

TITLE 13
HEALTH AND QUALITY OF ENVIRONMENT^{1, 2}

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¹ **Editor's note**—Section 3 of Ord. No. 35-1985 revised former Ch. 11 by designating §§ 11-1.1—11-1.10 as Article I, §§ 11-2.1—11-2.9 as Article II and §§ 11-3.1—11-3.3 as Article III, to allow for the inclusion in said chapter of new Article IV. During the 1995 recodification, each of the above Articles were codified as separate chapters to this Title 13.

² **Cross references**—Rabies control, § 6.12.010 et seq.; noise abatement, Title 18; solid waste, Title 12; impoundment of motor vehicles, § 24.08.010.

Chapter 13.01

ECOLOGICAL BILL OF RIGHTS

Sec. 13.01.010. Ecological Bill of Rights.

The City shall from time to time adopt an Ecological Bill of Rights that establishes and projects the City's philosophy for protecting environmental quality. The Ecological Bill of Rights shall serve as one (1) of the guides to all land use development and planning, based on the philosophy of "allowing the use of our natural resources, but not depleting them beyond their ability to recover at their natural rate." The City shall from time to time adopt and update action steps to accomplish the goals in the Ecological Bill of Rights. Once adopted, the Ecological Bill of Rights shall be made available for public inspection in the City Clerk's office, the Community Development Department and the Environmental Health Department. ([Ord. No. 13-2000](#), § 1)

Chapter 13.04

WATER QUALITY¹

¹ Cross reference—Water service.

Sec. 13.04.010. Definitions.

(a) *Composting Toilet* shall mean: A human waste disposal system consisting of a toilet that uses little or no water connected to a specially built tank in which waste material is decomposed by aerobic bacteria.

(b) *Enjoined* shall include temporary, preliminary and permanent injunctive relief.

(b) *Municipal water supplies* means all surface and underground water rights, whether absolutely or conditionally decreed, of the City, which are used or are capable of being used for any beneficial purpose, including, without limitation, municipal, commercial, aesthetic, irrigation, minimum stream flow, fish and game propagation, recreation, domestic, industrial uses and augmentation and exchange.

(d) *Nonpoint source* means any source of pollutant other than a point source and includes, without limitation, water use and development practices, activities which encroach on riparian areas, vegetation disturbance, soil disturbance and earth movement, impervious cover and storm water runoff from developed areas.

(e) *Permit* means a permit lawfully issued pursuant to Public Law 92-500, the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251, et seq.) or pursuant to Section 25-8-501, C.R.S. 1973 et seq.

(f) *Person* means an individual, corporation, partnership, association, municipality, district, federal or state agency, commission or other state or federal body or political subdivision thereof.

(g) *Point source* means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or concentrated animal feeding operation from which pollutants are or may be discharged.

(h) *Pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste dirt and slurry.

(i) *Presumption* means that any person charged with the waste of water resources shall bear the burden of proving that the water diversions which were wasted did not contribute to or result in a degradation of the water quality standards set forth in Section 13.04.020 below.

(j) *Sources* means any area which contributes to the water supply of any stream or river and includes, without limitation, any drainage basin or underground aquifer.

(k) *Waste* means the failure to apply water diverted from any source which contributes to municipal water supplies to a beneficial use and includes, without limitation, causing or permitting the application of water in excess of that reasonably required to accomplish the purpose or purposes for which the water is diverted; permitting water to escape from ditches, canals or other structures in excess of reasonable loss; and any diversion of water rights decreed for a given purpose under circumstance which cannot reasonably justify such usage. (Code 1971, § 11-1.1; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 2; [Ord. No. 16-2012](#))

Sec. 13.04.020. Water quality standards.

Within the jurisdictional areas set forth in Section 13.04.030 below, the standards for water quality shall be those standards adopted from time to time by the Water Quality Control Commission pursuant to Sections 25-8-202(b) and 25-8-404, C.R.S. 1973, as applicable to the waters located within the jurisdiction of this Chapter. Said standards are incorporated herein by reference. (Code 1971, § 11-1.2; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 2, 3[a])

Sec. 13.04.030. Jurisdiction for water quality.

Pursuant to Section 31-15-707(1), C.R.S. 1973 and for the purpose of maintaining and protecting its municipal water supply from injury and pollution, the City shall exercise regulatory and supervisory jurisdiction within the incorporated limits of the City of Aspen and over all streams and sources contributing to municipal water supplies for a distance of five (5) miles above the points from which municipal water supplies are diverted. (Code 1971, § 11-1.3; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 2)

Sec. 13.04.040. Discharges unlawful.

Within the jurisdictional areas defined in Section 13.04.030 above, it shall be unlawful for any person to discharge from either a point on a nonpoint source any pollutant or engage in any activity which will result in the degradation of water quality below the standards set forth in Section 13.04.020 above. (Code 1971, § 11-1.4; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 2, 3(b))

Sec. 13.04.050. Waste prohibited.

Within the jurisdictional areas defined in Section 13.04.030 above, it shall be unlawful for any person to waste water resources. The failure to apply water to a beneficial use shall give rise to a presumption of waste. (Code 1971, § 11-1.5; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 2, 3[c])

Sec. 13.04.060. Compliance with permits.

Compliance with an applicable permit held by any person charged with a violation of this Chapter shall constitute an absolute defense to any such violation. (Code 1971, § 11-1.6; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 2)

Sec. 13.04.070. On-site waste disposal system.

(a) It shall be unlawful for the owner or occupant of any building used for residence or business purposes within the City to construct or reconstruct an on-site sewage disposal device for the purpose of collecting, storing or disposing of sewage; provided, however, that temporary, self-contained privies may be placed on construction sites or at public gatherings for the duration of the construction or attraction. These temporary facilities shall be maintained in a clean and sanitary condition at all times.

(b) If any structure within the jurisdictional limits defined in Section 13.04.030 above is currently being served by an on-site sewage disposal system and that system fails or malfunctions to the extent that it no longer is treating waste effectively and a danger is created that pollution of the City's water supply or ground water may occur, the owner or occupant shall make application within five (5) days from the date on which the owner or occupant first learns of said failure or malfunction to the applicable sanitation district for attachment of the structure to the public sewage system. If said structure is not within a sanitation district or capable of being attached to a public sewage system, the owner or occupant shall be responsible for controlling, repairing or replacing said failure or malfunction within five (5) days from the date on which said owner or occupant first learns of said failure or malfunction. If such an on-site sewage disposal system is to be installed, it shall be done so in conformance with "Pitkin County Regulations on Sewage Disposal Systems." Any malfunction or failure of an on-site waste disposal system is hereby defined to be a public nuisance.

(c) Notwithstanding any provision herein to the contrary, at the sole discretion of the Environmental Health Director, a composting toilet may be constructed upon publicly owned property or upon privately owned property within the City of Aspen in excess of five (5) acres. Such composting toilet shall be constructed and maintained pursuant to standards issued by the Environmental Health Department. If in the opinion of the Environmental Health Director any approved and installed composting toilet constitutes a potential threat to the public health, then the Environmental Health Director shall require improvements to the constructed toilet or to the maintenance procedures or shall revoke permission for use of the composting toilet. Any such requirements, including removal of the toilet, shall be completed by the property owner within ten (10) days of notice from the Environmental Health Director. . (Code 1971, § 11-1.7; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 2, 3[c]; [Ord. No. 16-2012](#))

Sec. 13.04.080 Disposal of animal carcasses.

Any animal which shall be killed or die from any cause in the City or within one hundred (100) feet of the banks of Maroon Creek, Castle Creek, Hunter Creek, the Roaring Fork River or any tributary thereto that is within the jurisdictional limits defined in Section 13.04.030 above shall be at once removed to a designated landfill by the owner or person having had such animal in his or her possession, control or charge and the carcass of such animal shall be buried or disposed of in a sanitary manner. If ownership of the animal cannot be determined, it shall be the responsibility of the animal control department to pick up and dispose of such an animal carcass as herein provided. (Code 1971, § 11-1.8; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 2, 3[c])

Sec. 13.04.090. Specific activities causing pollution.

(a) It shall be unlawful for any person or persons to have, keep or maintain any grazing livestock or other animal within one hundred (100) feet of any water treatment facility, reservoir, intake point, distribution stream, trench, inlet pipe or drain comprising a part of the City of Aspen municipal water facility.

(b) It shall be unlawful for any person to bathe or swim in any of the reservoirs or other part of the Aspen water utility. (Code 1971, § 11-1.9; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 2)

Sec. 13.04.100. Accumulation of standing water on land regulated.

It shall be unlawful for any person owning or occupying any premises, lot or parcel of land within the jurisdictional limits defined in Section 13.04.030 above to allow an accumulation of standing water that is or is likely to become offensive or injurious to the public health. Any person owning or occupying any premises, lot or parcel of land whereupon water shall be standing as aforesaid shall be deemed guilty of creating and maintaining a public nuisance. (Code 1971, § 11-1.10; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 2, 3(c))

Chapter 13.08

AIR QUALITY

Sec. 13.08.010. Air quality, declaration of policy.

