

ORDINANCE DRAFTING

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I. Introduction

Good legislative drafting is a complex and difficult task. Its importance as a specialized skill of a municipal attorney is often underestimated. Clear legislative drafting avoids problems ranging in severity from administrative confusion to constitutional challenge.

A good ordinance expresses its intent and purpose **clearly, simply, and concisely**. It is **readable** and **readily understood** by the average citizen. It is **precise, consistent** in language and content, and **grammatically correct**. It does not violate any superseding **legal authority** and contains all the **necessary formalities** required by the municipality to be enforceable.

There are few objective measures we can use to determine the quality of individually crafted legislative acts before passage. Drafting errors are often discovered later when implementation and enforcement begin. The following guidelines, however, may serve as a useful checklist for avoiding common drafting pitfalls and ensuring that your legislation clearly accomplishes its intended purpose.

II. Drafting Issues Can Be Broken Into Two Components

A. Formal requirements:

1. Must follow statute or charter, if it specifies ordinance form.

a. **Title**

- (1) Constitutional requirement that all statutes have titles
doesn't apply to city ordinances.
- (2) If statute or charter requires title of an ordinance to contain reference to the specific provisions of the ordinance, provisions differing from those described in title may be void.

b. **Single subject matter**

If statute or charter requires ordinance to cover only a single subject matter, courts interpret "subject matter" broadly.

c. **Enacting clause**

“Substantial compliance” is sufficient.

d. Routine **findings** (e.g. home rule and health, safety and welfare clauses)

e. **Publication**

(1) Note publication requirements in statute/charter.

(2) Publication by title may be safer than full publication in case the ordinance contains errors.

f. **Effective date**

2. While these are important to ultimate validity, they will not be further considered in this presentation. Refer to state statute, city charter, city code and Ordinance Drafting Manual, Checklist.

B. Substantive Requirements

1. **Legislative Findings**

a. Findings are useful to support substantive validity of ordinance, that must be reasonable, nondiscriminatory, and not delegate legislative power without sufficient standards.

b. Findings can express legislative intent, although this must also be clear in language of ordinance.

c. **Put into body of ordinance**; do not use “whereas” clauses.

d. Codify all substantive provisions of ordinances.

2. **Emergency Findings**

a. Spell out specific need for emergency adoption.

b. If facts do not justify emergency adoption, ordinance will not be effective immediately upon publication, but may be effective at a later date.

3. **Legal Authority** to Adopt Ordinances

a. To legislate on the issue:

- (1) Is subject matter authorized by constitution and not limited by charter, if home rule city, or by statute, if statutory city?
- (2) Is subject matter a matter of statewide concern only (in which case, home rule city can augment provisions of state law, but cannot authorize what state law prohibits nor prohibit what state law authorizes?)
- (3) Is subject authorized under the city's general welfare/police power, which may make it more subject to judicial scrutiny than if expressly authorized by statute?

b. To legislate by ordinance (rather than by resolution)

- (1) hard line to draw
 - (a) must be by ordinance if statute, charter or code specify.
 - (b) should be by resolution if commemorative proclamation or ministerial as opposed to legislative acts.
- (2) test may be whether action is temporary or permanent (varies by state).
- (3) McQuillan cites examples of cases in which unless the charter says an act must be done by ordinance, the city can usually act by resolution.

4. **Requisites** of a Valid Ordinance

a. To be valid an ordinance must:

power;

- (1) be adopted by a duly created and legally existing municipal corporation;
- (2) emanate from the power of the municipal corporation;
- (3) relate to a subject within the scope of the corporation's
- (4) be consistent with the Constitution and laws of the United States and the state of incorporation and with the municipal charter;
- (5) be reasonable in its terms;
- (6) be adopted by the authorized legislative body, legally convened;
- (7) be in the required form;
- (8) be precise, definite, and certain in expression;
- (9) be passed in the manner required; and
- (10) be enacted in good faith, in the public interest alone, and designed to enable the corporation to perform its public government functions. (McQuillan, Municipal Corporations Sec. 15.16).

- b. The validity of ordinances adopted within a municipality's power and following formal requisites is presumed, and persons challenging such ordinances bear a heavy burden to invalidate them.

III. Drafting Style

A. Text of Ordinance

1. Use **short sections** or subsections of 1-2 sentences that can be subsumed within a single title or "catch line."

2. **Catch lines** are not substantive law, but **should be concise and accurate**, especially in criminal ordinances where police officers may use them to write complaints; they must give notice of the charge.
3. **Grammar and punctuation** are important, because they can affect the interpretation and meaning of an ordinance.
4. Use **simple, non-technical words**, unless the context clearly requires technical words. Define where necessary, but use commonly understood terms in their common meanings; don't torture terms into unexpected or uncommon meanings.
5. **Avoid subjective terms**, such as "acceptable" unless followed with a clear standard by which the enforcement officer can make them objective.
6. Use **mandatory language** when imposing duty or prohibiting action.
7. Impose duty on or prohibit action by a person. (e.g., "**No person shall own** or possess a dog in the city without a license," not "All dogs shall be licensed.")

