ORDINANCE NO. 7321

AN EMERGENCY ORDINANCE AMENDING CHAPTER 6-1, B.R.C. 1981, PERTAINING TO THE PROTECTION OF WILDLIFE AND SETTING FORTH DETAILS IN RELATION THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 6-1-1, B.R.C. 1981, is repealed and reenacted to read:

6-1-1 **Legislative Intent and Purpose.**

(a) The purpose of this chapter is to protect the public health, safety, and welfare of the residents of the city by prescribing the types of animals that can be kept in the city and the conditions under which they can be kept, limitations on keeping animals that create a nuisance by being safety or health hazards, and the procedures by which the city manager or an authorized agent may impound and dispose of animals kept in violation of the chapter.

(b) The city council intends to protect persons and property in the city from animals running at large and to abrogate the requirements of the Colorado fence law. [fn]

(c) Notwithstanding the use of words such as "guardian," "keeper," "owner" or "title" in this chapter, the city council intends to reflect the common law view that the property rights of owners in their animals are qualified by the city's exercise of its police power over such animals, and that summary impoundments and dispositions of animals are two such qualifications of such rights. [fn]

(d) Further purposes of this chapter are to:

(1) Protect unique elements of the local environment;

(2) Protect bio-diversity and overall health of natural ecosystems within this community;

(3) Recognize the important contribution of wildlife to the local environment;

[fn] 35-46-101, 102, C.R.S. See SaBelle's, Inc. v. Flens, 599 P.2d 950 (Colo. App. 1979) Berman, J., dissenting, aff'd, 627 P.2d 750 (1980).

[fn] Thiele v. City and County of Denver, 312 P.2d 786 (Colo. 1957).

(4) Advance local community values by encouraging humane means of wildlife control;

(5) Avoid collateral harm to wildlife that is protected under state, federal and local law;

(6) Manage conflicts between wildlife and human land uses;

(7) Foster preservation of animal and bird species native to the local community; and

(8) Legislate in a manner that satisfies important issues of local concern while also being consistent with applicable state and federal regulations.

(e) The following priorities shall guide the city's policies and regulations with regard to the interface between people and wildlife:

(1) Efforts should be made to minimize conflicts between human beings and wildlife;

(2) When unsustainable conflicts between wildlife and human beings exist on a particular property, efforts should be made, where appropriate, to maintain wildlife on portions of such property in order to minimize such conflicts;

(3) Where resolution of conflicts between human uses and wildlife habitat cannot be achieved on a particular property, relocation alternatives should be explored and encouraged;

(4) Where relocation alternatives are not feasible, capture and transportation of wildlife for use in animal recovery programs should be explored and encouraged;

(5) Where lethal control measures for wildlife are required, the use of live trapping and individual euthanization should be considered and encouraged in order to minimize suffering;

(6) When lethal control measures are employed, action should be taken to mitigate the negative community-wide impacts associated with the loss of local wildlife and wildlife habitat; and

(7) When lethal control measures are utilized, notice should be provided to the city manager so that habitat preservation and environmental impacts can be monitored.

(f) The city intends to exercise its legislative authority and power to require action in compliance with this chapter by landowners, residents, visitors, employers and employees pursuant to its local home rule authority. To the extent any landowner is a person permitted by the State of Colorado to use pesticides, this chapter shall not be construed to regulate that person's handling, mixing, loading, application, administration, control or disposal of a pesticide or its container, and shall be construed only to regulate land use and the management of wildlife on local land.

(g) The city council finds that the regulation of local wildlife, wildlife habitat and any conflicts between human land uses and local wildlife constitutes an area of valid local concern and regulation and is therefore subject to the valid exercise of the city's police power. The various provisions of this Chapter bearing upon those subjects reflect an appropriate exercise of the city's police powers, except to the extent that any such provision may be contradicted and overridden by a controlling provision of state law.

(h) The city council finds that the use of poison to control wildlife is having an adverse and cumulative effect upon the local environment, and upon the health and safety of human beings and local wildlife. Residents and visitors to the city are urged to avoid using poisons as a mechanism for wildlife control, especially when other less ecologically damaging control strategies are available.

Section 2. Section 6-1-2, B.R.C. 1981, is amended to add the following definitions:

6-1-2 **Definitions.**

. . .

"Landowner" means the owner or manager of land, or any other person who has control over the management of the land.

. . .

"Lethal control" means methods of wildlife control that rely for their effectiveness upon the killing of individual animals or upon the extermination of groups of animals.

. . .