The City Council hereby finds and declares that air quality is an important component of the health, safety and welfare of the citizens and community of the City and that the air quality in and around the City is threatened by various pollutants. The City Council finds and declares that it has a duty to not only protect and improve the air quality in and around the City for the health, safety and general welfare of the City but also for the economic and aesthetic well-being of the City as a resort community and to preserve the scenic natural resources of the community. To this end, it is the purpose of these Sections 13.08.010 through 13.08.060 to achieve the maximum practical degree of air purity possible by requiring the use of all available practical methods and techniques to control, prevent and reduce air pollution throughout the City and to maintain a cooperative air quality program with the County, the State and the United States Environmental Protection Agency. It is further declared that the control, prevention and abatement of air pollution within the City is a matter of significant local interest and that the following regulations are enacted by the exercise of the City's police powers, including those granted to the City pursuant to Section 25-7-128, C.R.S. 1973, as amended. (Code 1971, § 11-2.1; [Ord. No. 12-1983](#), § 6; [Ord. No. 74-1992](#), § 1)

Sec. 13.08.020. Definitions.

- (a) (Repealed by Ord. No. 40-2000)
- (b) *Charbroiler* shall mean a cooking device in a commercial food service establishment, either gas fired or using charcoal or other fuel, upon which grease drips down upon an open flame, charcoal or embers.
- (c) *Commission* shall mean the Colorado Air Quality Control Commission.
- (d) *Decorative gas appliance* shall mean a device utilizing natural gas as a fuel designed to appear as a real fireplace with a four (4) to five (5) inch Class B vent, fixed glass doors and a fire box no deeper than twenty-four (24) inches.
- (e) *Food service establishment* shall have the same meaning as the definition for the term in Section 12-44-202, C.R.S., as amended.
- (f) *High-fat-content meat* shall mean any meat and/or the meat portion of any meat product having a precooked fat percentage equal to or greater than fifteen percent (15%) by weight according to established laboratory testing procedures as determined by the department, such meat and/or meat

products including, without limitation, hamburger, chopped beef, ground beef, beef sausage, beef ribs, pork sausage, pork ribs and sausage made from any form of meat or combinations of meats. (Code 1971, § 11-2.2; [Ord. No. 12-1983](#), § 6; [Ord. No. 5-1986](#), § 2; [Ord. No. 20-1988](#), § 1; [Ord. No. 74-1992](#), § 1; [Ord. No. 47-1993](#), § 1; [Ord. No. 7-1999](#), § 1; [Ord. No. 40-2000](#), § 1 (part))

Sec. 13.08.030. Reserved.

Editor's note—Ord. No. 40-2000, § 1, repealed former § 13.08.030, pertaining to establishment of the Clean Air Advisory Board. Former § 13.08.030 was derived from Ord. No. 74-1992, § 1. (Code 1971, § 11-2.3)

Sec. 13.08.040. Reserved.

Editor's note—Ord. No. 40-2000, § 1, repealed former § 13.08.040, pertaining to composition and terms of the Clean Air Advisory Board. Former § 13.08.040 was derived from Ord. No. 74-1992, § 1. (Code 1971, § 11-2.4)

Sec. 13.08.050. Reserved.

Editor's note—Ord. No. 40-2000, § 1, repealed former § 13.08.050, pertaining to powers and duties of the Clean Air Advisory Board. Former § 13.08.050 was derived from Ord. No. 74-1992, § 1. (Code 1971, § 11-2.5)

Sec. 13.08.060. Reserved.

Editor's note—Ord. No. 40-2000, § 1, repealed former § 13.08.050, pertaining to powers and duties of the Clean Air Advisory Board. Former § 13.08.050 was derived from Ord. No. 74-1992, § 1. (Code 1971, § 11-2.6)

Sec. 13.08.070. Fireplaces and woodstoves.

(a) No person shall repair, alter, move, install or reinstall a solid fuel-burning device or gas log fireplace without having first obtained a building permit in accordance with Title 8 of this Code.

(b) No person shall replace a solid fuel burning device which is substantially destroyed, demolished or in need of replacement with another solid fuel burning device, unless the replacement is a Department certified device. Solid fuel burning devices lawfully existing and installed as of the date of enactment of this ordinance may be repaired to the extent that such repair, in the reasonable judgment of the Chief Building Inspector, is necessary to prevent the existence of an unsafe condition and that such repair will not affect the fire box.

(c) No person shall install a solid-fuel-burning device in any building unless it is a Department certified device.

(d) No person shall install more than two (2) Department certified devices in any single building.

(e) Each new solid-fuel-burning device, gas log fireplace or gas appliance shall be registered with the department upon installation and prior to final approval of such installation by the Department. Such registration shall be obtained by submission of the stove and fireplace registration form provided by the department and upon payment of the fee prescribed by Subsection 2.12.050(f) of this Code.

(f) Notwithstanding any provision of this Section to the contrary, any pre-existing wood burning fireplace which is destroyed or demolished by an act of God or through any manner not willfully accomplished by the owner may be restored as of right with a gas log fireplace; provided, however, that a building permit for reconstruction shall be issued within twelve (12) months of the date of the demolition or destruction (Code 1971, § 11-2.10; [Ord. No. 12-1983](#), § 6; [Ord. No. 5-1986](#), § 3; [Ord. No. 20-1988](#), §§ 1—4; [Ord. No. 38-1988](#), § 1; [Ord. No. 48-1988](#), § 1; [Ord. No. 54-1989](#), §§ 1, 2; [Ord. No. 74-1992](#), § 1; [Ord. No. 29-1993](#), § 1; [Ord. No. 7-1999](#), § 2)

Sec. 13.08.080. Coal burning prohibition.

No person shall burn coal in a solid-fuel-burning device. (Code 1971, § 11-2.11; [Ord. No. 74-1992](#), § 1; [Ord. No. 7-1999](#), § 3)

Sec. 13.08.090. Non-owner occupied dwelling units.

No property owner shall rent a building if a fireplace or woodstove is the sole source of heat. Property owners and not tenants, shall be liable for any penalty imposed for a violation of this Section. (Code 1971, § 11-2.12; [Ord. No. 74-1992](#), § 1; [Ord. No. 7-1999](#), § 4)

Sec. 13.08.100. Restaurant grills.

It shall be unlawful for any person to construct, maintain or operate a restaurant grill in a commercial food service operation within the City in a manner not in compliance with this Section.

(a) Charbroilers installed in food service establishments on or after January 1, 1993, shall install, operate and maintain a control device that reduces uncontrolled PM10 emissions by at least ninety (90) percent, according to manufacturer specified removal efficiencies. This Subsection (a) shall not apply to the replacement of an existing charbroiler with a charbroiler having a cooking surface area that is less than or equal to the cooking surface of the charbroiler being replaced. Food service establishments with charbroilers that re-open for business after being closed for a period of six (6) months or more shall be subject to the provisions of this Subsection to the same extent as food service establishments that install charbroilers on or after January 1, 1993. Control devices required by this Subsection (a) shall be maintained according to manufacturer's recommended guidelines. All owners and operators of food service establishments subject to the provisions of this Subsection (a) shall maintain records containing the control device's installation date, manufacturer's recommended guidelines and the actual maintenance performed on the control device.

(b) Charbroilers installed in a food service establishment after April 25, 1983 but before January 1, 1993, shall not be used to cook high-fat-content meat unless an emission control device that reduces uncontrolled PM10 emissions by at least ninety percent (90%) according to manufacturer specified removal efficiencies is installed and thereafter operated in accordance with manufacturer's suggested guidelines or instructions. Owners and operators of food service establishments subject to the provisions of this Subsection (b) who claim to serve meat that is not high-fat-content shall allow the Department to enter upon the establishment at all times reasonable for the purpose of obtaining a sample of meats prepared on the charbroiler or to review and evaluate test data maintained by the establishment illustrating the fat-content levels of the meat prepared in such establishment.

(c) Notwithstanding any provision to the contrary as contained hereinabove, food service establishments shall be exempt from the limitations as set forth in this Section 13.08.100 above for up to four (4) days per year during a period commencing May 1 and ending October 30 so as to accommodate the utilization of outdoor charbroilers in food preparation. Such exemptions shall be subject to those rules and regulations as may be adopted from time to time by the City Manager to implement this Subsection. (Code 1971, § 11-2.30; [Ord. No. 12-1983](#), § 6; [Ord. No. 74-1992](#), § 1; [Ord. No. 47-1993](#), § 2)

Sec. 13.08.110. Engine idling.

(a) Except as hereinafter provided, it shall be unlawful for any person to idle or permit the idling of the motor of any stationary motor vehicle for a prolonged or unreasonable period of time determined herein to be five (5) minutes or more within any one (1) hour period of time.

(b) This Section shall not apply when an engine must be operated in the idle mode for safety reasons including, but not limited to, the operation of cranes and forklifts used in the construction industry.

(c) The time required by a diesel-powered motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more while operating in a stationary position to achieve a temperature of one hundred twenty (120) degrees Fahrenheit and an air pressure of one hundred (100) pounds per square inch, shall not be included in the computation of the five (5) minutes determined herein to be a prolonged or unreasonable period of time. The temperature and air pressure as indicated on the vehicle's gauges may be used for determining the diesel engine's temperature and air pressure.

(d) The time during which transportation vehicles are actively loading or discharging passengers shall not be included in the computation of the five (5) minutes determined herein to be a prolonged or unreasonable period of time. A *transportation vehicle* shall be defined for purposes of this Section to mean motor vehicles designed to transport a minimum of sixteen (16) persons. (Code 1971, § 11-2.70; [Ord. No 74-1992](#), § 1)

Sec. 13.08.120 Smoking Vehicles

13.08.120.01 Applicability and Statement of Purpose.

- (a) **Applicability.** This Chapter applies to diesel-powered motor vehicles having a gross vehicle weight rating of 14,001 or more pounds, which are considered heavy duty diesel vehicles (HDDV).
- (b) **Purpose.** Aspen's Outdoor Air Quality program manages many air quality measures and develops new programs and projects that continue to protect our air quality with a changing climate. The Opacity Standard on HDDVs will improve Aspen's air quality by allowing for the local enforcement of a state Opacity Standard for HDDVs.