B. Grandfathering Provisions

Federal and state constitutions prohibit retroactive effect of laws. This includes ordinances. Due process prohibits impairing vested rights existing before an ordinance. But an ordinance can require compliance with new standards (such as building codes) in the future, if circumstances change (thus, additions to existing structure may require the entire structure to be brought up to code standard). Clarity is essential to avoid disputes about the effect of ordinances on past approvals and applications filed during the legislative process.

C. Severability

One clause in a **code** applicable to the code and all future ordinances amending it is sufficient. (But ordinances not amending the code should contain severability clauses.)

D. Repeal by Implication

Such repeals are disfavored as sloppy drafting technique. It is often difficult to know later whether the legislature intended to repeal a somewhat inconsistent ordinance. It is

more time-consuming, but far better practice, to repeal or **amend every provision of the code that is intended to be affected** by an ordinance.

E. Penalty Clause

1. The penalty clause may exist once in the **code** and need not be part of each ordinance.
2. Be certain that all proscriptive ordinances for which a penalty may be sought are drafted in mandatory language “**No person shall . . .**”).
3. If a set of standards or conditions is required to be met (for instance to obtain or retain a license or permit), make sure that the ordinance also expressly imposes a penalty for failure to meet the standards in addition to subjecting licensee to **license revocation**. (e.g., in a building code, include a section making failure to meet the standards an offense, subject to specific municipal court penalty).

F. Amendments

Show changes expressly in the ordinance in **legislative format**, by striking deletions and highlighting (“redlining”) or capitalizing additions, unless the changes are so extensive to justify a repeal of entire section and reenactment with new text. Displaying actual changes makes it easier for public and council to see the precise changes made.

G. Adoption by Reference

State statute ordinarily permits statutory and home rule cities to adopt by reference (rather than verbatim) various types of codes (state laws and regulations, and uniform codes such as fire and building codes). The ordinance adopting such a code by reference must be published as per the charter or the state statutes. Certified copies of the code to be adopted must be available in the city clerk’s office for a set period before the public hearing and must be retained in the office of the clerk or chief enforcement officer throughout the time the code is in effect in the city. The ordinance should expressly set forth by name and date the code to be incorporated. When a uniform code is adopted with modifications, the changes should be set out in full in the adopting ordinance.

H. Drafting Tips

Use short, single-thought sentences

Use no unnecessary words (“The officer shall determine” instead of “The officer shall make a determination.”)

effect) Avoid redundancies and repetitions (null and void, cease and desist, force and effect)

Avoid ambiguity and an unintended choice between alternative meanings

Avoid commonly used internally inconsistent phrases (any and all, and/or)

Be consistent in language and style throughout the ordinance

Define unfamiliar terms and terms that have a special meaning within the ordinance. Use the defined terms consistently. Do not use the defined word within its own definition. State the definition as “...means” or “...includes”

Avoid technical terms where possible

Avoid lawyerisms and legalese (hereinafter, heretofore, such, said)

Use good grammar and punctuation

Use present tense whenever possible, try to avoid future tense

Use active voice, avoid the passive

Use simple sentence structures (subject, verb, object)

Use positive rather than negative statements

Use singular subjects - they include the plural

Use the correct words to define rules of conduct

“Shall” is mandatory and imposes a duty to act

“Shall not” is the general language of prohibition

“May” indicates authority or discretion

“May not” denies authority to act and is a prohibition, but “shall not” is the preferred form

Use “without limitation” after “including” each time to avoid implication of a limitation. A reference in a construction section of the code also will help: “The word “including” means “for example” and implies no limitation.”

I. Be Sensitive to Gender Neutrality

Awareness of and sensitivity to this issue in your drafting may not be obvious, but lack of it will be noticed

Choose gender-neutral nouns such as police officer rather than policeman

Avoid using the male third person singular pronouns unless the subject is an identified male. Find a substitute for he, his and him whenever the subject may be male or female, is unidentified or is unknown

Use these alternatives to avoid awkward construction:

Rewrite the sentence to eliminate the need for a pronoun

Use he or she or his or her (An applicant may not ...unless he or she...)
(s)he and he/she

Use the third person plural (they, their, them) as singular. This is gaining in practice, although it is still considered to be grammatically incorrect (An applicant may not...unless they...)

Use one, no one, anyone

Repeat the noun (If an officer denies a request, the officer shall...)

Use plurals as subject (If officers deny a request, they shall...)

Use articles a, an, the (An owner of a business must not conduct the business without first obtaining a license.)

Delete the pronoun (An owner of a business must not conduct business without first...)

