one ceiling or wall type electric light, except where light is available from a permanent source or an adjacent space providing a minimum of five foot-candles.

(3) Every outlet and fixture shall be installed and maintained in sound condition.

(b) Electric heating appliances that are not permanently installed may not be used to meet the heating requirements of Subsection 10-2-10(b), B.R.C. 1981.

(c) No person shall install, use, or allow to be installed or used any non-stationary electrical outlets, makeshift outlets, tacked extension cording, or makeshift electric wiring.

(d) Every dwelling unit shall be provided with an electrical service entrance capacity of at least thirty amperes if no electrical appliances exceed 110 volts, or at least forty amperes if no more than one electrical appliance requires 220 volts, or at least seventy amperes if two or more electrical appliances require 220 volts. If there is evidence of insufficient or unsafe electrical service or wiring, including without limitation flickering lights, hot wires, burnt wire insulation, overloading of circuits, burnt fuses, or oversized fuses, the operator shall furnish, upon request, an analysis and recommendation for repairs by a licensed electrical contractor. The

city manager may require repairs as recommended by the electrical contractor.

(e) No person shall have frayed and exposed wiring, wiring unprotected by proper covering, fixtures in disrepair, or makeshift wiring of fixture repair.

(f) When a baseline inspection is required as part of the rental housing licensing program specified in Chapter 10-3, "Rental Licenses," B.R.C. 1981, and such inspection is required to be done by a licensed rental housing inspector, that portion of the inspection which covers subsections (c), (d), and (e) of this section shall be done by a licensed rental housing inspector who is also either an American Society of Home Inspectors, Inc., certified rental housing inspector, an International Conference of Building Officials or International Code Council certified combination inspector, or an electrical contractor licensed by the city.

Ordinance Nos. 4824 (1984); 5270 (1990); 7189 (2002).

### 10-2-10 Mechanical and Heating Standards.

(a) Every mechanical fixture and piece of mechanical equipment shall be installed as required by the city mechanical code<sup>1</sup>, and maintained in a sound condition. It is a specific defense to a charge of code non-conformity that the installation was in conformance with the mechanical code in effect at the time of installation and the work was done with a permit and approved, but this specific defense shall not apply to any requirements specifically listed in this section.

(b) Every dwelling shall have heating facilities capable of safely and adequately heating all habitable rooms, bathrooms, and water closet compartments located therein to a temperature of at least sixty-eight degrees Fahrenheit at a distance three feet above floor level, when the temperature outside is minus five degrees Fahrenheit. If the city manager is notified that the heating system fails to perform to meet this requirement, the city manager may require the operator to furnish an inspection report and recommendation for corrections, if any, to the heating system by a licensed mechanical contractor. The manager may require that the recommended corrections be done. The following supplemental heating devices shall not be considered "heating facilities" for the purpose of calculating or measuring the heating capacity of a dwelling:

(1) Unvented fuel-burning room heaters.

(2) Electric heating appliances that are not permanently installed, or any other heating appliances not permanently installed.

(3) Solid fuel-burning devices, as defined in Chapter 6-9, "Air Quality," B.R.C. 1981.

(c) Gas-fired equipment shall comply with the city mechanical code.

(d) Storage-type water heaters shall be installed so as to maintain that clearance from unprotected or protected combustible materials specified by the manufacturers' installation instructions. Uninsulated tank water heaters and hot water storage tanks shall be insulated. Additional insulation shall be installed on all water heaters and storage tanks located in unheated spaces except if prohibited by manufacturer's installation instructions. Additional tank insulation shall be securely fastened and held clear of pilot lights and vents in an approved manner.

- (e) Sufficient clearance shall be maintained to permit cleaning of heating equipment surfaces; replacement of filters, blowers, motors, burners, controls, and vent connections; lubrication of moving parts, where required; and adjustment and cleaning of burners and pilots. A safety inspection and tune-up shall be performed as necessary to provide safe operation at least every four years. But for rental property required to be licensed under Chapter 10-3, "Rental Licenses," B.R.C. 1981, a safety inspection and tune-up shall have been performed by a qualified heating maintenance person not more than one year before the date of application for a new rental license, or of the expiration date listed on the last license issued for such property in the case of a renewal of an unexpired license, or within four years after the date of issuance of any rental license with an indefinite term and within every succeeding four-year period. A safety inspection and tune-up consists of inspection and maintenance of all fuel burning appliances, including, without limitation, the furnace and other components of the heating system, as follows:
- (1) Check for gas leaks at furnace shutoff valve, furnace, and any joints in between, and correct any leakage found.
  - (2) Identify gas line material. Replace all copper or other non-complying pipe with approved pipe.
  - (3) Check for proper drafting of appliance. Correct as necessary until drafting is proper.
  - (4) Check for readily accessible gas line shutoff valve, which shall be within three feet of the furnace. If not accessible, correct accessibility. If valve is too far away, have mechanical contractor install valve in proper location.
  - (5) Check to assure vents and draft diverters are in sound condition, securely in place, and of approved material. Secure and replace as necessary.
  - (6) Check for adequate combustion air for furnace and any other appliance within same mechanical room. Increase combustion air supply as necessary.
  - (7) Check to assure all single wall vents are a minimum of six inches from combustibles and all B-type vents are a minimum of one inch from combustibles. Correct any clearance deficiencies as necessary.
  - (8) Check to assure sufficient clearance is maintained for cleaning and repairs to furnace. Correct any clearance deficiencies as necessary.
  - (9) Check and remove all loose combustible materials from within four feet of mechanical equipment in mechanical rooms.
  - (10) Check and thoroughly clean all dust and dirt from within and around furnace, blower, motor, burners, and controls.
  - (11) Lubricate and adjust all moving parts as needed.
  - (12) Check, adjust, and clean all burners and pilots as needed.
  - (13) Check, clean if cleanable, or replace all filters.
  - (14) Check for visible signs of a cracked heat exchanger insofar as this may be accomplished through existing access and inspection ports in the furnace. If cracked, have mechanical contractor replace heat exchanger.
- (15) Check to assure limit switches on furnaces and safety valves on boilers are in sound condition. Replace as necessary.
  - (16) Check to assure boilers, as applicable under the city mechanical code, are equipped with a low-water cutoff. If a cutoff is required but not installed, have mechanical contractor install.
  - (17) If a state boiler inspection is required, a copy of the site inspection sheet and the certificate from the state inspection is accepted as the tune-up.
  - (18) Perform a carbon monoxide test on all fuel burning appliances, gas fireplaces and gas fired water heaters using a carbon monoxide detector according to the testing equipment manufacturer's instructions, and note all deficiencies and how they have been corrected. The test shall be performed using equipment approved under a nationally recognized standard for measuring the levels, in parts per million, of carbon monoxide.
- (f) Combustion-type heaters shall be provided with down-draft diverters in the vent pipes of such appliances. Vents and vent-fittings shall be constructed of one of the following materials: galvanized or lead-coated iron or steel; stainless steel; monel; aluminum 2-S « H, none of which shall be less than No. 26 U.S. Standard gauge; copper not less than sixteen ounces per square foot; or any other approved material.
  - (g) Existing radiant heaters may be used and maintained if there is no evidence of carbon on any of the radiants and there are no broken radiants.
  - (h) Furnaces shall be installed in accordance with the manufacturer's instructions.
  - (i) Boilers or furnaces shall be equipped with approved safety devices arranged to limit high steam pressures, water temperatures, or temperatures in warm air furnaces. Each gas-fired boiler shall be equipped with a low water cut-off which conforms with the city mechanical code.
  - (j) Unvented fuel burning heaters are prohibited except in garages and other group U occupancies as defined in the city building code. Fuel-combustion heating appliances shall be vented to the atmosphere. Down-draft diverters shall be provided in the vents from gas and oil appliances. Vents and vent-fittings shall be either a double-wall Type B flue or constructed of approved non-corrodible material such as galvanized steel or aluminum 2-S 1/2H, of at least No. 26 U.S. Standard gauge.
  - (k) A vent pipe shall be installed so as to avoid sharp turns or other constructional features that would create excessive resistance to the flow of the products of combustion. Horizontal runs of gas vents depending on natural draft shall not exceed fifteen feet, but in no case may such horizontal runs exceed seventy-five percent of the vertical height of the flue. On such horizontal runs, vents shall be securely supported by metal straps.
  - (l) All vent pipe connections to a masonry chimney or flue shall be made with a slip joint; the thimble shall be cemented into the chimney and shall not extend into the chimney beyond the chimney lining.