13.08.120.02 Definitions

- (a) **Air Pollutant** means any fume, smoke, particulate matter, vapor or gas or any combination thereof, but does not include water vapor or steam condensate.
- (b) **Emission** shall mean the discharge or release of one (1) or more Air Pollutants into the atmosphere.
- (c) **Emit** shall mean to discharge, release, or to permit or cause the discharge or release of one (1) or more Air Pollutants into the atmosphere.
- (d) **Engine** shall mean any internal combustion machine such as found in motor vehicles which utilize liquid fuel for combustion.
- (e) **Heavy-duty diesel vehicle or HDDV** means a diesel-powered Vehicle or bus with a Gross Vehicle Weight Rating (GVWR) of greater than 14,000 pounds.
- (f) **Opacity** means the degree to which an air pollutant obscures the view of an observer expressed in percentage of obscuration, or the degree, expressed in percent, to which transmittance of light is reduced by the air pollutant.
- (g) **Opacity Meter** means an optical instrument which is designed to measure the Opacity of diesel exhaust. Opacity Meters to be utilized for the SAE J1667 test procedures must meet SAE J1667 specifications.

(h) Opacity Standard means any Air Pollutant which when Emitted is such a shade or density as to obscure an observer's vision to a degree in excess of forty percent (40%)

(i) Owner shall mean the person or entity that holds or possesses title to any Vehicle or other means of transportation, conveyance or machine whose Engine is Emitting Air Pollutants as described herein.

(j) Qualified Observer shall mean a person who is certified by Colorado Department of Public Health and Environment (CDPHE) in taking visual Opacity readings. Any person certified by the CDPHE after completion of a course in observing and grading visible Emissions in terms of Opacity is competent to express an opinion on degree of Opacity in any proceeding.

(k) Roadside Inspection means the testing of a HDDV's Emission for Opacity in a manner that meets the requirements set forth by the SAE J1667 and established by Section 13.08.120.03.

(l) SAE J1667 means the Society of Automotive Engineers' J1667 Snap Acceleration Smoke Specifications and Test Procedures set out in *J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Motor Vehicles*, © 1996 Society of Automotive Engineers Inc. (SAE), which document is hereby incorporated into this regulation by reference. The incorporation of the J1667 Recommended Practice into this Chapter by reference does not include later amendments to or editions of the material. To obtain a copy of the *J1667 Recommended Practices* visit the Society of Automotive Engineers, Inc. website at www.sae.org.

(m) Vehicle shall mean any on road mode of conveyance designed for highway speeds and delivers people or goods.

13.08.120.03 Testing and Roadside Inspection.

- (a) The Environmental Health & Sustainability Department shall develop a vehicle screening method, or methods, for conducting Roadside Inspections of HDDVs that operate within the City of Aspen. The purpose of such inspections shall be to determine whether such vehicles are in compliance with the Opacity Standard for HDDVs.
- (b) The Roadside Inspection of HDDVs shall be performed by a Qualified Observer at any location designated by the Environmental Health & Sustainability Director or any location acceptable to both the Qualified Observer and the HDDV Owner.
- (c) Qualified Observers. The Opacity test shall be administered by a Qualified Observer.
- (d) Enforcement by Qualified Observers. Enforcement of the Opacity Standard shall be by any code enforcement officer who is a Qualified Observer. As well, any such Qualified Observer may exercise discretion and issue a warning rather than a summons. Any warning so issued shall notify the individual of the nature of the violation and recommend that the cause of the violation be remedied as soon as possible. No other person may stop a HDDV for a violation of this Chapter, or make an arrest, or issue a summons and complaint for a violation of this Chapter, unless such person is so empowered by law.

13.08.120.04 Opacity Standard.

- (a) Opacity Standard. HDDVs shall maintain an Emission Opacity level that is at or below 40%. A HDDV will pass the Opacity test if its smoke measurement is at or below the Opacity level of 40%.
- (b) Responsible Party. Regardless of who is operating a HDDV at the time of violation of this article, it is the legal responsibility of the Owner thereof to provide for compliance with the provisions of this Chapter. Any summons issued for violation of this section shall likewise be issued to the Owner of the HDDV.
- (c) Test Results. Drivers and Owners of HDDVs that undergo the Roadside Inspection shall be given a copy of their test results.

13.08.120.05 Violation and Penalty.

- (a) Violation.
 - (1) It shall be unlawful for any person to own a HDDV or allow to be operated an HDDV in the City of Aspen that Emits or causes to be Emitted any Air Pollutant in excess of the Opacity Standard.
 - (2) It shall be unlawful for any person to fail to cooperate or allow to be tested a HDDV during a roadside inspection.
- (b) Penalty. A violation of this provision of this Chapter shall constitute a misdemeanor and shall be subject to the penalty set forth in section 1.04.080 of the City Municipal Code, except as provided in 13.08.120.05(c) below. Each day a violation continues constitutes a separate offense.
- (c) Minimum Fines. The minimum fine for a first offense violation shall be five hundred dollars (\$500) with a mandatory court appearance.
- (d) Authority. Authority is expressly provided to the judge of the municipal court to reduce or to suspend all or any part of fines in the event that the person charged with the violation provides proof to the court that the HDDV which Emitted the pollutant resulting in the violation has been repaired as provided in section 13.08.120.06 hereof.

13.08.120.06 Repair of HDDV.

- (a) Compliance Period. Any Owner who is given a ticket for a violation of this Chapter shall be provided the opportunity to either fix the HDDV or appear in municipal court on the regular court arraignment date next closest to the expiration of sixty (60) days thereafter to answer charges of the violation of this Chapter. Within the period prior to arraignment, the person summoned may either repair the HDDV to comply with the provisions of this Chapter; cease operating the HDDV within the City; or risk charges for additional violations of this Chapter.

- (b) If prior to the court appearance date, the HDDV which is the subject of the summons is repaired and found to be in compliance with the provisions of this Chapter after a test conducted by a Qualified Observer, the ticket will be dismissed by the Municipal Court upon proof of compliance without the need for the HDDV owner to appear. Such compliance shall be evidenced by an appropriate written document. The Qualified Observer who issued the ticket must present a compliance letter to the Court in order to obtain the dismissal.

The Qualified Observer may, upon request, extend the compliance period for a period of not to exceed fifteen (15) days from the date of request. The court shall be notified of the extension. ([Ord No.27a-2016](#))

Chapter 13.12

RUBBISH, WEEDS AND BRUSH CONTROL

Sec. 13.12.010. Removal of rubbish, weeds and brush required.

All rubbish and all weeds and brush which constitute a fire or health hazard shall be removed from all lots and tracts of land within the City and from the alleys behind and from the sidewalk areas in front thereof. (Code 1971, § 11-3.1; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 4)

Sec. 13.12.020. Notice; removal by City and assessment of cost for failure to remove.

(a) In the event any landowner shall fail to remove any such rubbish or weeds and brush which constitute a fire or health hazard as provided herein, the City Manager or his or her authorized agent may give the record owner of such lot or parcel of land written notice of such condition and require the removal of such weeds, brush and rubbish within fifteen (15) days of the date of such notice. It shall be unlawful for any landowner to fail or refuse to comply with such notice.

(b) If the owner of such property shall fail to remove the weeds, brush and rubbish within the period above provided, then the City may remove or have removed such weeds, brush and rubbish and shall thereupon charge the whole cost thereof, including inspection and other incidental costs in connection therewith, to the owner of such lots or parcels of land.

(c) In the event that the owner or owners of the lot or lots or tracts of land against which any assessment hereunder shall be made, shall fail, refuse or neglect to pay the same within twenty (20) days from the date of notice of such assessment, then and in this event, the assessment shall be certified by the Director of Finance to the County Treasurer of the county to be by him placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected together with a penalty added thereto to defray the costs of collection. All the laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and the redemption thereof, shall apply to and have full effect for the collection of all such assessments. (Code 1971, § 11-3.2; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 4)

Sec. 13.12.030. Notice in discretion of City Manager or his or her authorized agent.

The notices required by Section 13.12.020 above to be given to remove weeds, brush and rubbish shall be given at the sole discretion of the City Manager or his or her authorized agent and a determination by him that such a notice should be given because of the condition of such lots or tracts of land shall be conclusive on the question of whether the condition of such lots or tracts of land are such as warrant such action. (Code 1971, § 11-3.3; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), §§ 4, 5)

Chapter 13.16

SMOKING IN PUBLIC PLACES

Sec. 13.16.010. Short title.

This Chapter shall be known as and it may be cited as the "City of Aspen Clean Indoor Air Act." (Code 1971, § 11-4.1; [Ord. No. 35-1985](#), § 1)

Sec. 13.16.020. Legislative intent and purposes.

The City Council finds that the smoking of tobacco or any other weed or plant, is a form of air pollution, a positive danger to health and a material annoyance, inconvenience, nuisance, discomfort and a health hazard to those who are present in confined spaces and in order to serve public health, safety and welfare, the declared purpose of this Chapter is to control and limit the smoking of tobacco or any weed or plant, in public places and places of employment as hereinafter set forth. The City Council intends that the restrictions and limitations of this Chapter be viewed as minimum standards and should not be construed as limiting in any way the authority of persons in control of a public place from prohibiting smoking within their establishment altogether. (Code 1971, § 11-4.2; [Ord. No. 35-1985](#), § 1)

Sec. 13.16.030. Definitions.