J. Use the Resources of IMLA and state municipal leagues

With relatively few exceptions, a drafter will find that a municipal attorney somewhere is attempting to address a similar problem or has already drafted an ordinance on a similar topic:

Call an IMLA member

Use the IMLA Listserv

Use the IMLA Model Ordinance service

Keep IMLA and municipal league conference materials for future reference

Call IMLA or the municipal league

K. Use Internet Resources

Municipal codes of other jurisdictions can be obtained through the Internet

Internet research sites such as Findlaw continue to multiply

L. Examples of Clear Word Choices

Avoid:	If you can use:
able to	can
adequate amount/number of	enough
afford	give
aggregate	total
aid and abet	aid
any and all	a/each/all
applicable to	applies
are hereby required to	shall

at the time when	then
at this point in time	now
at the present time	now
attributable to	from/by
authorize and direct	must
be and the same is hereby	is
binding upon	binds
by and between	between
constitute and appoint	appoint
covenant and agree	agree
deem	consider
directed to	shall
does not operate to	does not
due to the fact that	because
during the course of	during
during such time as	while/during
each and every	each
each and all	each
effectuate	carry out
excessive number of	too many
exclusively	only
for the purpose of	to
for the reason that	because
for and during the period	during
for the duration of	to/for/during

from and after	after
full and complete	total
full force and effect	effective
have and obtain	have
hereby authorized to	may
in excess of	more than
in lieu of	instead of
in accordance with	by/under
in connection with	with/about/concerning
in the near future	when
in the event that	when/if
in as much as	since
initiate/institute	begin
made and entered into	made
maintain	continue
manner in which	how
necessitate	require
not prohibited from	may
notwithstanding the fact that	nevertheless/although
null and void and of no effect	void
of the ground that	because
on the part of	by
on a daily basis	daily
on or before	by
order and direct	must

originate	start
over and above	in addition to
per annum	a year
permitted to	may
power and authority	power/authority
prior to	before
provided, however	provided
question as to whether	whether
render	make/give
required to	shall
said, same, such	the, this that
shall be lawful to	may not
shall have and may exercise	may
sole and exclusive	exclusive/only
solely	only, alone
stand and be in full force	effective
subsequent to	after
sufficient number of	enough
terminate	end
then and in that event	then
to the extent that	if/when
unable to	cannot
understood and agreed	accepted
until such time as	until
unto	to

utilize	use
vested with power and authority	may
when and as	since
with reference to	about/concerning
within and under the terms of	under

OFFICE OF THE CITY ATTORNEY

CITY OF BOULDER

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ORDINANCE DRAFTING STYLE MANUAL

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ORDINANCE DRAFTING STYLE MANUAL

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ORDINANCE DRAFTING CHECKLIST

Here is a checklist for drafting unexceptional ordinances (references are to this manual unless otherwise indicated):

1. Publish by title only (§16); be sure that the title clearly indicates the substances of the ordinance (§15).
2. Includes:
 - a. Enacting Clause (Charter §16; §4);
 - b. Amending Clause, if appropriate (§5);
 - c. A police power finding (§13);
 - d. A finding of local concern, if appropriate (§13);
 - e. Specific emergency findings, if appropriate (§12, 13);
 - f. Finding of publishing by title only (§16).

ORDINANCE DRAFTING STYLE MANUAL

This style manual for drafting ordinances for adoption in Boulder presents a series of rules that, while they may seem somewhat arbitrary, should enhance the consistency of the Boulder Revised Code and subsequent additions thereto. Besides obvious grammatical rules and some legal requirements, there are no fixed rules of drafting style. We should use the following suggestions in order to keep the code consistent and improve its readability and interpretation by the City departments, the public, and the courts. The manual is adapted from the "Legislative Drafting Manual" prepared by the Legislative Drafting Office of the Colorado General Assembly (1977). Grammar, punctuation, and style suggestions come from Strunk and White, "The Elements of Style" (1972), The Harvard Law Review Association, "A Uniform System of Citation: (13th ed. 1981) ("Bluebook"), and U.S. Government Printing Office, "Style Manual" (1973).

1. CITATION OF THE CODE

As noted in Section 1-1-2, B.R.C. 1981, the code shall be cited "B.R.C. 1981."

2. CITATIONS

All citations in the code will conform to the requirements of the Bluebook. One exception to Bluebook form, however, is that Colorado state law will be cited: C.R.S. This is as the General Assembly has decreed. (See 2-5-101(3), C.R.S.), even though the Colorado appellate courts have seen fit to invent a different citation form for their opinions.

3. ORGANIZATION OF THE CODE

A. The code is organized into fourteen major titles, each of which consists of several chapters; each chapter is divided into sections, subsections, paragraphs, and subparagraphs. Sections should be short, to make them easier to amend and index. (Indexing is done by section not by page number.) Each distinct subject should be in a separate section¹. It should be noted that section headings, called "catch lines" are only inserted for purposes of clarity and are not part of the law. (Section 1-1-3, B.R.C. 1981) Nevertheless, they should be clear, concise and brief, particularly in drafting criminal ordinances where they are often used by police officers in writing complaints. Catch lines should be sufficient to give notice of the content of the section, never contain the word "or," and be written in prohibitory language. See 2-5-113(4), C.R.S.