(m) A reasonably accessible and approved clean out opening with a tight-fitting cover shall be provided and maintained free of all obstructions and debris at least twelve inches below the lowest vent inlet into any unlined masonry chimney or flue; but no unlined chimney that is a part of and supported by walls and terminates above any floor (a "shelf" or "bracket" chimney) shall be used to vent any gas appliance.

(n) The cross-sectional area of any flue shall not be less than the cross-sectional area of the flue connection outlet of the appliance it serves. When additional vents from other appliances are connected to the flue, the vent area shall be at least the greater of:

(1) the vent area of the appliances having the largest vent, plus an amount equaling fifty percent of the areas of all additional smaller appliance vents, or

(2) seventy-five percent of the combined areas of all connected appliance vents.

(o) Single-walled metal vents or flues shall be not less than six inches from combustible material and shall not pass through combustible walls, floors, ceilings, or partitions unless they are guarded at point of passage by approved double metal ventilated or insulated thimbles. There shall be one inch of clearance for Type B or double-walled pipe.

(p) A gas appliance vent pipe may be connected to the vent pipe of another gas appliance through a suitable "Y" junction fitting provided the vent size is increased to accommodate the increased volume of flue gases.

(q) All water heaters shall be provided with an approved water pressure and temperature relief valve and drain extension to minimize the possibility of explosions and scalding.

(r) Gas-fired appliances are prohibited in pits or other places subject to flooding by water seepage.

(s) Water heating facilities for dwellings shall provide water at a temperature of at least one hundred twenty degrees Fahrenheit and a recovery capacity of at least twenty gallons per hour for each dwelling unit.

(t) All gas-fired space and central heating equipment, water heaters, and gas dryers shall have approved safety pilot assemblies.

(u) Gas cooking ranges and plates shall not be installed in rooms used for sleeping purposes, and in no case shall such appliances be used for purposes of heating any portion of a dwelling. But permanently installed gas cooking ranges and plates may be installed in sleeping areas which are not in a rooming unit if such ranges or plates have been installed pursuant to a permit, inspection, and approval by the city.

(1) All ranges shall be rigidly connected to the house gas piping outlet with not less than three-fourths inch pipe, except that a maximum of six feet of approved semi-rigid tubing may be used immediately adjacent to such appliance. Such semi-rigid tubing shall not pass through any wall, partition, floor, or ceiling.

(2) Gas cooking ranges, plates, and refrigerators shall be in sound condition. All orifices, burners, and controls shall be kept in sound

condition and in no case constructed, installed, or maintained in a manner that would permit carbon monoxide production during operation.

(v) All gas appliances shall be connected to an approved gas supply using approved materials. An approved shutoff valve, in addition to any valve on the appliance, shall be installed outside of each appliance, ahead of its union connection, and within three feet of the appliance.

(w) Gas meters shall be located on the exterior of all dwellings in an approved location and shall have an approved shutoff valve at the gas service entrance.

(x) All unused gas lines shall be terminated in an approved manner.

(y) Gas water heaters, gas furnaces, and decorative gas appliances shall not be located in or be directly accessible from a bedroom or bathroom, unless the city manager has approved such location because there is an adequate physical separation of the makeup air, natural gas, and products of combustion from such rooms, which separation includes without limitation a gasket sealed door and outside makeup air, or a direct vent/sealed combustion chamber system.

1 Chapter 10-9, "Mechanical Code," B.R.C. 1981.

Ordinance Nos. 5270 (1990); 5798 (1996); 7189 (2002).

10-2-11 Cooking Devices.

Every dwelling unit shall have a cooking device installed in an approved manner.

Ordinance Nos. 4824 (1984); 5270 (1990).

10-2-12 Light, Ventilation, Window and Door Standards.

(a) Every habitable room in a dwelling shall have at least one window or a skylight facing directly to the outside. The city manager may approve an indirect means of supplying five foot-candles of illumination to such rooms, except for sleeping rooms, without direct opening to the exterior, if ventilation is provided as required by subsection (c) of this section.

(b) Every public hall or stairway in or leading into every multiple dwelling shall have a minimum of five foot-candles of illumination measurable with a standard light meter at floor level in halls and tread levels on stairways, at all times when the structure is occupied. This requirement does not apply when there is a power outage to the building. If an emergency lighting system is required or installed within the building, it must be in sound condition.

(c) Every habitable room within a dwelling shall be provided with at least one window or skylight, openable or vented directly to outside air or other comparable means of mechanical or natural ventilation that is approved by recognized testing laboratories. Such facilities for ventilation shall present an area of contiguous air between the inside of the room and the outdoor space of not less than one square inch for each square foot of floor area for each habitable room.

(d) Every bathroom, shower room, or water closet compartment shall be provided with ventilation to the outside air of at least four square inches cross-sectional area of duct, at least one window openable to the outside exposing at least four square inches of outside air, or another approved

mechanical, electrical, or natural means of providing comparable ventilation.

(e) Windows shall be soundly and adequately glazed, free from loose and broken glass and cracks that would cause physical injury to persons, allow the elements to enter the structure, or allow excessive heat loss from within. A single crack in glazing (other than a shower enclosure) which is securely contained in a frame and is not exposed to severe wind hazard may be duct taped or caulked if it has no exposed sharp edges and does not exceed twelve inches in length. All accessible windows shall be weatherstripped to prevent excessive air infiltration. Effective weather-stripping shall be installed and maintained or more extensive treatments such as operable or removable storm windows or double glazing which provide equivalent air infiltration reduction may be substituted.

(f) Exterior doors shall fit doorway openings and be weatherstripped in a manner that prevents excessive air infiltration, heat loss, and the entrance of the elements and vermin. Exterior doors shall be maintained free from cracks or breaks. All doors leading directly into a dwelling unit or rooming unit shall be provided with workable locks; but nothing in this section requires that entrances into common hallways or any other entrance that does not lead directly into a dwelling unit or rooming unit shall be locked.

(g) All basement hatchways, crawl space, or cellar openings shall be constructed so as to prevent the entrance of the elements and vermin and shall be maintained in a state to minimize the danger of physical injury.

Ordinance Nos. 5270 (1990); 5798 (1996).

#### 10-2-13 Egress Standards.

(a) Every habitable space shall be provided with an unobstructed exit to the ground level. Every inside and outside stairway, every porch, and every appurtenance thereto shall be maintained and kept in sound condition.

(b) Doors, windows, corridors, stairways, fire escapes, and passageways serving as ordinary or emergency exit routes shall be free of stored or discarded material, and in no case shall such routes be obstructed or locked to persons within the building.

(c) In dwellings containing two or more inhabited floors:

(1) Inhabited second stories shall have two means of egress to ground level if the occupancy load of the second story is ten or more;

(2) Inhabited floors above the second story shall have no fewer than two means of egress to ground level regardless of the number of occupants, if they are rented separately from any lower levels of the structure; and

(3) All means of egress shall be equipped in a manner that obviates the need to jump or drop to the ground.

(d) Dwelling or rooming units located in basements or cellars shall be provided with two separate routes of egress; one of those means of egress may be for emergency use only. There shall be a minimum of ten feet of horizontal separation between each such egress.

(e) If any window is used or intended to be used for emergency egress in meeting the requirements of subsections (c) or (d) of this section, it shall be readily accessible and have minimum unobstructed dimensions of thirty inches in width and twenty-four inches in height or twenty-four inches in width and thirty inches in height, or shall meet the dimensional requirements for escape or rescue windows of the city building code, and shall lead to an open, unobstructed space at grade level.