(a) *Bar area* means an area comprising fifteen (15) feet or less from the perimeter of a permanent counter which is primarily devoted to serving alcoholic beverages and within which the service of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term *bar area* shall not include the restaurant/dining area. The City Council (or its designee) may extend the fifteen-foot limitation to encompass a larger area upon a demonstration by the owner of an establishment that such area is primarily devoted to the serving of alcoholic beverages (such as a barroom, cocktail lounge or similar facility) and the service of food is only incidental to the consumption of such beverages.

(b) *Dining area* means any enclosed area containing a counter or tables upon which meals are served, excluding the bar area.

(c) *Enclosed* means closed-in by a roof and four (4) walls with appropriate openings for ingress and egress and is not intended to mean areas commonly described as public lobbies.

(d) *Public place* means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: Banks, education facilities, health facilities, public transportation facilities, reception areas, restaurants, retail stores, retail service establishments and waiting rooms. A private residence is not a public place.

(e) *Smoking* means the combustion of any cigar, cigarette, pipe or similar article, using any form of tobacco or other combustible substance in any form.

(f) *Theater and auditorium* means any enclosed area devoted to exhibiting motion pictures or presenting theatrical performances, lectures or like entertainment.

(g) *Employee* means any person who is employed by any employer in consideration for monetary compensation or profit.

(h) *Employer* means any person, partnership or corporation, including municipal corporation who employs the services of any person(s).

(i) *Independently ventilated* means that the ventilation system for any area in which smoking is permitted and the ventilation system for any nonsmoking area do not have a connection which allows for the mixing of air from the smoking and nonsmoking areas. To be considered independently ventilated, the area shall be sufficiently sealed to prevent the escape of any smoke to adjoining areas by the use of appropriate dry wall, windows, doors, paints and sealants. The ventilation system shall be designed and operated so that there are no discernable tobacco odors detectable outside the building or in adjacent spaces in a multi-use building. The ventilation system shall be an engineered system approved by the Community Development Department. The Community Development Department, prior to the issuance of a building permit, shall verify compliance with the applicable provisions of this Chapter and shall review the submission of architectural, structural, electrical and HVAC plans as may be required.

(j) *Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work area, employee lounges, conference rooms and employee cafeterias. A private residence is not a place of employment.

(k) *Secondary activity area* means that portion of an eating establishment which is physically segregated, independently ventilated and primarily devoted to secondary activities within which the service of food and alcoholic beverages is only incidental. Examples of secondary activities include billiard rooms, game rooms, reading rooms and the like. A secondary activity area, if not a free standing building, shall have an independent heating, ventilating and air conditioning ("HVAC") system, completely isolated from all other HVAC systems used in a common building structure. A *common building structure*, for purposes of this Chapter, shall mean the contiguous area of a public or private building that is known as a particular street address and contains common exterior walls, notwithstanding the partition of the interior space to provide for separate business establishments or the existence of multiple levels and shall include common areas, areas of ingress or egress and escalators and/or elevators. (Code 1971, § 11-4.3; [Ord. No. 35-1985](#), § 1; [Ord. No. 1-1996](#), §§ 1, 2)

Sec. 13.16.040. Smoking prohibited.

(a) Elevators. Smoking is prohibited and is unlawful within elevators in buildings generally used by and open to the public, including elevators in office, hotel and multifamily buildings.

(b) Hospitals and health care facilities. Smoking is prohibited and is unlawful in public areas of health care facilities and hospitals, as defined in Section 25-3-101, C.R.S., as it may be amended from time to time, including waiting rooms, public hallways and lobbies, except in specially designated smoking areas that are physically separated and independently ventilated.

(c) Public meeting rooms. Smoking is prohibited and is unlawful in hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted which require or provide direct participation or observation by the general public.

(d) Public restrooms. Smoking is prohibited and unlawful in public restrooms.

(e) Indoor service lines. Smoking is prohibited and is unlawful in indoor service lines in which more than one person is giving or receiving services of any kind, whether or not such service involves the exchange of money.

(f) Eating establishments. Smoking is prohibited and is unlawful in every publicly or privately owned coffee shop, cafeteria, short-order cafe, luncheonette, sandwich shop, soda fountain, restaurant or other eating establishment serving food, except under the following circumstances where smoking may be permitted at the option of the owner of the establishment:

(1) Any area exterior to the building in which the establishment is located.

(2) The smoking of cigarettes in any bar area as defined in Subsection 13.16.030(a). The smoking of pipes and cigars shall not be permitted in such area.

(3) Any enclosed rooms which are being used for private functions.

(4) In a secondary, physically separated and independent ventilated interior area that is specifically designated and signed as a "Smoking Permitted" dining area, provided that such secondary dining area shall not exceed in square footage an area equal to fifty (50) percent of the square footage of the primary dining area. The smoking of pipes and cigars shall be prohibited in such area.

(5) Smoking, including pipes and cigars, shall be permitted in a secondary activity area as defined in Subsection 13.16.030(k) located within an eating establishment if:

(i) such secondary activity area is specifically designated and signed as a "Cigar and Pipe Smoking Permitted" area;

(ii) such secondary activity area has an engineered ventilation system approved by the Community Development Department; and

(iii) the owner provides a nonsmoking secondary activity area for identical uses and which is at least twice the floor area square footage of the secondary activity area where the smoking of cigars and pipes is permitted.

(g) Retail stores. Smoking is prohibited and is unlawful in all public areas of retail stores, including grocery stores, retail service establishments, retail food production establishments and drugstores. (Code 1971, § 11-4.4; [Ord. No. 35-1985](#), § 1; [Ord. No. 1-1996](#), § 3)

(h) Outdoor areas of City owned property. Smoking is prohibited and is unlawful on any area of City owned property which has been designated a non smoking area. Such areas shall be clearly marked with appropriate no smoking signage. [Ord. No. 32-2010](#)

Sec. 13.16.050. Structural modifications not required.

(a) Nothing in this Chapter shall require the owner, operator or manager of any existing theater, auditorium, health care facility or any existing building, facility, structure or business, to incur any expense to make structural or other physical modifications to any area.

(b) Nothing in this Section shall relieve any person from the duty to post signs or adopt policies as required by this Chapter. (Code 1971, § 11-4.5; [Ord. No. 35-1985](#), § 1)

Sec. 13.16.060. Regulation of smoking in places of employment.

The places subject to regulation pursuant to Section 13.16.040 above shall not be deemed places of employment for purposes of this Section. The following regulations apply to places of employment.

(a) Within ninety (90) days of the effective date of this Chapter, each employer shall adopt, implement and maintain a written smoking policy which shall contain at a minimum the following:

(1) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways and elevators.

(2) Provision and maintenance of no smoking areas in cafeterias, lunchrooms and employee lounges that effectively provide a smoke-free environment for nonsmoking employees.

(3) Any employee in the place of employment shall be given the right to designate his or her immediate area as a nonsmoking area and to post it with appropriate sign or signs. The policy adopted by the employer shall include a definition of the term "immediate work area" which gives preferential consideration to nonsmokers.

(4) In any dispute arising in the work place under the smoking policy, the rights of the nonsmoker shall be given precedence.

(5) Except where other signs are required, whenever smoking is prohibited, conspicuous signs shall be posted so stating.

(b) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

(c) Notwithstanding the provisions of Subsection (a) of this Section, every employer shall have the right to designate any place of employment as a nonsmoking area.

(d) This Section is not intended to regulate smoking in the following places and under the following conditions:

(1) A private home which may serve as a place of employment.

(2) Any property owned or leased by other governmental agencies.

(3) A private enclosed place of employment occupied exclusively by smokers, even though such place of employment may be visited by nonsmokers, excepting places in which smoking is prohibited by fire marshal or by other law, ordinance or regulation.

(e) An employer shall post "No Smoking" signs in any area designated as a nonsmoking area and "Smoking Allowed" signs in any area designated as a smoking area. (Code 1971, § 11-4.6; [Ord. No. 35-1985](#), § 1)

Sec. 13.16.070. Posting of signs.

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, signs shall be posted as follows:

(a) In public places where no smoking is permitted pursuant to this Chapter, a sign using the words "No Smoking" and/or the international no smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.

(b) In public places where certain areas are designated as smoking areas pursuant to this Chapter, the statement "No Smoking Except in Designated Areas" shall be conspicuously posted on all public entrances or in a position clearly visible on entry into the establishment. In addition, the person having the authority to manage and control any area designated as a nonsmoking area

pursuant to this Chapter, shall post or cause to be posted and prominently displayed and shall maintain "No Smoking" signs in conspicuous locations within said areas. All such signs shall clearly and conspicuously recite the phrase "No Smoking" and/or use the international no smoking symbol. The signs shall be posted not less than five (5) feet nor more than eight (8) feet above floor level and shall be of sufficient number and location to cause the message of at least one of the signs to be clearly visible, legible and readable. (Code 1971, § 11-4.7; [Ord. No. 35-1985](#), § 1)

Sec. 13.16.080. Exceptions.