¹It is recommended that in order to determine whether a section incorporates too much material, one should try writing a section heading. If it is too long, the section is probably too long.

B. Each section is numbered to indicate title, chapter, and section, separated by hyphens; this system parallels that used by C.R.S. Subsections are lettered with lower case letters. Paragraphs are numbered with arabic numerals; subparagraphs are indicated by capital letter; and sub-subparagraphs are indicated by small roman numerals.

4. TITLES OF ORDINANCES

The title of an ordinance must "clearly express" the single subject matter of the ordinance (charter Section 16). In view of the fact that charter Section 18a permits publication of an entire ordinance by title only, it is particularly important that the title completely describe the ordinance so that publication of the title gives actual notice of its contents. The title should also be clear and concise.

5. ENACTING CLAUSE

In accordance with Section 16 of the Charter, the enacting clause of all ordinances should be in the following form: "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO. . ."

6. AMENDING CLAUSES

Clauses amending existing sections of the code should specifically refer to the section being amended to assist central records and the codifier. For example:

Section X-XX-XX, B.R.C. 1981, is amended to read:

There is no need to append "as follows" to this, as the phrase adds nothing.

7. ORDINANCES AMENDING THE CODE

Adding an entirely new section or subsection or repealing a section or subsection is straightforward. But when amending existing provisions of the code it is preferable to provide interested persons a version of exactly how existing law is being changed. This is usually accomplished by typing the entire existing section and indicating deletions by strikeouts and additions by capitals or preferably and if available, by redline or upper and lower case bold face. (See General Assembly Joint Rule No. 21.) We should follow this format for relatively uncomplicated changes involving five or fewer lines. In these cases the enacting clause shall read: "Section X-XX-XX, B.R.C. 1981, is amended to read:"

When changes are very extensive, use the repeal and reenact format: "Sections X-XX-

XX and X-XX-XXI, B.R.C. 1981, are repealed and reenacted to read:"

New sections or subsections that are added to the code need not be typed in redline, capital, or bold letters in the enacting ordinance. Use this enacting clause: "Chapter X-XX, B.R.C. 1981, is amended by the addition of a new section to read:"

8. ADOPTION BY REFERENCE

State law (31-16-20 through-208, C.R.S.) permits statutory and home rule cities to adopt by reference various types of codes (uniform codes, state codes and other city codes).

Codes adopted by reference require publication and public hearings (31-16-203, C.R.S.), which would probably mean those requirements set out in our charter for adopting ordinances. State law prohibits adopting penalty provisions by reference (31-16-204, C.R.S.), and requires that a certified copy of the codes adopted by reference be available for inspection and copying in the clerk's office 15 days before the public hearing and in the office of the clerk or the chief enforcement officer throughout the time the codes are in effect (31-16-206, C.R.S.).

In adopting codes by reference we should carefully identify them in the ordinance by name and date. When modifying a uniform code, we must be specific in the ordinance and assure that the reference in the city code: 1) indicates that the referred code is adopted with modifications, deletions, and amendments and sets those amendments out in full.

9. SAVING CLAUSES

Some statutes and ordinances include a clause to assure that when a provision of the code is repealed, persons in violation of that section before the time of its repeal are not immune from prosecution. Since Section 5-2-27, B.R.C. 1981, contains such a general provision it should not be necessary to incorporate a saving clause into future ordinances. If liability, penalty, or forfeiture under an existing statute is to be waived upon the repeal or amendment of that ordinance, however, the ordinance should so state expressly. Somewhat akin to a saving clause is a provision in an ordinance permitting an agency to elect among a series of remedies or penalties and impose more than one. See Section 1-1-20, B.R.C. 1981.

10. GRANDFATHER CLAUSE

We should state specifically in an ordinance directly affecting existing rights or structures to whom the ordinance applies. For instance:

The provisions of this chapter [or section x, y, z] do not apply to any person who, on or before July 1, 1980, holds a license issued under provisions of this code then in effect.

or

Nothing in this chapter shall be construed to affect any right, duty, or liability arising under ordinances in effect immediately prior to July 1, 1980, but rights, duties, or liabilities shall be continued and concluded under such prior ordinances.

or

The provisions of this chapter apply to structures whose construction has commenced on or before July 1, 1980. But additions or alterations to existing structures commenced after July 1, 1980, shall meet the requirements of this chapter [see, e.g., Uniform Building Code §104(a)].

11. REPEAL BY IMPLICATION

Repeals by implication are disfavored, but if two provisions of a code conflict, courts will enforce the one enacted most recently. See People ex rel. Wade v. Downen, 108 P.2d 224, 226 (1940).

12. SEVERABILITY CLAUSE

A severability clause provides in effect that if any part of an act is held unconstitutional or in violation of superseding state or federal law, the remainder of the act is still effective. Since Section 1-1-4, B.R.C. 1981, includes a severability provision that applies to the entire code, it is not necessary to incorporate a separate severability clause in future ordinances. Of course the city council is entitled to express its intention that provisions of an ordinance not be severable and that in case of a declaration of invalidity, the entire ordinance falls.