"Protected Birds" includes any bird protected by the Migratory Bird Treaty Act, 16 U.S.C. Sections 703-712. Protected birds do not include members of bird species listed in a United States treaty, law or Executive Order as an invasive species.

. . .

"Unnecessary suffering" means suffering resulting from reckless or negligent practices causing avoidable lacerations, suffocation, broken bones, amputations or the infliction of pain on animals ~~that could have been avoided by the~~ use of reasonable, practical, and humane practices.

. . .

"Wild birds" means birds that are living in a state of nature and that are not tame or domesticated.

. . .

Section 3. Section 6-1-6, B.R.C. 1981, is repealed and reenacted to read:

6-1-6 **Subjecting Animals to Unnecessary Suffering.**

(a) No person shall:

(1) Overdrive, overload, drive when overloaded, or overwork any animal;

(2) Cause unnecessary suffering to any animal or take actions likely to cause unnecessary suffering to any animal;

(3) Needlessly shoot at, wound, capture, or in any other manner needlessly molest, injure, or kill any animal; or

(4) Carry or transport or keep any animal in a manner that causes the animal to endure unnecessary suffering.

(b) It is a specific defense to a charge of violating paragraph 6-1-6(a)(3), B.R.C. 1981, that the action was necessary to avoid injury to a person or that the animal was not a domesticated animal and the action was necessary to avoid injury to a person or property.

(c) This section shall not apply to injuries suffered by prairie dogs as a result of trapping or relocation practices. Regulation of such conduct will be pursuant to Section 6-1-11, "Limitation on Lethal Means of Control for Prairie Dogs and Birds," B.R.C. 1981, and "6-1-37, "Procedures Affecting the Relocation of Prairie Dogs," B.R.C. 1981.

Section 4. Section 6-1-11, B.R.C. 1981, is repealed and reenacted to read:

6-1-11 **Limitation on Lethal Means of Control for Prairie Dogs and Birds.**

(a) Except as authorized by other provisions of this chapter, no person shall utilize lethal means of control for prairie dogs or wild birds or remove prairie dogs from the ground with the intent to kill them.

(b) It shall be an affirmative defense to a violation of this section that behaviors described in 6-1-11 (a):

(1) Were undertaken by a person who owns, or is responsible for operating, an airport facility or a person who acted at the direction of the owner of an airport facility, where such action is necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;

(2) Were undertaken by a person who owns or is responsible for operating a dam or other existing structure where structural integrity or safety is threatened by the activities of prairie dogs or birds;

(3) Resulted from public or utility-related projects conducted in conformity with management practices designed to minimize avoidable harm to animals located within an area containing prairie dog habitat;

(4) Were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;

(5) Were required in order to resolve immediate and verified health or safety hazards pursuant to a permit issued in conformity with Section 6-1-39, "Special Permit," B.R.C. 1981; or

(6) Were undertaken as part of an ongoing and continuous program approved and permitted by the city manager that was designed to prevent re-colonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

Section 5. A new Section 6-1-11.5 is added to read as follows:

6-1-11.5 **Causing Death of a Prairie Dog or Wild Bird for Humanitarian Reasons.**

Notwithstanding any other provision of this Chapter, the following persons are authorized to cause the death of a prairie dog or wild bird for humanitarian reasons: Humane Society of Boulder Valley employees, veterinarians, Colorado Division of Wildlife employees, City Park Rangers, City Wildlife Managers, or persons permitted under state or federal law as wildlife rehabilitators.

Section 6. Section 6-1-12, B.R.C. 1981, is repealed and reenacted to read:

6-1-12 **Damaging Prairie Dog Burrows Prohibited.**

(a) Except as authorized by other provisions of this chapter, no person shall damage any prairie dog burrow.

(b) It shall be an affirmative defense to a violation of this section that:

(1) The burrow was uninhabited when it was damaged;

(2) A state permitted relocator had, within the twelve previous months, attempted to relocate all prairie dogs utilizing that burrow, whether or not all those prairie dogs were successfully captured and relocated;

(3) The burrow was damaged by a person who owned, or was responsible for operating, an airport facility or by a person who was acting at the direction of the owner of an airport facility and the activity that damaged the burrow was necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;

(4) The burrow was damaged in connection with temporary disturbances caused by public or utility-related projects where such activities were conducted in conformity with best management practices within an area containing prairie dog habitat;

(5) The burrow was damaged by a person who owned, or was responsible for operating, a dam or other existing structure where the structural integrity or the safety of the dam or structure was threatened by the burrow or by burrowing;