(a) "No Smoking" areas are not required, although they are encouraged, in private areas; hotel, motel and lodge meeting and assembly rooms rented to guests; hotel and motel lobbies; areas and rooms while in use for private social functions, the facilities of a private or members only organizations, private hospital rooms, psychiatric or psychological counseling facilities, jails, bars or stores that deal exclusively in tobacco products and accessories. Notwithstanding anything to the contrary contained herein, the smoking of pipes and cigars shall not be allowed in hotel and motel lobbies.

(b) Any owner or manager of a business or other establishment subject to this Chapter may apply to the City Council (or such board or commission of the City authorized by the City Council to grant the same) for an exception or modification of the provisions of this Chapter due to unique or unusual circumstances or conditions, provided that it will be the burden of the applicant to show either that the provisions of this Chapter cannot be complied with without incurring expenses for structural or other physical modifications, other than posting signs or that due to unique or unusual circumstances, the failure to comply with the provision for which the exemption is requested will not result in a danger to health or annoyance, inconvenience or discomfort. (Code 1971, § 11-4.8; [Ord. No. 35-1985](#), § 1)

Sec. 13.16.090. Enforcement.

(a) The City Manager or the City Manager's designee shall be responsible for compliance with this Chapter with regard to facilities which are owned, operated or leased by the City.

(b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all "No Smoking" signs required by this Chapter. Owners, operators, managers or employees of same shall be required to orally inform persons violating this Chapter of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation and shall be their sole enforcement obligation hereunder.

(c) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Manager or City Manager's designee.

(d) The City Manager or the City Manager's designee may enforce the provisions of this Chapter by either of the following actions:

(1) Servicing notice requiring correction of any violation of this Chapter.

(2) Requesting the City Attorney to initiate appropriate enforcement proceedings, including, without limitation, the initiation of a complaint in Municipal Court or the institution of injunctive, abatement or other appropriate action to prevent, enjoin, abate or remove such violation.

(e) Any person convicted of violating any provision of this Chapter shall, upon conviction, be punished by a fine, up to the maximum amount allowed in Section 1.04.080 of this Code, for each separate offense and may be enjoined from any further or continued violation thereof. Each day any violation of this Chapter shall continue shall constitute a separate offense.

(f) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Code 1971, § 11-4.9; [Ord. No. 35-1985](#), § 1; [Ord. No. 12-1996](#), § 10)

Sec. 13.16.100. Penalties and relief.

(a) Any person, upon conviction of a violation of any provision of this Title, shall be subject to a fine, imprisonment or both a fine and imprisonment, as set forth in Section 1.04.080 of this Code, for each separate offense and may be enjoined from any further or continued violation hereof. A violation of Chapter 13.16 shall be punishable by a fine only. Each day any violation of this Title shall continue, shall constitute a separate offense hereunder.

(b) In addition to the penalties and relief provided for in Subsection (a) above, any person found in violation of any provision of Sections 13.04.010 to 13.04.100 of this Title shall reimburse the City for any expenses incurred in preventing pollution of the municipal water supplies caused by said person, any expenses incurred in restoring municipal water supplies to the standards set forth in Section 13.04.020 or any expenses incurred in improving any intake, treatment facility or other part of the water works, which improvement is necessitated by the violation found hereunder. (Code 1971, § 11-5.1; [Ord. No. 44-1981](#), § 1; [Ord. No. 12-1983](#), § 8; [Ord. No. 35-1985](#), § 1; [Ord. No. 12-1996](#), § 9)

Chapter 13.20

TREE REMOVAL PERMITS

Sec. 13.20.010. Legislative intent and purposes.

The City Council finds that trees provide important environmental, aesthetic and health benefits to the residents and guests of the City which extend beyond the boundaries of the property upon which trees may grow. The City Council further finds that trees enhance the real estate values of property upon which trees grow and neighboring properties. Large trees are a resource which cannot be fully replaced if injured, damaged or removed. Property development and construction activities can result in injury or loss of valuable trees in the City. It is the intent of this Chapter to preserve to the fullest extent possible existing trees considered desirable by the Manager of Parks and Recreation or his or her designee as hereinafter set forth. ([Ord. 34-1995](#), § 3)

Sec. 13.20.020. Removal of trees; permit required; valuation.

(a) Applicability of Section and definition. The terms and provisions of this Chapter shall apply to all private and public real property situated in or subsequently annexed to the corporate limits of the City. The term *tree* shall include, for purposes of this Chapter, all deciduous trees having a trunk diameter of six (6) inches or more, *Querus gambelli* (Gamble Oak), *Acer glabrum* (Rocky Mountain Maple), *Amelanchier spp.* (Serviceberry) and *Prunus Virginiana* (Chokecherry) with a trunk diameter of three (3) inches or more and coniferous trees having a trunk diameter of four (4) inches or more. Trunk diameters shall be measured in inches measured as close to four and one-half (4½) feet above ground as possible.

(b) Removal or damage to trees prohibited without permit.

(1) It shall be unlawful for any person, without first obtaining a permit as herein provided, to remove or cause to be removed any tree.

(2) It shall be unlawful for any person, without first obtaining a permit for tree removal as herein provided, to dig, excavate, turn, compact or till the soil within the dripline of any tree in

such a manner as to cause material damage to the root system of the tree. For purposes of this Subsection, the *dripline* of a tree is a cylinder extending from grade level down to a depth of ten (10) feet below grade, having a radius equal to the length of the longest branch of the tree, with the center of the cylinder located at the center of the trunk of the tree.

(3) It shall be unlawful for any person in the construction of any structure or other improvement to park or place machinery, automobiles or structures; or to pile, store or place, soil, excavated material, fill or any other matter within the dripline of any tree. During construction the Manager of Parks and Recreation or his or her designee, may require the erection of suitable barriers around all trees, including trees not included in the definition set forth at Subsection (a) above, to be preserved. These protection areas will be established on site in order to protect existing natural resources when appropriate. Roots must be protected from exposure to the elements with burlap or other suitable materials and these materials must remain moist during the extent of the project. In addition, during construction, no attachments or wires other than protective guy wires shall be attached to any tree.

(4) Where construction of structures or improvements on any property necessitates the removal or relocation of any trees, the Manager of Parks and Recreation or his or her designee, may, as a condition for the approval of the removal or relocation, require that the owner replace any removed or relocated trees with a tree or trees of comparable value on the affected property. When in the opinion of the Manager of Parks and Recreation or his or her designee, replacement of relocated trees cannot reasonably be accommodated on the affected property; the applicant shall pay a cash-in-lieu amount equal to the comparable value of the aggregate of all trees removed as determined pursuant to Section 13.20.020(e), below.

[\(Ord 16-2016 §1\)](#)

(5) It shall be unlawful for any person, without first obtaining a permit for tree removal as herein provided, to intentionally top, damage, girdle, limb up or poison any healthy tree. For purposes of this Section *topping* a tree is the removal of more than five percent (5%) of the height from the top of any deciduous tree or the removal of the terminal bud from a coniferous tree. The terminal bud of a coniferous tree is the highest bud on the tree.

(6) It shall be unlawful for any person, without first obtaining a permit as herein provided, to relocate any tree. If a relocated tree dies within two (2) years of relocation and is not replaced with a tree of equal value, the death of the relocated tree shall be deemed an unpermitted tree removal. This Section shall not apply to the initial planting of trees obtained from nursery stock.

(7) It shall be unlawful for any person to fail to provide the Manager of Parks and Recreation or his or her designee, with written notice, delivered at least four (4) working days in advance, of the time and date on which removal of any tree will occur. Written notice pursuant to this Section is required even if a permit for tree removal, as herein provided, has been obtained.

(8) Each violation of the above Subsections (b)(1—7) shall be a separate offense.

(c) Penalty. Any person convicted of violating any provision of Chapter 13.20 shall be subject to punishment as set forth in Section 1.04.080 of this Code.

(d) Tree removal permits.

(1) Any person wishing to obtain a permit or relocate a tree shall file an appropriate application with the Manager of Parks and Recreation or his or her designee. Such application

shall contain such information as the Manager of Parks and Recreation or his or her designee, shall require to allow adequate enforcement of this Section.

(2) On request of the Manager of Parks and Recreation or his or her designee and when necessary to adequately apprise the Manager of Parks and Recreation or his or her designee, of the intended tree removal, said application shall include a site plan showing the following:

- (i) Location of proposed driveways and other planned areas or structures on said site;
- (ii) Location of all trees four (4) inches or over identified by trunk diameter and species;
- (iii) Designation of all diseased trees and any trees endangering any roadway pavement or structures and trees endangering utility service lines;
- (iv) Designation of any trees proposed to be removed, retained and relocated and areas which will remain undisturbed;
- (v) Any proposed grade changes which may adversely impact any trees on the site.