13. FINDINGS OF EMERGENCY

According to charter Section 17, no ordinance can be passed finally on the date of its introduction, except in cases of emergency, for the preservation of the public peace, health, or property and only by a two-thirds vote of the council members present at that time. The facts demonstrating urgency and need must be specifically stated in the measure. See e.g., McCray v. City of Boulder, 165 Colo. 383, 349 P.2d 350 (1968) and Flading v. City of Boulder, 417 P.2d 787 (1966) where the Supreme Court upheld, but criticized, bare allegations of emergency.

14. LEGISLATIVE FINDINGS

There are two distinct types of findings, the jurisdictional ones such as emergency and police power findings and the legislative intent findings. The former must be part of the ordinance, but need not be codified. The latter should be codified in order to be useful. Although the charter requires express findings only to justify an emergency, it is appropriate to include other legislative findings to support an ordinance. To do so assists courts and administrators to interpret the ordinance and tends to establish a rational basis for its enactment.

One jurisdictional finding in all ordinances should be that "the ordinance is necessary to protect the public health, safety, and welfare," for certain express reasons, to establish the city's police power to enact the provision. A fairly pro forma police power declaration was upheld by the Supreme Court in U.S. Disposal v. Northglenn, 567 P.2d 365 (1977). Other bases for the adoption should be expressed as specifically as possible. A declaration of local concern should be included where appropriate, especially if the ordinance supplements or varies state law. All such findings are appropriately placed as separate sections toward the end of the ordinance. The standard form for both findings is:

Section . This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

15. EFFECTIVE DATE

According to Section 18, of the charter no ordinance except an emergency ordinance shall take effect until thirty days after final passage and only after publication in a newspaper within five days subsequent to final passage. That section also provides, however, that the tax levy ordinance, the annual appropriation ordinance, any ordinance providing for a vote by or submission to the people, and ordinances ordering improvements initiated by petition and to be paid for by special assessments shall take effect immediately upon their publication (which must occur within five days of final passage). The council may specifically provide for a later effective date, but this is not usually done, except for the annual fees ordinance, which normally contains a provision making it effective on the next January 1st.

16. PUBLICATION OF ORDINANCE

Section 18a of the charter modifies Section 18 and permits publication of an ordinance by title only, as long as the notice indicates that the full text of the ordinance is available from the city clerk's office. Publication by title only is permitted when the council deems it appropriate, and publication by title only is the norm. Include the following section at the end of the ordinance to accomplish this:

Section. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

If there are any substantive amendments to the ordinance at second reading, a second notice should be published indicating that amendments have been made. In that case, a third reading will be necessary. It is important to be sure that the city clerk's office has a complete copy of all changes to ordinances at all times.

17. ORDINANCE SIGNATURE FORMAT

1. The ordinance signature lines for non-emergency ordinances should read:

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this ____ day of _____, 19__.

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

PUBLISHED BY TITLE ONLY this ____ day of _____, 19__.

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

2. The ordinance signature lines for an emergency ordinance adopted on first reading should read:

INTRODUCED, READ, PASSED BY A TWO-THIRDS VOTE OF COUNCIL
MEMBERS PRESENT, ADOPTED AS AN EMERGENCY MEASURE, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 19__.

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

3. The ordinance signature lines for passage as a second reading emergency should be, for first reading, the same as for any ordinary first reading, and for second reading should be as follows:

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this ____ day of _____, 19__.

(SEAL)

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

READ ON SECOND READING, PASSED BY A TWO-THIRDS VOTE OF COUNCIL
MEMBERS PRESENT, ADOPTED AS AN EMERGENCY MEASURE, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 19__.

(SEAL)

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

4. Amendments. First reading amendments should be included in the ordinance as part of its introduction. When an ordinance is amended non-substantively after first reading, change the signature line to:

READ ON _____ READING, AMENDED, PASSED, ADOPTED, AND
ORDERED PUBLISHED BY TITLE ONLY this ____ day of _____, 19__.

(SEAL)

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

If substantively amended, a further reading is required, but the signature line for the
reading at which amendments occurred should read:

READ ON _____ READING, AMENDED, AND ORDERED PUBLISHED BY
TITLE ONLY this ____ day of _____, 19__.

(SEAL)

Mayor

Attest:

Director of Finance and Record
Ex-officio City Clerk

18. CODIFICATION

Many so-called "special" (as opposed to "general") ordinances need not be codified, including ordinances calling elections, annexing land, appropriating funds, creating special assessment districts, and approving P.U.D.'s. Furthermore, resolutions and proclamations need not be codified.

19. RULES OF GRAMMAR AND STYLE

A. Short sections and sentences .

Draft short sections, subsections, and paragraphs and use short and simple sentences whenever possible. Generally the shorter an ordinance can be drafted, the better; but do not become so intent on brevity that adequate treatment is not given to all legislative requirements.