(1) If any such window has a finished sill height more than forty-four inches above the floor, functional permanent steps shall be provided.

(2) If any such window exits into a window well, and the well is more than forty-four inches below grade level, functional permanent steps shall be provided.

(3) If any such window exits into a window well, the well shall have an unobstructed minimum head room clearance of thirty inches to an open exterior area, such as a yard or street.

(f) The main means of egress from each habitable room in a dwelling shall have an unobstructed height of at least six feet four inches.

Ordinance Nos. 5039 (1987); 5270 (1990).

#### 10-2-14 Minimum Space, Use, and Location Requirements.

(a) Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area plus non-habitable room area up to a maximum of ten percent of the total required floor space. But this floor space requirement does not apply when the residents of a dwelling unit are members of a family related by marriage, adoption, or whole or half blood up to the second degree of consanguinity.

(b) Every room occupied for sleeping purposes by one person shall contain at least 70 square feet of floor space and every room occupied for sleeping purposes by more than one person shall contain at least 30 square feet of floor space for each additional occupant thereof. The floor space shall be calculated on the basis of total habitable sleeping room area plus up to twenty-five percent of the area of a closet adjacent to such sleeping room.

(c) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet, and the floor area of the part of any room where the ceiling height is less than five feet shall not be considered as habitable area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(d) No basement or cellar space shall be let as a habitable room and no basement or cellar space shall be used as a dwelling unit or rooming unit unless:

(1) The floor, ceiling, and walls meet the standards as required by Section 10-2-15, "Floors, Foundations, Walls and Ceilings," B.R.C. 1981;

(2) The total amount of light provided in each room equals at least the minimum amount of light as required in Subsection 10-2-12(a), B.R.C. 1981;

(3)The facilities for ventilation in each room are equal to at least the minimum as required under Subsection 10-2-12(c), B.R.C. 1981; and

dampness that would permit the harborage of insects or promote the growth of bacteria.

(4)The floors and walls do not at any time admit any underground or surface run-off water and the floors and walls are finished in a way to eliminate dampness from condensation.

(b) Carpeting may be used in kitchens contained within a dwelling unit but shall not be used in communal or shared kitchens located within rooming houses or serving rooming units.

Ordinance Nos. 4824 (1984); 5270 (1990).

Ordinance No. 5270 (1990).

#### 10-2-15 Floors, Foundations, Walls and Ceilings.

#### 10-2-17 Safe Maintenance of Utilities and Equipment.

(a) Every foundation, floor, roof, ceiling, and exterior and interior wall shall be reasonably weathertight and watertight, kept in sound condition and capable of affording privacy for the occupants. All accessible seams, cracks, and joints where air infiltration may occur shall be caulked. Where it is observed that recent water damage in area has occurred to the interior, the city manager may require an inspection and repair recommendation by a licensed contractor. The city manager may require that recommended repairs, if any, be done. The city manager may accept a written statement from the operator that the leak has been repaired.

(a) All supplied facilities, pieces of equipment, or utilities in or about the premises of any dwelling unit shall be capable of performing their intended functions, shall not be constructed or installed in such a manner as to create a hazard to persons, and shall be maintained in sound condition. Nothing in this section shall be interpreted to require repair or replacement of dishwashers, compactors, washers, dryers, hot tubs, air conditioners, saunas, or other non-essential appliances that have been safely disconnected.

(b) Every foundation, roof, floor, exterior and interior wall, ceiling, inside and outside stair, and porch and appurtenance thereto shall be safe to use and capable of supporting the loads that normal use may cause to be placed thereon and shall be kept in sound condition .

(b) Required exit doors from individual dwelling units and bedrooms may be provided with a night latch, deadbolt, or security chain, if such devices are openable from the inside without the use of a key or tool.

(c) Floors, interior walls and ceilings, and all appurtenances thereto shall be secure and free of holes, cracks, breaks, dampness, and loose or peeling plaster that would admit or harbor insects and rodents, cause injury by tripping or cause injury from falling loose building materials.

(c) Safe maintenance shall be provided for fireplaces and wood stoves. Safe maintenance includes, without limitation:

(d) All holes cut in floor covering for the passage of plumbing fixtures for pipes shall be sealed to prevent passage of vermin.

(1)firebrick and flue maintained in sound condition;

(2)operable damper;

(e) Floor coverings that are torn or loose and located on a stairway or within three feet of any door threshold or stairway shall be removed or repaired in an acceptable manner to prevent tripping. Tears in excess of six inches in length and rising one-quarter inch or more above the floor surface in any location present a tripping hazard and shall be repaired.

(3)chimney and flue chamber is free of defects or blockages;

(4)where deterioration, such as loose, missing bricks, rusted holes, or serious defects, of chimney or flue occurs above the roofline it shall be replaced or repaired to meet the requirements of the city building code, and

(5)proper drafting to occur at all times when in use.

(f) Floor coverings such as carpeting, tile, linoleum, and similar material shall be repaired or replaced when more than twenty-five percent of the floor covering area is severely deteriorated .

Ordinance No. 5270 (1990).

#### 10-2-18 Stairways and Guardrails.

(g) The floor, walls, and ceiling of every bathroom and shower room shall have a smooth, impervious, and easily cleanable surface free from peeling paint for more than ten percent of each surface, breaks, cracks, holes, and makeshift repairs. But carpeting and other approved materials may be installed in a bathroom located within one dwelling unit, if such a bathroom is not shared by any rooming unit. No person shall use carpeting in communal bathrooms located within rooming houses or shared by rooming units.

(a) Stairways used for egress routes for habitable rooms shall have at least six-feet-four-inch headroom, measured vertically from the tread level, and shall be maintained in a sound condition.

(b) Risers and treads shall be of uniform height and width within one-half inch maximum variance throughout any one flight. Except in those stairways leading to unused cellar or attic space, the rise of the steps in a stairway shall not exceed eight inches, and the tread shall not be less than nine inches in width, which may include a one-inch nosing.

Ordinance No. 5270 (1990).

(c) Every inside stairway and every outside stairway which contains four or more risers and is attached to or directly abutting a dwelling, except stairways providing access to unused cellar or attic space, shall be provided with one handrail securely fastened to the wall or to a sturdy balustrade. The handrail shall be placed at a uniform height not less than thirty inches nor more than thirty-eight inches above the nosing level.

#### 10-2-16 Food Preparation and Food Storage Areas.

(a) Kitchen sink countertops, food preparation surfaces, cooking devices, and food storage areas shall be easily cleanable and shall be free from holes, breaks or cracks that leak or could cut or injure a person, and

(d) All unclosed floor and roof openings, open and glazed sides of landings, ramps, stairs, balconies or porches which are more than seven feet above grade or the floor below, and roofs used for other than service of the building, shall be protected by a guardrail. Guardrails shall be not less than twenty-four inches in height and shall be capable of supporting fifty pounds per linear foot applied horizontally to the top of the guardrail. If a guardrail requires more than fifty percent replacement or repair, the replacement or repair must meet the dimensions required by the city building code.

Ordinance No. 5270 (1990).

#### 10-2-19 Occupant's Responsibilities.

(a) No occupant of a dwelling or rooming unit shall fail to maintain, and upon departure, to leave that part of the dwelling and premises thereof, including basement facilities, that the occupant occupies and controls and that is provided for the occupant's use, in a clean and sanitary condition, free of litter, debris, and vermin.

(b) No occupant shall keep any animals or pets in a dwelling or rooming unit, or on any premises in such a manner as to create unsanitary conditions, including without limitation, accumulation of excrement.

(c) No occupant of a dwelling or rooming unit shall fail to dispose of all refuse, garbage, rubbish, and rubble that such occupant generates as required by Chapter 6-3, "Trash," B.R.C. 1981.