(3) After filing said application, the Manager of Parks and Recreation or his or her designee, shall review the application (and site plan if required) and determine what effect the intended removal or relocation of trees will have on the natural and historic resources of the area. Based on a review of the following factors, the Manager of Parks and Recreation shall either grant or deny the requested permit:

- (i) Whether the trees intended for removal or relocation are necessary to minimize flood, snowslide or landslide hazards;
- (ii) Whether retention of the trees is necessary to prevent excess water runoff or otherwise protect the watershed;
- (iii) Whether the removal or relocation of the trees will cause wind erosion or otherwise adversely affect air quality;
- (iv) The condition of the trees with respect to disease, danger of falling and interference with utility lines;
- (v) The number and types of trees in the neighborhood, the contribution of the trees to the natural beauty of the area and the effect of removal or relocation on property values in the area;
- (vi) The necessity or lack thereof, to remove the trees to allow reasonable economic use and enjoyment of the property;
- (vii) The implementation of good forestry practices, including consideration of the number of healthy trees that the parcel of land in question can support;
- (viii) The adequacy of the methods proposed to be used to relocate any trees; and
- (ix) The impact of any tree on a historically designated property or adjacent right-of-way by considering the following matters:
 - (A) In cases where a tree is jeopardizing the physical integrity of a historically designated structure through contact with the building, heaving due to roots or shading that results in decay, deterioration or structural defect, this shall be justification for the issuance of a tree removal permit exempt from mitigation pursuant to Section

13.20.020(d). Examples of unacceptable impacts to a historically designated structure include: deterioration of exterior walls, foundations or other vertical supports; deterioration of flooring or floor supports or other horizontal members; deterioration of external chimneys; deterioration or crumbling of exterior plasters or mortars; ineffective waterproofing of exterior walls, roofs and foundations; the inability to retain paint on exterior surfaces; or excessive weathering of exterior surfaces. The applicant for a tree removal permit shall be required to submit proof of the damage that is occurring in the form of a written evaluation from a third party with expertise in structural engineering or a relevant building trade. The Manager of Parks and Recreation may suggest means to prevent the tree from causing further damage short of its removal if these actions would meaningfully reverse the problem.

(B) In cases where, per the advice of the Historic Preservation Commission, a tree detracts from the integrity of a landscape which has been historically designated for its own merits, this shall be justification for the issuance of a tree removal permit exempt from mitigation pursuant to Section 13.20.020(d).

(C) In cases where the visibility of the street facing facades of a historically designated structure are impacted by an evergreen tree which is not located in the City right-of-way, to the extent that the public enjoyment of the resource is seriously diminished per the advice of the Historic Preservation Commission, this shall be justification for the issuance of a tree removal permit exempt from mitigation pursuant to Section 13.20.020(d). The Manager of Parks and Recreation may consider whether the tree in question has a unique character to offset the negative impact to the structure. This character may include an unusual or unique species or specimen tree quality. The Manager of Parks and Recreation may suggest means to prevent the tree from obstructing the resource, short of its removal, if these actions would meaningfully reverse the problem.

(D) In cases where, per the advice of the Historic Preservation Commission, a tree is inconsistent with established historic landscape patterns in the area or landscape practices associated with the period of significance of the property or district, the removal or relocation of the tree should be considered, subject to mitigation pursuant to Section 13.20.020(d). The Manager of Parks and Recreation may consider whether the tree in question has a unique character to offset the negative impact to the structure. This character may include an unusual or unique species or specimen tree quality.

(E) In cases where, per the advice of the Historic Preservation Commission, the protection of a tree conflicts with the redevelopment of a historically designated property in a manner that is consistent with the "City of Aspen Historic Preservation Design Guidelines," the Manager of Parks and Recreation shall consult with the Historic Preservation Commission to consider the feasibility of all options including removal or relocation of the tree or redesign of the development. Unless the tree is an unusual or unique species or specimen tree quality, flexibility shall be allowed for its removal or relocation in favor of the best preservation option for the historic structure, subject to mitigation pursuant to Section 13.20.020(d).

(4) Where construction of structures or improvements on any property necessitates the removal or relocation of any trees, the Manager of Parks and Recreation or his or her designee, may, as a condition for the approval of the removal or relocation, require that the owner replace any removed or relocated trees with a tree or trees of comparable value on the affected property. When in the opinion of the Manager of Parks and Recreation or his or her designee, replacement of

relocated trees cannot reasonably be accommodated on the affected property; the applicant shall pay a cash-in-lieu amount equal to the comparable value of the aggregate of all trees removed. *Comparable value* for purposes of this Section shall mean a tree or trees of equal aggregate value and species to the replacement cost of the tree to be removed or relocated.

(5) No trees shall be removed from City property except in accordance with Chapter 21.20 of this Code.

(6) The removal of dead trees shall require prior notice to the Manager of Parks and Recreation or his or her designee and a permit from the City.

(7) In case of an emergency caused by a tree being in a hazardous or dangerous condition posing an immediate threat to person or property, such tree may be removed without resort to the procedures herein described; provided, however, that evidence of such an emergency is provided to the Manager of Parks and Recreation or his or her designee, within twenty-four (24) hours.

(8) After obtaining a permit as herein provided the responsible party must post the permit in such a manner that it is clearly visible from curbside of the property.

(e) Valuation of trees. When, in accordance with this Section, the value of a tree must be determined, the Basic Value shall be \$X per square inch of the cross sectional area of the tree at the point where the diameter of the tree is measured. In calculating the Basic Value, the following equation shall be used:

$$\text{Basic Value} = \$X \times \pi \times (D/2)^2$$

Where: D = the diameter of the tree in inches, measured at 4.5 feet from the ground.

X = the \$(dollar) value assigned in the Tree Fees – Mitigation Fee in Section 2.12.080.

([Ord. No. 34-1995](#), § 3; [Ord. No. 19-2004](#) § 1; [Ord. No. 16-2016](#) § 2)

Sec. 13.20.030. Fees.

The applicable administrative fees for tree removal permits and permits to landscape in the public right-of-way shall be as established in Section 2.12.080, Parks Department fees, where a *removal permit* is a request unrelated to construction activities and a *removal permit – development* is a request where construction of a structure or improvements on any property necessitates the removal or relocation of any trees.

([Ord. No. 19-2004](#), § 1; [Ord. No. 16-2016](#), § 3)

Sec. 13.20.040. Appeals.

Any person not satisfied with the action taken by the Manager of Parks and Recreation or his or her designee or any other City staff person with regard to an application pursuant to this Chapter shall have the right to take successive appeals, first to the City Manager and then to the City Council. An appeal to the City Manager shall be taken by filing with the City Clerk a signed statement that the applicant desires to appeal to the City Manager, along with a copy of the application and the written denial or the permit objected to. An appeal of a decision by the City Manager to the City Council shall be taken by filing with the City Clerk copies of the application, denial or permit and the written decision issued by the City Manager, along with a signed statement that the applicant desires to appeal to the City Council. Each appeal shall be filed within two (2) days, exclusive of Saturdays, Sundays and legal holidays, of the decision appealed from. An informal summary hearing shall precede a decision by either the City Manager or City Council, and advance notice of the hearing shall be provided to the applicant and the

City official whose decision is being appealed as soon as is practicable. The right to appeal an adverse decision by the City Manager to City Council shall be contingent upon City Council's regular meeting schedule. If the applicant's appeal cannot be heard by the City Council within ninety (90) days of the original decision then the City Manager's decision shall be final. ([Ord. No. 19-2004](#), § 1)

Chapter 13.24

WASTE REDUCTION

13.24.010 Definitions.

For purposes of this Chapter, the following terms shall have the meanings ascribed to them:

Disposable Paper Bag. The term Disposable Paper Bag means a bag made predominately of paper that is provide to a customer by a Grocer at the point of sale for the purpose of transporting goods.

Disposable Plastic Bag. The term Disposable Plastic Bag means any bag that is less than two and one-quarter mil thick and is made predominately of plastic derived from petroleum or from bio-based sources, provided to a customer at the point of sale for the purpose of transporting goods. Disposable Carryout Bag does not mean:

- (a) Bags used by consumers inside stores to:
 - (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish;
 - (3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and,
 - (4) Contain unwrapped prepared foods or bakery goods;
 - (5) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag.
- (b) Bags provided by pharmacists to contain prescription drugs;
- (c) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

Grocer. The term Grocer means a retail establishment or business located within Aspen City limits in a permanent building, operating year round, that is a full-line, self-service market and which sells a line of staple foodstuffs, meats, produce, household supplies, or dairy products or other perishable items. Grocer does not mean:

- (a) Temporary vending establishment for fruits, vegetables, packaged meats and dairy.
- (b) Vendors at farmer's markets or other temporary events.
- (c) Location where foodstuffs is not the majority of sales for that business.
- (d) Location where the facility is less than 3500 sq. ft.

Reusable Bag. The term Reusable Bag means a bag that is:

- (a) Designed and manufactured to withstand repeated uses over a period of time; and
- (b) Is made from a material that can be cleaned and disinfected regularly; and

- (c) That is at least 2.25 mil thick if made from plastic; and
- (d) Has a minimum lifetime of seventy five uses; and
- (e) Has the capability of carrying a minimum of eighteen pounds.

Waste Reduction Fee. The term Waste Reduction Fee means a City fee imposed and required to be paid by each consumer making a purchase from a Grocer for each Disposable Paper Bag used during the purchase.

13.24.020 Prohibitions

On and after the effective date:

- (a) No Grocer shall provide a Disposable Plastic Bag to a customer at the point of sale.
- (b) Nothing in this section shall preclude persons or Grocers from making Reusable Bags available for sale or for no cost to customers.

13.24.030 Paper Bag fee requirements

(a) Grocers shall collect from customers, and customers shall pay, at the time of purchase, a fee of \$0.20 for each Disposable Paper Bag provided to the customer.

(b) Grocers shall record the number of Disposable Paper Bags provided and the total amount of fee charged on the customer transaction receipt.

(c) A Grocer shall not refund to the customer any part of the waste reduction fee, nor shall the grocer advertise or state to customers that any part of the waste reduction fee will be refunded to the customer.

(d) A Grocer shall not exempt any customer from any part of the waste reduction fee for any reason except as stated in section 13.24.070.

13.24.040 Voluntary Opt In

- (a) Any store or business with a City of Aspen business license may voluntarily opt in to the Waste Reduction Program and apply the ban and waste reduction fee to its business by applying with the City of Aspen Environmental Health Department.