B. Consistency .

Don't, for example, refer to officials by one title in one sentence and another in another sentence. Always check the official title, if any, of an officer or department in the charter or code and use the correct title in full or, after using it once in its complete form, use it in a shorter form.

Notwithstanding the contrary provisions of charter Section 65, the following titles shall be used in the code: department of public works and utilities, department of finance, department of parks and recreation, department of open space and real estate, police department, and fire department. (There is no city department of public health; its functions are contracted to the county health department).

C. Definitions .

If a word or phrase is defined in a "definitions" section (in the chapter or in a separate "definitions" chapter), such word or phrase must be used exactly as defined and only when the meaning given by the definition is intended; if a different meaning is intended, it should be so stated. Use defined terms whenever possible. Be consistent also in the use of ordinary words. The use of synonyms does not add variety, only confusion. Do not use the term "regulation" (which refers to an administrative rule), if you mean "ordinance" (council legislation).

When creating a definitions section within a chapter, arrange the definitions in alphabetical order, but do not assign a subsection letter or paragraph number to each definition. This makes adding new definitions much easier.

When referring to a definition which is in some other and not applicable portion of the code, refer only to the section number even if those definitions still have separate paragraph identification. This prevents inadvertent subsequent cross-reference problems.

When writing definitions, remember that "means" is restrictive while "includes" is non-restrictive. Lyman v. Town of Bow Mar, 533 P.2d 1129, 1133 (Colo. 1975).

D. Present tense and active voice .

Use the present tense wherever possible and avoid the use of the future tense. The word "shall" should not be used to state a rule of law but should be used only to differentiate between mandatory and permissive statements. don't say "a violation of any provision of this article shall be punishable by fine or imprisonment," but say "a violation of any provision of this article is punishable..." Use the active voice whenever possible. Don't say, "A permit shall be issued by the city clerk," but say "The city clerk issue a permit."

Cross reference titles. Generally, when citing to another title, chapter, or section of the code, include the title of the referenced section: unless exempted by Section 4-3-27, "Exceptions for Non-Profit Corporations," B.R.C. 1981, . . . If the subject matter of the cross reference is obvious from the context this need not be done: and pay the fee specified in Section 4-20-73, B.R.C. 1981. If subsections or paragraphs have titles, use them. If they do not, consider adding some clue: unless excepted under Subsection 4-7-23(d), B.R.C. 1981, which generally concerns exemptions for charitable organizations, . . . or: unless an exemption for charitable organizations under Subsection 4-7-23(d), B.R.C. 1981, applies. Be careful here: this process is intended to aid the reader, not to limit the scope of the reference.

E. Prohibitory language .

The violation of an affirmative duty imposed by the code is arguably punishable. But it is far better to state a violation in prohibitory terms: " No person shall own or keep a vicious animal." (See also paragraph H below)

F. Singular number and neutral gender .

Use the singular rather than the plural and use neutral gender terms at all times ("firefighter," "police officer," "workers' compensation"). Avoid gender-referenced pronouns. It is preferable to repeat the noun of reference than to say "he or she" or "his or her." Often a sentence can be rewritten to avoid gender references entirely. If the plural must be used in a compound word, such as attorney-at-law, the significant word takes the plural-attorneys-at-law.

G. Don't be pretentious, redundant, or verbose .

Use simple words. Don't say, "A violation of this act constitutes a misdemeanor," but say "A violation of this act is a misdemeanor." Don't use redundant expressions such

as "null and void" or "shall be in force and effect". Use instead, "void" and "takes effect." Do not use "authorized and empowered"; use "may". Don't use many words when a few will do. For example, the following is too verbose:

The chief clerk is hereby authorized and it shall be his duty to sign and approve every order which shall be issued by the commission, and said chief clerk shall have every such order published as provided for in this article.

It is better to say:

The chief clerk shall sign every order of the commission and provide for the publication of such order as required by Section X.

This example also illustrates that one should use specific rather than general cross-references whenever possible.

Don't use archaic words like "whomsoever" or "aforementioned". In short, never use a big word when a simple word will do.

H. Don't use provisos .

A proviso can be recognized by the use of the words "provided that", "provided, however, that," or "provided further, that" before a sentence or clause, usually for the purpose of stating an exception to the preceding sentence or clause. It is considered preferable to avoid the use of proviso altogether. [Apparently the proviso was originally used in conveyances of real property and was a reservation on the grant, the sole purpose of the reservation being to defeat the grant upon the happening of the condition subsequent.] In drafting statutes and ordinances, provisos have most often been used to make exception to the preceding provision and are sometimes improperly used to present extraneous ideas not connected with a preceding provision. In legislation, a simple exception to a preceding provision should be made by the use of such words as "but," or "except that"; and if a provision is subject to numerous exceptions or conditions, such exceptions or conditions should be placed in a separate section or subsection for clarity.