(d) Subject to the limitation set forth in subsection (c) of this section, no occupant of a structure containing a single dwelling unit shall fail to exterminate any insects, rodents, or other pests in the premises over which such occupant has control, and no occupant of a dwelling unit in a structure containing more than one dwelling unit or rooming unit shall fail to perform such extermination whenever such occupant's dwelling unit or rooming unit is the unit primarily infested.

(e) No occupant of any rooming unit shall use or store in the unit any electrical hot plate or other cooking device.

(f) No occupant shall store any combustibles in a furnace or boiler room or water heater compartment.

(g) No occupant of a dwelling or rooming unit shall fail to maintain and keep all plumbing within such occupant's unit free from filth, debris, garbage, litter, decayed organic matter, soil, grease, obstruction to proper flow, or anything that may serve to attract or harbor vermin.

(h) No occupant shall install, use, or permit the installation or use of any makeshift non-stationary electrical outlets, makeshift outlets, tacked electrical extension cording, or makeshift electric wiring.

(i) No occupant shall permit the installation or use of an electrical extension cord from an electrical convenience outlet extending or passing from one room to another room.

(j) No occupant shall permit the installation or use of an electrical extension cord where foot traffic passes directly over it.

(k) No occupant shall permit the installation or use of an electrical extension cord across any doorway or through any wall or partition of any dwelling unit or room therein.

(l) No occupant shall install, use, or fail to remove any unvented fuel-burning room heater from a dwelling or rooming unit.

(m) No occupant shall use as habitable space any area not approved for such use.

(n) No occupant of any rooming unit shall use or store in the unit any refrigerator or refrigerator-freezer or combined microwave and refrigerator-freezer unit in excess of three cubic feet of cooling and freezing space and then only if the electrical system of the entire building is adequate for all the electrical loads of the building.

(o) No occupant of any dwelling or rooming unit shall disable or disconnect a smoke detector required by this code.

Ordinance Nos. 5083 (1987); 5270 (1990); 5494 (1992); 5798 (1996); 5975 (1998).

#### 10-2-20 Operator's Responsibilities.

(a) Every operator of a dwelling containing two or more dwelling units is jointly and severally responsible for maintaining the shared or public areas of the dwelling and premises thereof in a clean and sanitary condition and no such person shall fail to maintain such areas.

(b) Whenever infestation<sup>1</sup> exists in two or more of the dwelling units in any dwelling, or in the shared or public part of any dwelling containing two or more dwelling units, all operators are jointly and severally responsible to exterminate the infestation.

(c) Notwithstanding provisions of subsections (a), (b), and (f) of this section, whenever infestation is caused by failure of an operator to maintain a dwelling in ratproof or reasonably insectproof conditions, all operators are jointly and severally responsible to exterminate the infestation.

(d) No operator shall store or allow to be stored any combustible or inflammable material in any furnace or boiler room or water heater compartment.

(e) No operator shall fail to prevent the use of hot plates or other cooking devices in any rooming unit.

(f) No operator shall fail to provide trash receptacles as required by Chapter 6-3, "Trash," B.R.C. 1981.

(g) No operator shall fail to comply with the pre-application pesticide notification provisions of Section 6-10-7, "Notification to Tenants and Employees of Indoor Application," B.R.C. 1981.

(h) No operator shall provide, install, or permit the presence of a refrigerator or refrigerator-freezer or combined microwave and refrigerator-freezer unit larger than three cubic feet of cooling and freezing space in a rooming unit and then only if the electrical system of the entire building is adequate for all the electrical loads of the building.

(i) No operator shall provide, install, or permit the presence of any unvented fuel-burning room heater in a dwelling or rooming unit.

(j) No operator of a property that is located in the floodplain shall fail to post on the exterior of the premises at the entrance a sign approved by the city manager stating that the property is subject to flood hazard and containing such further information and posted at such other locations inside the building as the manager may reasonably require.

1For rodent control, see Chapter 6-5, "Rodent Control," B.R.C. 1981.

Ordinance Nos. 5270 (1990); 5798 (1996); 5975 (1998).

#### 10-2-21 Rooming Houses.

No person shall own and allow to be occupied or operate a rooming house, or shall occupy or let to another for occupancy any rooming unit, except in compliance with all provisions of this chapter; but Subsection 10-2-7(b) and Section 10-2-11, "Cooking Devices," B.R.C. 1981, do not apply to rooming houses or rooming units.

Ordinance No. 5270 (1990).

#### 10-2-22 Smoke Detectors Required in Dwelling Units.

(a) Every dwelling or rooming unit not regulated under Section 10-2-23, "Buildings Containing Multiple Units," B.R.C. 1981, shall have a smoke detector installed within every sleeping room within that dwelling unit. On floors of the unit which do not have a sleeping room, a smoke detector shall be installed in a hallway or on a room connected to a hallway by an opening which cannot be closed.

(b) Such detectors may be:

(1) Battery operated; or

(2) Receive their primary power from the building wiring.

(c) Smoke detectors shall be located on the ceiling or on the walls of the room in which they are installed as required by the manufacturer's listing. Detectors under this section need not be interconnected.

(d) Smoke detectors required by this section shall be installed within each dwelling or rooming unit prior to issuance of a rental housing license pursuant to Chapter 10-3, "Rental Licenses," B.R.C. 1981.

Ordinance No. 7189 (2002).

#### 10-2-23 Buildings Containing Multiple Units.

This section applies to buildings containing three or more dwelling or rooming units. In addition to all provisions applicable to such a building, it shall also comply with the following requirements:

(a) Manual Fire Alarms in Larger Buildings.

(1) Manual fire alarms shall be installed in accordance with Chapter 10-8, "Fire Prevention Code," B.R.C. 1981, in buildings covered by this section if:

(A) The building is three or more stories high; or

(B) The building contains more than fifteen dwelling units that are served by common corridors or exitways; or

(C) The building is a hotel or motel containing twenty or more guest rooms.

(2) The following buildings are excepted from this manual fire alarm requirement:

(A) A building, all of whose units exit directly to the outside to grade or onto an unenclosed exit balcony leading directly to grade.

(B) A building protected throughout by an automatic sprinkler system as provided for in subsection (l) below.

(b) Smoke Detectors in Common Corridors of Smaller Buildings. Buildings not required by subsection (a) above to have manual fire alarms shall have smoke detectors and alarms which receive their primary power from the building wiring installed within all common corridors of the building in accordance with the following specifications:

(1) The spacing between detectors shall not exceed thirty feet. The maximum spacing from any exit door or stair shaft enclosure shall not exceed fifteen feet. Ceiling projections and corridor arrangement shall be considered in locating smoke detectors for maximum effectiveness.

(2) When more than one corridor detector is required for any building, the corridor detectors in that building shall be interconnected, and when activated shall sound an alarm throughout all corridors in the building.

(3) Smoke detectors shall be installed without a disconnecting switch other than that required for over current protection.

(4) Smoke detectors shall be installed as described above no later than January 1, 1993.

(c) Smoke Detectors in Units.

(1) Detectors in rooms. Each dwelling unit, hotel/motel sleeping room, and rooming unit shall have located within it smoke detectors that are:

(A) Battery operated; or

(B) Receive their primary power from the building wiring.

(2) Installation deadline. Smoke detectors required by this subsection shall be installed within each unit no later than January 1, 1993.

(3) Power for detectors in condominium buildings.

(A) Smoke detectors which receive their primary power from the building wiring shall be installed within each condominium dwelling unit in the building in accordance with subparagraph (4)(A) below, no later than January 1, 1997.

(B) Apartment buildings converting to condominium ownership shall have smoke detectors which receive their primary power from the building wiring installed in accordance with subparagraph (4)(A) below, within thirty days of conversion.

(4) Location of smoke detectors.

(A) Location within dwelling units: smoke detectors shall be located on the ceiling or on the walls of the unit as required by the manufacturer's listing and shall be audible from all sleeping rooms within the unit. Detectors installed within dwelling units under this paragraph need not be interconnected.

(B) Location within hotel/motel sleeping rooms, rooming units, or efficiency dwelling units: detectors shall be located on the ceiling or wall as required by the manufacturer's listing within the bedrooms.