13.24.050 Retention, remittance, and transfer of the Waste Reduction Fee

(a) A Grocer may retain 25% of each waste reduction fee collected up to a maximum amount of one thousand dollars (\$1000) per month within the first twelve (12) months of the effective date of this ordinance and one hundred dollars (\$100) per month for all months thereafter.

- (b) The retained percent is limited to allowable use for the Grocer to:
 - (1) Provide educational information about the Waste Reduction Fee to customers;
 - (2) Train staff in the implementation and administration of the fee; and
 - (3) Improve or alter infrastructure to allow for the implementation, collection and administration of the fee.

- (c) The fees retained by a Grocer pursuant to this ordinance shall not be classified as revenue for the purposes of calculating sales tax;
- (d) The remaining amount of each fee collected by a Grocer shall be paid to the City of Aspen Finance Department and shall be deposited in the Waste Reduction and Recycling Account.
- (e) A Grocer shall pay and the City of Aspen shall collect this fee at the same time as the City Sales Tax. The City shall provide the necessary forms for Grocers to file individual returns with the City, separate from the required City Sales Tax forms, to demonstrate compliance with the provisions of the fee.
 - (1) If payment of any amounts to the City is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in Section 13.24.080.
- (f) The Waste Reduction Fee shall be administered by the City of Aspen Environmental Health Department.
- (g) Funds deposited in the Waste Reduction and Recycling Account shall be used for the following projects, in the following order of priorities:
 - (1) Campaigns conducted by the City of Aspen and begun within 365 days of the effective date of this act, to:
 - (A) Provide reusable carryout bags to residents and visitors; and
 - (B) Educate residents, businesses, and visitors about the impact of trash on the City's environmental health, the importance of reducing the number of disposable carryout bags entering the waste stream, and the impact of disposable carryout bags on the waterways and the environment.
 - (2) Ongoing campaigns conducted by the City of Aspen to:
 - (A) Provide reusable bags to both residents and visitors; and
 - (B) Create public educational campaigns to raise awareness about waste reduction and recycling;
 - (C) Funding programs and infrastructure that allows the Aspen community to reduce waste and recycle.
 - (D) Purchasing and installing equipment designed to minimize trash pollution, including, recycling containers, and waste receptacles;
 - (E) Funding community cleanup events and other activities that reduce trash;
 - (F) Maintaining a public website that educates residents on the progress of waste reduction efforts; and
 - (G) Paying for the administration of this program.
- (h) The Fees shall not be used to supplant funds appropriated as part of an approved annual budget.
- (i) No Waste Reduction Fee shall revert to the General Fund at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in Subsection (g) of this Section without regard to fiscal year limitation.

13.24.060 Required Signage for Grocers.

Every Grocer subject to the collection of the fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the City of Aspen imposed ban and fee.

13.24.070 Exemptions

A Grocer may provide a Disposable Paper Bag to a customer at no charge to that customer if the customer is a participant in a Colorado Food Assistance Program.

13.24.080 Audits and Violations

(a) Each Grocer licensed pursuant to the provisions of this Chapter shall maintain accurate and complete records of the fees collected, the number of Disposable Paper Bags provided to customers, the form and recipients of any notice required pursuant to this Chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each Grocer to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records.

(b) If requested, each Grocer shall make its records available for audit by the City Manager during regular business hours in order for the City to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.

(c) Violation of any of the requirements of this act shall subject a Grocer to the penalties set forth in this Section.

(1) If it is determined that a violation has occurred, the City of Aspen shall issue a warning notice to the Grocer for the initial violation.

(2) If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Aspen shall issue a notice of infraction and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense

C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court pursuant to Section 1.04.080.

(4) No more than one (1) penalty shall be imposed upon a Grocer within a seven (7) calendar day period.

(5) A Grocer shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

(6) The penalty shall double after fifteen (15) calendar days if the Grocer does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

(d) If payment of any amounts of the Waste Reduction Fee to the City is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due in the amount of:

- (1) A penalty of five percent (5%) of total due, not to exceed ten dollars (\$10) each month.
- (2) Interest charge of one percent (1%) of total penalty per month.

Chapter 13.25

Licensing of Tobacco Retailers

13.25.010 Incorporation of general licensing provisions.

The provisions of Chapter 14.04 City of Aspen Municipal Code (Licenses and Permits Generally) and Section 1.04.110 (Double Fee for Failure to Obtain Required Licenses), shall apply to this Chapter except where they are specifically modified by the provisions of this Chapter.

13.25.020 Definitions.

The following definitions shall apply throughout this Chapter:

- (a) *Cigarette* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
 - (2) tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
 - (3) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1)(a) above.
 - (4) the term includes all “roll-your-own,” i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by consumers as tobacco for making cigarettes.
- (b) *Department* means the City of Aspen Environmental Health Department, and any agency or person designated by the City Manager to enforce or administer the provisions of this Chapter.

- (c) *Electronic Smoking Device* means an electronic device that, when activated, emits a vapor, aerosol, fume or smoke that may be inhaled or absorbed by the user, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah and similar devices. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized or produces a fume or smoke during the use of the device intended for human consumption.
- (d) *Licensee* means the owner or holder of a Tobacco Product Retailer License.
- (e) *License* refers to the Tobacco Product Retailer license.
- (f) *Licensing Administrator* means the person(s) within the City government designated with responsibilities by the City Manager for license issuance, renewal and collection of fees.
- (g) *Minimum Legal Sales Age* means twenty-one (21) years of age or older.
- (h) *Mobile Vending* means any sales other than at a fixed location.
- (i) *Tobacco Product* means 1) any product which contains, is made or derived from tobacco or used to deliver nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to Cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, mints, hand gels; and 2) electronic smoking device; 3) notwithstanding any provision of subsections 1) and 2) to the contrary, “tobacco product” includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately. 4) The term “Tobacco Product” does not include: (i) any product that contains marijuana; and (ii) any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.
- (j) *Tobacco Product Retail Location* or *Retail Location* means any premises where Tobacco Products are sold or distributed to a consumer including, but not limited to, hookah bar, lounge or café, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine or structure where Tobacco Products are sold.
- (k) *Tobacco Product Retailer* means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Tobacco or Nicotine Products, or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.
- (l) *Tobacco Product Retailing* means the selling, offering for sale, or exchanging for any form of consideration a Tobacco Product.

(m) *Self-Service Display* means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(n) *Tobacco Paraphernalia* means any item designed for the consumption, use or preparation of Tobacco Products.

(o) *Vending machine* shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses product.

13.25.030 Minimum Legal Sales Age.

Tobacco Products shall not be sold to any person under the Minimum Legal Sales Age.

13.25.040 License requirements and prohibitions.

(a) Tobacco Product Retailer License required.

(1) It shall be unlawful for any person to act as a Tobacco Product Retailer in the City unless he or she has obtained a License and maintains the same in full force and effect pursuant to this Chapter for each location where Tobacco Product Retailing occurs.

(2) No license may be issued to authorize Tobacco Product retailing anywhere other than at a fixed location that is designated in the License application and approved by the Licensing Administrator. Tobacco Product Retailing by a persons on foot, from vehicles or through Mobile Vending is prohibited.

(3) Tobacco Retailing without a valid License is a nuisance as a matter of law.

(b) Display of License. Each License shall be prominently displayed in a publicly visible location at the licensed Tobacco Product Retail Location.

(c) Display of Minimum Legal Sales Age Requirements. The requirement of the Minimum Legal Sale Age for the purchase of Tobacco Retail Product shall be prominently displayed in the entrance (or other clearly visible location) of the Tobacco Product Retail Location.

(d) Other Prohibitions.

(1) A Tobacco Product Retail Location may only have one active License at one time. Every License is separate and distinct and specific to a designated location. The License cannot be assigned, delegated, sold, inherited or otherwise transferred between persons or transferred to a different location, except as provided in this Chapter. No Licensee shall exercise the privileges of any other License or delegate the privileges of its own License.

- (2) A person or entity may not apply for a License for a one year period after a License has been revoked.
- (3) No License shall be issued to any person under twenty-one (21) years of age.

13.25.050 Conditions of the Tobacco Product Retail License.

The following conditions shall apply to the Licensee:

- (a) Minimum age for persons handling Tobacco Products. No Person who is younger than the minimum age established by the City to purchase and possess the Tobacco Products shall, while employed at a Tobacco Product Retail Location, sell, stock, retrieve, or otherwise handle Tobacco Products.
- (b) Prohibition of self-service displays. Licensees shall stock and display all Tobacco Products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the Tobacco Product from an employee of the business to the customer.
- (c) Requirements of positive identification. No person engaged in Tobacco Product retailing shall sell or transfer a Tobacco Product to another person who appears to be under the age of thirty (30) years without first examining the identification of the recipient to confirm that the recipient is at least twenty-one (21) years of age.
- (d) No Licenses shall be issued within 500' of schools. No Licenses will be issued to retailers located within 500 feet from schools or youth populated areas (community specific locations, playgrounds, parks etc.), as determined by the Licensing Administrator. This restriction shall not apply to an existing Retail Location within 500 feet of a youth populated area.