I. Use of "shall" and "may" .

The word "shall" should be used 1) to indicate the future tense or 2) in statutory directions or requirements and in prohibitions; the word "may" should be used where a right, privilege, or power is conferred. For example:

The license issued upon compliance with above requirements shall set forth the following....

The license issued hereunder may be suspended or revoked by the city manager for cause at any time.

Prohibitor ordinances should read "No person shall..." rather than "it shall be unlawful to...".

J. Numbers, dates, times, and age .

Numbers in substantive law should be expressed in words only from zero through one hundred, or if a "round" number like "thousand" or "million." In appropriations ordinances, the fees chapter (4-20), or charts, numbers should be expressed in figures. Numbers containing a decimal point should be expressed in numerals. If a series of numbers in a sentence contains a number in numerals, all numbers in the series should be in numerals. Do not use the convention "ten (10)" in ordinance or code drafting.

Dates should be expressed as follows: July 1, 1980; beginning July 1, 1980 and ending June 30, 1981. Time should be expressed as follows: 12 Noon or 12 Midnight; 9 a.m. or 2 p.m.; only with the figure "1" use the colon and "00", i.e., 1:00 p.m. There is no comma between a month and a year: July 1980.

Age should be expressed as follows: A person who is twenty-one years of age or older; a person who is eighteen years of age or older and under twenty-one years of age.

Despite the permissive provisions of state law (2-3-210, C.R.S.), we should use the word "through" in order to assure inclusion of all beginning and final ordinances and other numbers in a series.

Be especially careful in expressing numbers to account for every possibility, including the exact number; for example "personnel licensed prior to July 1, 1977, and after said date: does not provide the persons licenses on July 1, 1977. Use "on and after."

K. Use standard language and format and be current .

Use standard language for penalty provisions, short title sections, and introductory

clauses in definition and other recurrent sections. Be alert for references to outdated commissions, departments, or procedures.

L. Don't use "herein" or "heretofore" .

Do not use imprecise reference to ordinances and dates. Refer instead to the particular code material, e.g., "as used in this chapter, the term 'foodstuffs' includes without limitation..." OR "the city manager shall issue the permit authorized by Section 4-16-3, B.R.C. 1981, after certification by the Chief of Police."

M. Including Without Limitation .

Do not overuse "including without limitation." Be as specific as possible. The standard punctuation is: “. . . animals, including without limitation cats and dogs, are”

N. Effective Date .

When the reference in an ordinance is to the date an ordinance will take effect and that date will be that of the ordinance's passage rather than a date designated in the ordinance, refer to "on or after the effective date of this [article, chapter, section]: in the case of new material and to "on or after the effective date of this [article], as amended" in the case of existing code material that is amended.

O. Capitalization .

Capitalization in state legislative bills is governed by a joint rule of the senate and house. In the absence of any reasons to the contrary, we should follow the rule, which is as follows:

Generally, capitals should be used for:

1. The first word of a sentence or following a colon;
2. The first word of each entry of an numerated paragraph after a colon;
3. The short title of a particular act; and
4. Proper names such as entire names of counties, cities, and rivers; and
5. "Section," "Subsection," etc. when followed by a specific number and B.R.C. 1981.

Generally, capitals should not be used for:

1. The titles of federal, state, county, municipal, or other public officers or substitutes for such titles, such as "the city council," "the mayor," "the director";
2. The titles of federal, state, county, municipal or other public departments, agencies, institutions, boards, or funds or substitutes for such titles such as "the department", "the university";
3. Laws on a particular subject, as opposed to the proper name of an act or code.
4. The words "federal," "city," and "state".
5. The words "article," "act," "title," "section," and "subsection," unless followed by a specific number.

P. Punctuation .

The ordinance rules of punctuation should be followed in the drafting of ordinances. Although some courts have held that punctuation is not a part of a statute, punctuation is, of course, necessary, and the Colorado Supreme Court has apparently interpreted a proposed constitutional amendment on the basis of punctuation (see In Re Senate Concurrent Resolution No. 10, 137 Colo. 491, 328 P.2d 103(1958).

1. Form the possessive singular of nouns by adding "'s" but nouns ending in "s" take only an apostrophe.
2. Joint possession is indicated by placing an apostrophe on the last element of a series (soldiers and sailors' home), while individual or alternative possession requires the use of an apostrophe on each element of the series (master's and doctor's degrees).
3. Follow all words in the series (including that preceding the conjunction) with a comma: "No owner, lessee, or occupant shall..."
4. Enclose parenthetical expressions between commas, including non-restrictive clauses (those clauses that add to but do not restrict the antecedent); for example:

The audience, which had at first been indifferent, became more and more interested.

Non-restrictive clauses can be identified by attempting to set them in a separate sentence; they are introduced by "which". If two sentences would not change the meaning of the one sentence, the clause is non-restrictive. Restrictive clauses defining the antecedent are not set off by commas; they are introduced by "that." They can sometimes be identified by omitting the relator ("that"); if the sentence still makes sense, the clause is relative.