(5) Inspection and record-keeping for non-condominium buildings. Inspections are required to be conducted by the property owner or agent as follows:

(A) Battery-powered smoke detectors shall be tested for proper function on a semiannual basis. Batteries shall be replaced once each year. A record-keeping log book shall be maintained by the owner or agent indicating location of detector, date and result of inspection, and date of battery installation.

(B) Smoke detectors which receive their primary power from the building wiring shall be checked for good operating condition once each year.

(6) Log book made available for inspection.

(A) The city manager may inspect the required log books at any reasonable time to ensure owner compliance. If the certificates or log books are maintained off the premises, they shall be made available at the premises at the time of a rental inspection or at any other time on reasonable notice.

(B) If the city manager determines that the log books for battery-powered smoke detectors have been falsified, not maintained or not made available at time of inspection, the manager may, in a correction notice to the owner or agent, require the installation of smoke detectors which receive their primary power from the building wiring. The operator and any affected person may appeal the manager's determination to the board of building and fire code appeals within thirty days in the same manner as appeals may be taken for a notice of violation.

(d) Exit Signs. Exit signs in common corridors shall be provided in buildings with more than one required exit. Letters on signs shall be in block letters, six inches in height, with a stroke of not less than three-quarters of an inch.

(e) Emergency Battery Pack Lighting. Every public space, hallway, stairway, and other means of egress shall be illuminated by means of emergency lighting in buildings with more than twelve dwelling units or greater than three stories in height. Dwelling units with a direct exit to the outside to grade or onto an unenclosed exit balcony leading directly to grade shall not be counted in determining the number of units under this subsection.

(f) Portable Fire Extinguisher. One portable fire extinguisher of a minimum size and rating of "2A-10BC" shall be provided in each common boiler and furnace room, and within each common kitchen used by the tenants.

(g) Common Corridors.

(1) Walls and Ceiling Construction. Interior public exit corridors serving five or more dwelling units shall have corridor walls free of holes or penetrations except for door openings. Ceilings shall be free of holes or penetrations other than those needed for existing lighting.

(2) Doors within Corridors. Doors opening onto interior public exit corridors but not regulated by subsection (h) below shall have a fire protection rating of not less than twenty minutes or be a one-and-three-quarter-inch thick solid core door. Glazed openings in doors shall be of fixed wired glass supported on all sides. Doors shall be self-closing and equipped with self-latching devices for keeping doors tightly closed.

(3) Requirements. The requirements of this subsection do not apply to buildings protected throughout by an automatic sprinkler system, designed and installed in accordance with Chapter 10-8, "Fire Prevention Code," B.R.C. 1981, or as provided in subsection (l) below.

(h) Vertical Openings, Construction, and Protection.

(1) Stair Shafts. Stair shafts and other openings extending vertically through floors shall be enclosed in a shaft of fire-resistive construction with at least a one hour rating. Such enclosure is not required for openings which serve only one adjacent floor and are not connected with openings serving other floors, or are within individual dwelling units.

(2) Opening Protection. Every opening into a shaft enclosure shall be protected by self-closing fire doors and assemblies having a fire protection rating of one hour.

(3) Requirements. The requirements of this subsection do not apply to buildings protected throughout by an automatic sprinkler system, designed and installed in accordance with Chapter 10-8, "Fire Prevention Code," B.R.C. 1981, except when the vertical enclosure is already in existence as described above, the enclosure's fire rated integrity shall continue to be maintained as previously installed and approved, or as provided for in subsection (l) below.

(i) Hazardous Areas. Common boiler, furnace, and water heater rooms, laundries, and repair or maintenance shops shall comply with one of the following:

(1) Have a fire resistance rating of at least one hour, and openings shall be protected by self-closing and self-latching fire doors with a fire protection rating of at least three-quarters of an hour;

(2) Be protected by automatic sprinklers designed and installed in accordance with Chapter 10-8, "Fire Prevention Code, 4" B.R.C. 1981, or as provided for in subsection (l) below; or

(3) Have heat detectors whose rating does not exceed one hundred thirty-five degrees Fahrenheit installed within each such room above the appliance with the highest heating capacity, or if there is no heating appliance then centrally located within the room, interconnected to an audible alarm in every common corridor in the building. If no common corridor exists then the audible alarm shall be located in each unit abutting the hazardous area.

(j) Sprinkler Systems. Sprinkler systems, if provided or required to be provided by any provision of this code, shall be fully operational at all times. Such systems shall not be compromised, shut off or tampered with without first notifying, and receiving approval from, the city manager.

Approval shall only be given for repairs, remodeling, testing, or maintenance, and then only for a reasonable period of time. 10-2-25 Authority to Issue Rules.

(k) Interior Finish. Wood, carpet, and materials of Class III flame-spread rating are prohibited as a covering on walls and ceilings of interior public corridors serving five or more dwelling units and vertical stair shafts serving these corridors. The requirements of this subsection do not apply if the building is protected throughout by an automatic sprinkler system, or as provided for in subsection (l) below, or capable of being protected by the application of intumescent covering material or finish.

The city manager may adopt reasonable rules to implement the provisions of this chapter.

Ordinance Nos. 5270 (1990); 7189 (2002).

10-2-26 Penalty.

The penalty for violation of any provision of this chapter is a fine of \$2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

Ordinance Nos. 5494 (1992); 5798 (1996); 7189 (2002).

(l) Exceptions. Buildings in the process of installing a sprinkler system at the time of a rental license inspection or within the term of the new rental licensing period need not comply with the provisions in subsections (a), (g), (h), (i), and (k) above, if the owner provides the city manager with a written statement that identifies the date of completion of the sprinkler system installation as being within the new license period. The city manager shall evaluate the reasonableness of the proposed date of completion of the sprinkler system installation based upon the size of the structure or complexity of proposed installation, and either approve the date proposed or specify an earlier date. A requirement of an earlier date of completion may be appealed to the board of appeals. Failure to have the sprinklers installed by the approved date, or the expiration of the rental license, whichever comes first, requires the owner to comply with the original correction notice within thirty days.

(m) Historic Structures. Individually landmarked structures and contributing structures in designated historic districts under Chapter 10-13, "Historic Preservation," B.R.C. 1981, need not comply with subsections (g), (h) and (k) above if a sprinkler system complying with the coverage requirements of the 1994 International Building Code Standard 9-1, as adopted in this title, has been installed throughout the building. But for individual dwelling or rooming units, such system need only provide coverage by a single sprinkler head placed immediately inside a door to such unit which exits into a common area. Nothing in this section permits a reduction in fire resistance in such structures, or reduces requirements found in other sections of this code.

Ordinance Nos. 5494 (1992); 5798 (1996); 7189 (2002).

10-2-24 Manager may Record Notices with Clerk and Recorder.

(a) When the city manager finds that there is a violation of this chapter, the manager may record a notice to that effect with the Boulder County Clerk and Recorder against the title of the land upon which the dwelling is built. When the condition upon which the notice described in the record was based has been corrected, the manager, upon demand of an interested person, shall provide a written release.

(b) If the city manager determines, after inspection, notice of violation, and opportunity for appeal under this chapter, that a room in a dwelling does not meet the requirements of this chapter for a habitable room and that the location or design of the room might lead a reasonable person to believe that the room was habitable under this chapter, the manager may record a notice that such room is not habitable with the Boulder County Clerk and Recorder against the title of the land upon which the dwelling is built.

Ordinance Nos. 5270 (1990); 7189 (2002).

1Adopted by Ordinance No. 7156.

#### 10-2.5-1 Legislative Findings and Statement of Purpose.

The city council of the City of Boulder, Colorado, hereby makes the following legislative findings and determinations of fact:

(a) The Boulder Revised Code presently contains various provisions enacted under the police power of the city which are intended to maintain order and promote the health, safety and welfare of the residents of the city.