13.25.060 Application procedure.

- (a) An application for a License shall be submitted and signed by an individual authorized by the person or entity making application for the License. It is the responsibility of each applicant and/or Licensee to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said License. No applicant and/or Licensee may rely on the issuance of a License as a determination by the City that the proprietor has complied with all applicable tobacco retailing laws.
- (b) All applications shall be submitted on a form supplied by the Licensing Administrator.
- (c) A licensed Tobacco Product Retailer shall inform the Licensing Administrator in writing of any change in the information submitted on an application for a License within thirty (30) business days of a change.

- (d) All License applications shall be accompanied by the payment in full of all fees as required in this Chapter.

13.25.070 Issuance of a Tobacco Product License.

Upon the receipt of a completed application for a License as required by this Chapter, the Licensing Administrator shall sign and issue a License within thirty (30) days which period may be extended by the Licensing Administrator for good cause unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (a) The information presented in the application is incomplete, inaccurate or false;
- (b) The applicant seeks authorization for a License at a location where this Chapter prohibits the issuance of a License;
- (c) The applicant seeks a License for a location that is not appropriately zoned for the use;
- (d) The applicant seeks authorization for a License and the applicant's current License is suspended or revoked;
- (e) The applicant is not qualified to hold the requested License under the provisions of this Chapter; or
- (f) The applicant and/or retail location is not in compliance with all City, state or federal laws;
- (g) The applicant is indebted to, or obligated in any manner to the City for unpaid taxes, liens or other monies; or
- (h) The payment of the licensing fee in the full amount chargeable for such License does not accompany such License application.

13.25.080 Denial of Tobacco Product License.

- (a) If the Licensing Administrator denies the issuance of the License, the Licensing Administrator shall notify the applicant in writing by regular mail postage prepaid on the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.
- (c) An applicant has the right to appeal the Licensing Administrator's denial of an application to the "Hearing Officer" that shall be appointed by the City Manager. Such an appeal shall be initiated by filing a written request with the Licensing Administrator within twenty (20) days of the date of the notice of denial of the issuance of a License.

- (d) The applicant's failure to timely appeal the decision of the Licensing Administrator is a waiver of the applicant's right to contest the denial of the issuance of the License.
- (e) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The standard of proof at such appeal shall be a preponderance of the evidence and the burden of proof shall be upon the applicant. The Licensee's failure to timely appeal the decision is a waiver of the Licensee's right to contest the suspension or revocation of the License.

13.25.090 License term, renewal and expiration.

- (a) Term. All Licenses issued under this Code shall be for the period of one (1) year or a fraction thereof and shall expire on the last day of December of each calendar year unless otherwise specifically provided.
- (b) Renewal of License. A Licensee shall apply for the renewal of the License and submit the renewal License fee no later than thirty (30) days prior to expiration of the existing term. The Licensing Administrator shall renew the License prior to the end of the term, provided that the renewal application and fee were timely submitted and the Licensing Administrator is not aware of any fact that would have prevented issuance of the original License or issuance of the renewal.
- (c) Expiration of License. A License that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a License requires submission of a new application. There shall be no sale of any Tobacco Products after the License expiration date and before the new License is issued.

13.25.100 License non-transferable.

- (a) A License shall not be transferred from one (1) person to another or from one location to another.
- (b) When a License has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new License for the remainder of the term of that License. All rights and privileges granted under the original License shall continue in full force and effect as to such survivors for the balance of the term of the License.

13.25.110 Fee for License.

- (a) The annual fee for original issuance of a License for applications filed in 2018 shall be five hundred dollars (\$500). The fee to issue or to renew a License may be changed from time to time by resolution of the City Council. The fee shall be calculated so as to recover the direct and indirect costs of administration and enforcement of this Chapter, including, for example, issuing a License, administering the License program, retailer

education and training, retailer inspection, compliance checks, community outreach and education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. Fees are nonrefundable except as may be required by law. In addition, from time to time, as deemed appropriate by License Administrator, the License may be increased in accordance with Article X Section 20 of the Colorado Constitution.

(b) All fees and interest from proceeds of License fees under this Chapter shall be deposited in a separate cash account established by the City. These funds are to be used exclusively to defray the costs of the local licensing program.

(c) As part of the annual budget process, the amount of fees charged by the City pursuant to this Section shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the City in connection with the adoption, administration and enforcement of this Chapter.

(d) Beginning with the fiscal 2018 budget, the amount of the fees charged by the City pursuant to this Section shall be fixed by City Council as part of its annual budget process. If, for any reason, such fees are not fixed by City Council as part of its annual budget process, the fees for the preceding year shall continue to in full force and effect until changed by City Council.

13.25.120 Compliance monitoring.

(a) Compliance monitoring of this Chapter shall be by the Department, as the Department (or its designee) deems appropriate.

(b) The Department shall have discretion to consider previous compliance check history or prior violations of a Licensee in determining how frequently to conduct compliance checks of the Licensee with respect to individual Licensees.

(c) The Department shall inspect each Tobacco Product Retailer at least two (2) times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any Licensee or other Person against the City or its agents.

(d) Compliance checks shall be conducted as the Department deems appropriate so as to allow the Department to determine, at a minimum, if the Tobacco Product Retailer is conducting business in a manner that complies with laws regulating access to Tobacco Products. When the Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Products.

13.25.130 Suspension or Revocation of License.

(a) The following shall be grounds for suspension or revocation of the Licensee's License:

(1) A violation by a Licensee or Licensee's officers, agents, or employees of any of the provisions of this Chapter, or any laws of the United States, the State of Colorado or ordinances of the City relating to the sale or furnishing of tobacco or Cigarettes to minors, or the storage or display of Cigarettes or tobacco products.

(2) Violations of any conditions imposed by the Licensing Administrator or Hearing Officer in connection with the issuance or renewal of a License.

(3) Failure to pay State or local taxes that are related to the operation of the business associated with the License.

(4) Loss of right to possession of the licensed premises.

(5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application;

(b) The City Manager shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of Licenses pursuant to this Chapter. The Hearing Officer shall have the authority to suspend, revoke, or impose remedial sanctions for violations.

(c) The Licensing Administrator shall commence suspension or revocation proceedings by petitioning the Hearings Officer to issue an order to the Licensee to show cause why the Licensee's License(s) should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the Licensee's License. The order to show cause shall set the matter for a public hearing before the Hearing Officer.

(d) Notice of the order to show cause order and hearing date shall be mailed to Licensee by regular mail, postage prepaid, at the address shown on the License no later than thirty (30) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.

(e) The notice to show cause hearing and any subsequent right to appeal shall be conducted and controlled by the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The standard of proof at such hearings shall be a preponderance of the evidence and the burden of proof shall be upon the Licensing Administrator and/or Department.

(f) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Hearing Officer shall consider the following factors:

(1) The nature and circumstances of the violation;

(2) Corrective action, if any taken by the Licensee;

- (3) Prior violations, if any by the Licensee;
- (4) The likelihood of recurrence of the violation;
- (5) Whether the violation was willful; and
- (6) Previous sanctions, if any, imposed on the Licensee.

13.25.140 Penalties and fines.^[1]_[SEP]

(a) Licensees: penalties and fines. In addition to any other penalty authorized by law, and if the Hearing Officer determines based on a preponderance of the evidence, that the Licensee, or any of the Licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to minors including but not limited to C.R.S. sections 18-13-121 and 24-35-503, the Hearing Officer may consider the following non-binding guidelines in determining the sanctions to be imposed upon a Licensee as follows:

- (1) One violation within thirty-six (36) months: a civil penalty of five hundred dollars (\$500) and/or suspension of the License for three (3) days.
- (2) Two violations within thirty-six (36) months: a civil penalty of one thousand dollars (\$1,000) and suspension of the License for seven (7) days.
- (3) Three violations within thirty-six (36) months: a civil penalty of one thousand five hundred dollars (\$1,500) and a minimum twenty (20) days suspension of the License.
- (4) Four violations within thirty-six (36) months: a civil penalty of two thousand dollars (\$2,000) and revocation of License.

The actual sanction imposed upon a Licensee for any violation may vary from the above-stated guidelines when warranted by the specific facts and circumstances of the case.

(b) After the effective date of this ordinance, it shall be unlawful for any Tobacco Product Retailer to sell a Tobacco Product without a License as mandated under this Chapter, or with a suspended or revoked License. In addition, the Hearing Officer may impose civil penalties of up to \$2,500 for each separate Tobacco Product sold during the period of non-compliance with this Chapter. A retailer whose License has been suspended or revoked 1) shall not display Tobacco Products in public view during the timeframe in which the License is suspended or revoked; and 2) advertisements relating to Tobacco Products that promote the sale or distribution of such products from the location that could lead a reasonable person to believe that such products can be obtained from that location shall not be displayed.

13.25.150 Enforcement.

(a)The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.

(b)Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall cause the offender to be subject to the penalties set forth herein or in the Aspen Municipal Code.

13.25.160 No Rights in License.

Every License issued under this Chapter confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of this Chapter. The License does not confer a property right of any kind. The License and privilege created by the License may be further regulated, limited or completely extinguished at the discretion of City Council or the electorate of the City, as provided in this Chapter, without any compensation to the Licensee. Nothing contained in this Chapter grants to any Licensee any vested right to continue operating under the provisions of this Chapter as they existed at the time the License was approved or issued, and every License shall be subject to any ordinance or prohibition adopted after the License was approved or issued.

13.25.170 Effective Date.

This Chapter shall become effective as of January 1, 2018 and enforceable on and after that date. Any Tobacco Product Retailer without a License after the effective date will be in violation of this Chapter. (Ord. No. 24, 2011; [Ord. No 17, 2017](#))

Updated January 2, 2018