The audience that we saw became more and more interested.

5. Phrases (introduced by prepositions, participals, and infinitives) and subordinate clauses (including introductory clauses) are set off by commas:

Becoming more and more interested, the audience fell silent.

After the dance, we went to the movie.

6. Place a comma before a conjunction which introduces an independent clause:

The early records of the city have disappeared, and we can no longer reconstruct the story of its first years.

Such compound sentences should generally be written into two sentences. If a relationship between the two sentences exists, one can and should find a stronger connective.

Because the early records of the city have disappeared, we can no longer reconstruct the story of its first years.

If the same subject exists for an independent and a dependent clause, use a comma if the conjunction connecting them is "but", but not if it is "and."

I have heard his argument, but am still unconvinced.

I have heard his argument and am now convinced.

7. If independent clauses must be joined, use a semicolon, which is generally stronger because it is brief, or a dependent conjunction and a comma.

It is nearly half past five. We cannot reach town before dark.
It is nearly half past five; we cannot reach town before dark.

It is nearly half past five, and we cannot reach town before dark.

If the second clause is preceded by an adverb, such as accordingly, besides, then, therefore, or thus, and not by a conjunction, the semicolon is still required:

I had never been in the place; besides, it was dark as a tomb.

Very short clauses may be strung together by commas.

Here today, gone tomorrow.

8. Periods and commas are usually placed inside quotation marks. In legislation, punctuation marks are placed after the quotation marks unless they are part of quoted language.

9. A quotation that is the object of a verb is preceded by a comma and set off by quotation marks. In a series of quotations, the comma falls within the marks. Quotations of more than one line are indented from the text and are not enclosed in quotation marks. For code drafting purposes, any punctuation immediately following something within quotation marks must be within the quotation marks: Section 4-6-23, “Head Lice Permit,” B.R.C. 1981.

Q. Parallels .

Express coordinate ideas in parallel form. This is especially important in legislative drafting, since a court might find that deviation from a pattern implies different legislative drafting meanings.

R. Keep related words together .

1. As a rule, do not split infinitives, and do not separate the subject and verb with a non-restrictive phrase and clause. Put such a phrase or clause at the beginning of a sentence, if possible, e.g., A dog, if you fail to discipline him, becomes a household pest, should read: If you fail to discipline him, a dog becomes a household pest.

2. The relative pronoun should come immediately after its antecedent. Thus,

There was a stir in the audience that suggested disapproval.

should read

A stir that suggested disapproval swept the audience.

3. Modifiers should come, if possible, next to the words they modify. A

common mistake is placement of the word "only." Thus, it is incorrect to say

He only found two mistakes. (This could be ambiguous.)

It is correct to say

He found only two mistakes.

or, Only he found two mistakes.

It is also incorrect to say

I rented the room to a lady with a southern exposure.

Rather, that sentence should read

I rented the room with a southern exposure to a lady.

4. Be certain that modifiers do modify the intended words.

Without a friend to counsel him, the temptation proved irresistible.

is incorrect because the prepositional phrase cannot modify "temptation." The sentence should read

Without a friend to counsel him, he found the temptation irresistible.

S. Hyphenated words .

Hyphenate groups of words that are used together as an adjective unless they can be written as one word.

He belonged to the leisure class and enjoyed leisure-class pursuits. He entered his boat in the round-the-island race.

T. Commonly Misused Words .

Strunk and White devote an entire chapter to commonly misused words and expressions. Certain of these problem areas are as follows:

1. The difference between "comprise" and "constitute" (comprise means embrace and constitute means makes up):
2. "Different from" is more correct than "different than";
3. "Due to" should not be used as a synonym for through, because of, or owing to in adverbial phrases ("He lost the game due to carelessness" is incorrect), but is correct as a predicate or modifier to a noun (The accident was due to bad weather);
4. Farther refers to distance, while further refers to time and quantity;
5. When "however" starts a sentence, it means "in whatever way" or "to whatever extent;" when it means "nevertheless" the word should not begin the sentence;
6. Remember that data and criteria are plural (their singular forms are datum and criterion);
7. "Like" governs nouns and pronouns, whereas "as" is used before phrases and clauses (We spent the evening as in the old days. She looked like a queen.)
8. The differences between literal and figurative;
9. The word "people" should not be used with words of number in place of "persons";
10. "State" is not a substitute for "say" or "remark", but means

"express fully or clearly;"

11. The difference between "that" and "which" ("that" is the defining or restrictive pronoun, "which" is the non-defining or non-restrictive pronoun - the lawnmower that is broken is in the garage. The lawnmower, which is broken, is in the garage). See also M.4 above.
12. "Therefore" means "thus," and for contract or ordinance drafting is probably the only spelling needed. "Therefor" means "for that."
13. "If" means "under the circumstances";
14. "Where" connotes location;
15. "While" connotes a span of time; and
16. "When" refers to a "point in time".