(b) Existing code provisions are directed towards the conduct of persons on private property, and are intended to ensure that neither the conduct of such persons, nor the physical condition of such properties, constitutes a nuisance to other residents in the vicinity of the properties or passers-by on the public rights-of-way.

(c) Various code provisions, including those pertaining to unreasonable noise, trash, litter, assault, brawling and harassment, are enforced by the filing of criminal prosecutions against the persons immediately responsible for violations of the same.

(d) Notwithstanding these enforcement efforts, recurring code violations on parcels of property in the city can result in the creation of public nuisances on such properties which seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city.

(e) Public nuisance laws exist under the state statutes, but such laws are enforceable only in the state courts and not in the municipal court.

(f) Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public nuisances.

(g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.

(h) It is necessary and desirable in the public interest to enact a local public nuisance law in order to: eliminate local public nuisances by removing parcels of real property in the city from a condition that consistently and repeatedly violates municipal law; make property owners vigilant in preventing public nuisances on or in their property; make property owners responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and otherwise deter public nuisances.

(i) The purpose of this chapter is to enact such a local public nuisance law.

(j) Premises governed by the Colorado Beer Code and Colorado Liquor Code need not be regulated by the provisions of this ordinance, because regulations promulgated under Articles 46, 47 and 48 of Title 12 of the Colorado Revised Statutes establish adequate local remedies to address recurring disturbances or other activities occurring on such premises

which are offensive to the residents of the neighborhood in which such licensed establishments are located.

#### 10-2.5-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Abate" means to bring to a halt, eliminate, or, where that is not possible or feasible, to suppress, reduce and minimize.

"Leasehold interest" means a lessor's or lessee's interest in real property under a verbal or written lease agreement.

"Legal or equitable interest" means every legal and equitable interest, title, estate, tenancy and right of possession recognized by law or equity, including, but not limited to, freeholds, life estates, future interests, condominium rights, time-share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.

"Notice of violation" means a written notice advising the owner and tenant or occupant of a parcel that the parcel, such persons, and other affected persons may be subject to proceedings under this chapter if the remaining number of separate violations needed to declare the parcel a public nuisance under this chapter occur in or on the parcel within the required period of time. Such written notice shall be deemed sufficient if sent by first class mail or certified mail to the parcel, addressed to the owner by name and to all tenants and occupants and to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Each notice of violation shall be limited to one separate date or range of dates of violation. Although each notice of violation may list a number of specific code violations on a particular date or range of dates, it shall count as notice of a single violation for the purpose of establishing the separate violations needed to declare the parcel a public nuisance.

"Ownership interest" means a fee interest in title to real property.

"Parcel" means any lot or other unit of real property, including, without limitation, individual apartment units, or any combination of contiguous lots or units owned by the same person or persons.

"Public nuisance" means the condition or use of any parcel on or in which two or more separate violations have occurred within a twelve-month period or three or more separate violations have occurred within a twenty-four-month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or of passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel. However, this definition of "public nuisance" is subject to the defenses set forth in paragraph 10-2.5-8(a)(2), B.R.C. 1981. Also, a public nuisance is not established when the only person annoyed is a law enforcement officer engaged in carrying out official duties.

"Relative" means an individual related by consanguinity within the second degree as defined in Section 1-2-1, "Definitions," B.R.C. 1981.

"Separate violation" means any act or omission that constitutes a violation of the Boulder Revised Code, provided that: an ongoing and

uninterrupted violation shall be deemed to have been committed only on the last day during which all the necessary elements of the violation existed; and multiple violations committed within any twenty-four-hour period of time on or in the same parcel shall be considered a single separate violation, irrespective of whether the violations are otherwise related to each other by some underlying unity of purpose or scheme. It is not necessary that a criminal prosecution has been initiated in order to establish that a violation has occurred.

#### 10-2.5-3 Nature of Remedies.

The remedies provided in this chapter shall be civil and remedial in nature except that, if any person knowingly fails or refuses to abide by a temporary or permanent abatement order issued by the municipal court under the provisions of this chapter, such person shall be guilty of a misdemeanor.

#### 10-2.5-4 Nuisance Prohibited.

No person having an ownership or leasehold interest in any parcel, or having a contractual obligation to manage such parcel, or occupying such parcel, shall commit, conduct, promote, facilitate, permit, fail to prevent or otherwise let happen, any public nuisance in or on such parcel. Such persons shall abate any public nuisance upon the parcel and prevent any public nuisance from occurring on the parcel.

#### 10-2.5-5 Procedures in General.

(a) The municipal court is vested with the jurisdiction, duties and powers to hear and decide all causes arising under this chapter, and to provide the remedies specified herein.

(b) Any civil action commenced pursuant to the provisions of this chapter shall be in the nature of a special statutory proceeding. All issues of fact and law in such civil actions shall be tried to the court without a jury. No equitable defenses may be set up or maintained in any such action except as provided specifically in this chapter. Injunctive remedies under this chapter may be directed toward the parcel or toward a particular person.

(c) Public nuisances as defined by this chapter shall be strict liability violations. No culpable mental state shall be required to establish a public nuisance under this chapter or to obtain court approval for remedies provided by this chapter. However, if a separate violation is used by the city to establish the existence of a public nuisance that has not been previously adjudicated, all of the elements of such separate violation, including any culpable mental state required for the commission of such separate violation, must be established by the city by a preponderance of the evidence at the trial on the merits of any civil action commenced pursuant to the provisions of this chapter.

(d) Proceedings pursuant to the provisions of this chapter shall generally be governed by the Colorado Rules of County Court Civil Procedure unless this chapter provides a more specific rule, provided, however, that with respect to the rules related to injunctions, Rule 65 of the Colorado Rules of Civil Procedure shall control rather than Rule 365 of the Colorado Rules of County Court Civil Procedure. Where this chapter, the Colorado Rules of Civil Procedure, or the Colorado Rules of County Court Civil Procedure fail to state a rule of decision, the court shall first look to the Public Nuisance Abatement Act, Section 16-13-301, et seq., C.R.S., and the cases decided thereunder.

(e) Actions pursuant to the provisions of this chapter shall be filed by the office of the city attorney for the city or by such other legal council as the city attorney may designate to represent the city.

(f) In the event that the city pursues any criminal penalties provided in any other section of this code, any other civil remedies, or the remedies of any administrative action, the remedies in this chapter shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action initiated pursuant to this chapter agree otherwise.

(g) An action brought pursuant to the provisions of this chapter may be consolidated with another civil action brought pursuant to the provisions of this chapter that involves the same parcel of real property. However, such actions shall not be consolidated with any other civil or criminal action except upon the stipulation of all parties. No party may file any counterclaim, cross-claim, third-party claim or set-off of any kind in any action pursuant to the provisions of this chapter.

#### 10-2.5-6 Required Procedures Prior to Commencement of Public Nuisance Action.

(a) No action shall be brought pursuant to the provisions of this chapter until the following procedures have been utilized:

(1) Following the first violation that serves as the basis for a nuisance abatement action, written notice of violation shall be given by the city manager to the owner of the parcel at which the nuisance conditions occurred.

(A) The notice shall be personally served upon the owner or served by certified or first class mail to the parcel, addressed to the owner by name, mailed to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Personal service or service by mail shall be given no later than thirty days following the date of the violation.

(B) The notice shall specify the nature of the nuisance, the date or dates of the nuisance, and the provision of the Boulder Revised Code that was violated. When a nuisance occurred at a multi-unit building, the city manager shall exercise reasonable efforts to identify the unit or units involved in the problem.

(C) The city manager may also send copies of the notice to tenants or others if, in the judgment of the city manager, notice to such additional persons will assist in abatement of nuisance conditions. Where the city manager has determined that one or more tenants is probably responsible for the existence of nuisance conditions and can identify that tenant or tenants, the city manager shall provide notice to such tenant or tenants.

(D) The notice may be accompanied by educational materials which, in the judgment of the city manager, will be of assistance to responsible parties in abating and avoiding nuisance conditions.

(E) No notice shall be given pursuant to this provision, nor shall any event be utilized as a "first incident" for the purpose of bringing a nuisance abatement action, unless the city manager determines that

such incident properly could serve as the basis of the filing of a criminal case in municipal court.

(2) Following a second violation within a twelve-month period, or a third violation within a twenty-four-month period, but prior to the filing of a nuisance abatement action based upon those violations, the city manager shall schedule a settlement meeting involving all persons who will be named as party defendants in any nuisance abatement proceeding based upon those incidents.

(A) No meeting shall be set up based upon any incident unless the city manager, in the exercise of due diligence, determines that there is reasonable cause to believe that a violation or problem that could trigger the nuisance abatement process has occurred.

(B) Notice of the meeting may be given by personal service, by first class mail confirmed by a telephonic communication with the person to whom notice is provided, or by any other means so long as it can be established that notice of the meeting was actually received by the party to whom such notice was provided. Notice shall be provided within thirty days of the date of the final violation that serves as the basis for the meeting.

(C) Landlords, tenants, residents and others whose corrective action is deemed necessary by the city manager in order to resolve nuisance conditions will be asked to attend the settlement meeting. Owners of rental properties may participate in such meetings through representatives legally authorized to enter into voluntary compliance agreements on behalf of those owners.

(D) Neighbors, victims and others may also be invited to attend such meetings. However, attendance of such persons will not be required. When victims and impacted neighbors do not choose to attend such meetings, the city manager will attempt to determine the impact of nuisance conditions upon such persons and present that information at the meeting.

(E) The scheduling, location and format of settlement meetings will be determined by the city manager in a manner that the city manager believes will be best suited resolving the problem. The city manager may utilize mediators, facilitators, and other experts (including community volunteers) to assist in the resolution of the problem.

(F) The desired outcome of the settlement meeting will be to obtain a voluntary compliance agreement, in which relevant parties agree to take corrective action to abate and avoid nuisance conditions.

(G) If no voluntary compliance agreement is achieved or, if such agreement is achieved but the city manager determines that a party has failed to comply with the terms of such agreement, the matter may be referred to the city attorney for evaluation and potential filing of a nuisance abatement action.

(b) Upon receipt of a referral for nuisance abatement, the city attorney shall evaluate the case and determine whether or not to initiate a court action. In evaluating such a case, the city attorney may consider, without limitation, the following factors:

(1) The level of cooperation of potential parties in attempting to resolve issues;

(2) The level of disturbance associated with the violations and the impact of those violations upon neighbors or other victims;

(3) The degree to which potential parties to the nuisance abatement action have taken reasonable steps to try and resolve the problem;

(4) The existence or non-existence of prior cases or incidents in which potential parties to a nuisance abatement action have been involved and the nature of that involvement;

(5) The percentage of units in a multi-unit housing context in which problems have occurred;

(6) The existence or non-existence, within a multi-unit housing context, of a condominium association or other internal governing body or management structure that might provide an avenue for relief of the problem and the probability that such governing body or management structure will be able to resolve the problem;

(7) The existence of any equitable, factual, legal, ethical, or other consideration of the type that would normally be considered by an attorney when deciding whether or not to file a civil action;

(8) The availability of resources required for the prosecution of the potential case;

(9) The availability of any other enforcement tools that might be better suited to resolution of the particular problem; and

(10) The probability of prevailing at a trial on the matter.

#### 10-2.5-7 Commencement of Public Nuisance Actions; Prior Notification.

(a) Notification is required before filing civil actions pursuant to the provisions of this chapter as follows:

(1) At least ten calendar days before filing a civil action pursuant to the provisions of this chapter, a notice shall be posted at some prominent place on the parcel. A notice shall also be mailed to the owner of the parcel. The mailing of the notice shall be deemed sufficient if mailed by first class or certified mail to the owner at the address shown of record relating to the parcel for such owner in the records of the Boulder County Assessor. The posted and mailed notices shall state that the parcel has been identified as the location of an alleged public nuisance and that a civil action pursuant to the provisions of this chapter may be filed.

(2) Agents of the city are authorized to enter upon the parcel for the purpose of posting these notices and to affix the notice in any reasonable manner to buildings and structures.

(3) The city shall not be required to post or mail any notice specified herein if it determines that any of the following conditions exist:

(A) The public nuisance poses an immediate threat to public safety;

(B) Notice would jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or

(C) Any other emergency circumstance exists.

(b) An action pursuant to the provisions of this chapter shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit, which may be accompanied by a motion for a temporary abatement order, through the office of the city attorney.

(1) The parties-defendant to an action commenced under the provisions of this chapter and the persons liable for the remedies provided by this chapter may include the parcel of real property itself, any person owning or claiming any ownership or leasehold interest in the parcel, all tenants and occupants of the parcel, all managers and agents for any person claiming an ownership or leasehold interest in the parcel, any person committing, conducting, promoting, facilitating or aiding in the commission of a public nuisance, and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders. None of these parties shall be deemed necessary or indispensable parties. Any person holding any legal or equitable interest in the parcel who has not been named as a party-defendant may intervene as a party-defendant. No other person may intervene.

(2) The parties-defendant shall be served as provided in the Colorado Rules of Civil Procedure for other civil actions except as otherwise provided in this chapter.

(3) The summons, complaint and, if applicable, temporary abatement order shall be served upon the real property itself by posting copies of the same in some prominent place on the parcel.

#### 10-2.5-8 Effect of Abatement Efforts; Defense to Action.

(a) If a person named as a party-defendant is the owner of a parcel of real property and is leasing the parcel to one or more tenants, or the person named has been hired by the owner of the parcel to manage and lease the parcel, and the separate violations which constitute the alleged public nuisance were committed by one or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter that said person has:

(1) Evicted, or attempted to evict by commencing and pursuing with due diligence appropriate court proceedings, all of the tenants and occupants of the parcel that committed each of the separate violations that constitute the alleged public nuisance; and

(2) Has, considering the nature and extent of the separate violations, undertaken and pursued with due diligence, reasonable means to avoid a recurrence of similar violations on the parcel by the present and future tenants or occupants of the parcel.

(b) The defenses set forth in subsection (a) above shall not be available to any person who fails to attend a settlement meeting set up by the city manager prior to the filing of a nuisance abatement action.

(c) If, in the judgment of the city manager, a person who has received a notice of violation has established sufficient grounds to assert a defense to an action under subsection (a) above, the separate violation which was the subject of the notice of violation shall no longer be considered a separate violation within the meaning of this chapter. Nothing herein shall be construed to prohibit the introduction of evidence of said separate violation at a subsequent court proceeding, if a public nuisance action is commenced on the basis of additional separate violations, for the purpose of determining whether the defendants named in such action

have undertaken and pursued with due diligence reasonable means to avoid a recurrence of similar violations on the parcel of real property by the present and future tenants or occupants of the parcel.

(d) Except as provided in subsection (a) above, the fact that a defendant took steps to abate the public nuisance after receiving the notice of its existence does not constitute a defense to an action brought pursuant to the provisions of this chapter.

#### 10-2.5-9 Court Directed Settlement Procedure.

(a) After a nuisance abatement action is filed pursuant to the provisions of this chapter, any party may file with the court clerk and serve a request for a court settlement conference, together with a notice for setting of such request. The court shall grant such request if, in its judgment, a settlement conference is appropriate under the particular circumstances.

(b) At any time prior to trial, the court may, without a request of the parties, order that a settlement conference be held.

(c) Any settlement conference held pursuant to the provisions of subsections (a) or (b) above shall be conducted as follows:

(1) The court settlement conference shall, if the request is granted, be conducted by any available judge other than the judge assigned to handle a trial in the matter, or by such other settlement officer, referee or mediator as may be selected by the court for such purpose.

(2) All discussions at the settlement conference shall remain confidential and shall not be disclosed to the judge who presides at trial.

(3) Statements at the settlement conference shall not be admissible evidence for any purpose at the trial of the matter or in any other proceeding.

(d) Settlement conferences, when held, shall be provided without special costs to the parties except in the following circumstances:

(1) With court approval, the parties may agree to retain the services of a particular mediator or settlement officer to assist with settlement discussions. In this event, the parties must agree to pay for the services of such outside settlement facilitator and must agree about the terms of such payment.

(2) In the event that any party failed to participate in a pre-filing settlement meeting pursuant to the provisions of paragraph 10-2.5-6(a)(2), B.R.C. 1981, the court may order such party to pay up to one-half of the reasonable costs or value of court-ordered settlement procedures.

#### 10-2.5-10 Abatement Orders.

(a) Issuance and Effect of Temporary and Permanent Abatement Orders: The issuance of temporary or permanent abatement orders under this chapter shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders, preliminary injunctions, and permanent injunctions, except to the extent of any inconsistency with the provisions of this chapter, in which event the provisions of this chapter shall prevail. Temporary abatement orders provided for in this chapter shall go into effect immediately when served upon the property or party against whom they are directed. Permanent

abatement orders shall go into effect as determined by the court. No bond or other security shall be required of the city.

(b) Form and Scope of Abatement Orders: Every abatement order under this chapter shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in reasonable detail the acts and conditions authorized, required or prohibited; and shall be binding upon the parcel, the parties to the action, their attorneys, agents and employees, and any other person named as a party-defendant in the public nuisance action and served with a copy of the order.

(c) Substance of Abatement Orders: Temporary or permanent abatement orders entered pursuant to the provisions of this chapter shall be narrowly tailored to address the particular kinds of separate violations that form the basis of the alleged public nuisance. Such orders may include:

(1) Requiring any parties-defendant to take steps to abate the public nuisance;

(2) Authorizing the city manager to take reasonable steps to abate the public nuisance activity and prevent it from recurring, considering the nature and extent of the separate violations;

(3) Requiring certain named individuals to stay away from the parcel at all times or for some specific period of time;

(4) Issuing any order that is reasonably necessary to access, maintain or safeguard the parcel; and

(5) Issuing any order that is reasonably necessary for the purposes of abating the public nuisance or preventing the public nuisance from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to, or the temporary or permanent closure of, a parcel, or the appointment of a special receiver to protect, possess, maintain, or operate a parcel.

(d) Temporary Abatement Orders:

(1) The purpose of a temporary abatement order shall be to abate temporarily an alleged public nuisance pending the final determination of a public nuisance. A temporary abatement order may be issued by the court pursuant to the provisions of this section even if the effect of such order is to change, rather than preserve, the status quo.

(2) At any hearing on a motion for a temporary abatement order, the city shall have the burden of proving that there are reasonable grounds to believe that a public nuisance occurred in or on the parcel and, in the case of a temporary order granted without notice to the party-defendants, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the court may consider whether an affirmative defense may exist under any of the provisions of this chapter.

(3) At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the court shall temper the rules of evidence and admit hearsay evidence unless the court finds that such evidence is not reasonably reliable and trustworthy. The court may also consider the facts alleged in the verified complaint or in any affidavit submitted in support of the complaint or motion for temporary abatement order.

(e) Permanent Abatement Orders:

(1) At the trial on the merits of a civil action commenced under this chapter, the city shall have the burden of proving by a preponderance of the evidence that a public nuisance occurred on or in the parcel identified in the complaint. At such trial, the city must also prove, by a preponderance of the evidence, any separate violations asserted as grounds for the public nuisance action that have not been previously adjudicated. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

(2) Where the existence of a public nuisance is established in a civil action pursuant to the provisions of this chapter after a trial on the merits, the court shall enter a permanent abatement order requiring the parties-defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring or recurring on the parcel or in using the parcel.

(f) Violation of an Abatement Order:

(1) No person shall fail to comply with any abatement order issued pursuant to the provisions of this chapter. Each day that a person is in violation of any such abatement order shall constitute a separate violation of these provisions.

(2) Whether or not a prosecution is brought pursuant to paragraph (1) of this subsection, the municipal court shall retain full authority to enforce its abatement orders by the use of its contempt powers. In a contempt proceeding brought as a result of violation of an abatement order issued pursuant to this chapter, the municipal court may, in its discretion, treat each day during which a party is in violation of an abatement order as a separate act of contempt.

10-2.5-11 Attorney's Fees.

(a) Other than as specifically provided by this section, attorney's fees shall not be awarded to any party in a nuisance abatement proceeding brought pursuant to the provisions of this chapter.

(b) Attorney's fees may be awarded at the discretion of the court under the following circumstances:

(1) Where there has been a judicial finding of the existence of a nuisance, as defined by the provisions of this chapter, whether such finding is made at trial or as part of a settlement in advance of a trial; and

(2) When the party found to be responsible for the nuisance failed to attend a settlement meeting set up by the city manager pursuant to paragraph 10-2.5-6(a)(2), B.R.C. 1981.

10-2.5-12 Motion to Vacate or Modify Temporary Abatement Orders.

(a) Timing of Motion to Vacate Temporary Order: At any time a temporary abatement order is in effect, any party-defendant or any person holding any legal or equitable interest in any parcel governed by such an order may file a motion to vacate or modify said order. Any motion filed under this subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

(b) Standard of Proof for Vacation of Temporary Order: The court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance was committed in or on the parcel. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the separate violations.

(c) Continuance of Hearing: The court shall not grant a continuance of any hearing set under this section unless all the parties so stipulate.

(d) Consolidation of Hearing with Other Proceedings: If all parties consent, the court may order the trial on the merits to be advanced and tried with the hearing on these motions.

#### 10-2.5-13 Civil Judgment.

In any case in which a public nuisance is established, in addition to a permanent abatement order, the court may impose a separate civil judgment on every party-defendant who committed, conducted, promoted, facilitated, permitted, failed to prevent, or otherwise let happen any public nuisance in or on the parcel that is the subject of the public nuisance action. This civil judgment shall be for the purpose of compensating the city for the costs it incurs in pursuing the remedies pursuant to the provisions of this chapter, and shall not be punitive in nature. For the purpose of this section, costs include expenses of the type detailed in Section 13-16-122, C.R.S.

#### 10-2.5-14 Supplementary Remedies for Public Nuisances.

In any action filed under the provisions of this chapter, in the event that any one of the parties fails, neglects or refuses to comply with an order of the court, the court may, upon the motion of the city, in addition to or in the alternative to the remedy of contempt and the possibility of criminal prosecution, permit the city to enter upon the parcel of real property and abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts required of the defendants in the court's orders.

#### 10-2.5-15 Stipulated Alternative Remedies.

(a) The city and any party-defendant to an action pursuant to the provisions of this chapter may voluntarily stipulate to orders and remedies, temporary or permanent, that are different from those provided in this chapter.

(b) The court shall make such stipulations for alternative remedies an order of the court and they shall be enforceable as an order of the court.

#### 10-2.5-16 Remedies Under Other Laws Unaffected.

Nothing in this chapter shall be construed as limiting or forbidding the city or any other person from pursuing any other remedies available at law or in equity, or requiring that evidence or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this chapter.

#### 10-2.5-17 Limitation of Actions.

Actions pursuant to the provisions of this chapter shall be filed no later than one year after the final public nuisance incident that serves as the

basis for the bringing of an action pursuant to this chapter. This limitation shall not be construed to limit the introduction of evidence of any other separate violations that occurred more than one year before the filing of the complaint for the purpose of establishing the existence of a public nuisance or when relevant for any other purpose.

#### 10-2.5-18 Effect of Property Conveyance.

When title to a parcel is conveyed from one person to another, any separate violation existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance exists with respect to such parcel, shall not be so used unless a reason for the conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions of this chapter. It shall be a rebuttable presumption that a reason for the conveyance of the parcel was to avoid the parcel from being declared a public nuisance pursuant to the provisions of this chapter if: (a) the parcel was conveyed for less than fair market value; (b) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person conveying the parcel; or (c) the parcel was conveyed to a relative of the person conveying the parcel.