(6) The burrow was on the property of a single family residence in which the person who destroyed the burrow, or authorized its destruction, was residing;

(7) Activities were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;

(8) The burrow was damaged during the process of utilizing lethal means of control in conformity with the provisions of this chapter; or

(9) The burrow was damaged in connection with an ongoing and continuous program approved by the city manager that was designed to prevent re-colonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

(c) If the manager has reason to believe that work pursuant to any permit or other approval will damage any prairie dog burrow not subject to the defenses set forth in this chapter, the manager shall deny the permit or approval or condition its exercise on lawful relocation of the animals. Appeal from such a denial or conditional approval shall be in accordance with the provisions for denials of such permits or approvals.

Section 7. Section 6-1-33, B.R.C. 1981, is repealed and reenacted to read:

6-1-33 **Bird Protection Sanctuary Created.**

(a) The following are legislative findings of fact:

(1) Protected birds are essential to the city's local ecosystem and their presence contributes to the quality of life of city residents and visitors;

(2) The city's open space and parks programs are enriched by the presence of protected birds;

(3) The humane treatment of wild birds and other wildlife reflects a core value for city residents;

(4) Utilization of some methods of lethal control for wild birds can have adverse impacts upon non-target species of birds, upon bird species protected by federal, state and local regulations and upon other non-target wildlife species; and

(5) Lethal control methods are often ineffective because birds tend to perch or nest at sites at which such measures have been previously utilized. The use of mechanical and structural methods of control to make perching or nesting sites unattractive is often more effective and causes less ecological damage.

(b) The area within the city is declared to be a sanctuary for the refuge of protected birds. All persons are urged to safeguard protected birds and their refuges within such sanctuary and to take reasonable steps to prevent unnecessary molestation of any wild birds within the city. Wildlife management practices and other activities conducted within the city should be designed to avoid unnecessary suffering on the part of wild birds.

Section 8. Section 6-1-34, B.R.C. 1981, is repealed and reenacted to read:

6-1-34 **Use of Poison Restricted for Lethal Control of Birds.**

No person shall poison any wild bird or distribute poison with the intent to poison any wild bird.

Section 9. Section 6-1-35, B.R.C. 1981, is repealed and reenacted to read:

6-1-35 **Injuring or Capturing Wild Birds Restricted.**

(a) Except as authorized by provisions of this chapter, it shall be unlawful for any person in the city knowingly to shoot at, wound, kill, capture, ensnare, net, trap or injure any wild bird, or for any person to damage the eggs or nest of any protected bird. It shall also be unlawful for any landowner within the city knowingly to permit another to engage in any of the actions forbidden by this subsection.

(b) It shall be an affirmative defense to a charge of violating this section that the following circumstances existed:

(1) The capture of, or injury to, a bird was incidental to removing that bird or its nest from a structure, including, without limitation, any covering over a sidewalk;

(2) The capture of, or injury to, a bird was required in order to protect the safety of existing structures, or to deal with a verified health or safety hazard pursuant to a permit issued in conformity with Section 6-1-39, "Special Permit," B.R.C. 1981;

(3) The capture and release of the bird was accomplished for purely humanitarian purposes;

(4) The capture of, or injury to, a bird occurred in conjunction with official activities of any of the following persons while engaged in professional activities of animal treatment, rehabilitation or removal: Humane Society of Boulder Valley employees, veterinarians, Colorado Division of Wildlife employees, City Park Rangers, City

Wildlife Managers, or persons permitted under state or federal law as wildlife rehabilitators;

(5) The capture of, or injury to, a bird occurred in conjunction with authorized activities of a city employee, Humane Society of Boulder Valley employee, veterinarian, or any person permitted by state or federal law to act in the capacity of a wildlife rehabilitator or of a permitted researcher engaged in the capture and banding of birds; or

(6) The capture of, or injury to, a bird occurred in conjunction with activities authorized by a depredation permit issued by the United States Fish and Wildlife Service.

Section 10. Section 6-1-36, B.R.C. 1981, is repealed and reenacted to read:

6-1-36 **Procedures for Obtaining Prairie Dog Lethal Control Permits.**

(a) Except as otherwise provided in this chapter, no person shall utilize lethal control measures for prairie dogs without first having obtained a lethal control permit from the city manager.

(b) An applicant for a lethal control permit shall file an application with the manager on forms supplied by the manager for that purpose.

(c) Each lethal control application shall include or be accompanied by:

(1) Proof that the applicant is the landowner on which the lethal means of control will be employed;

(2) Payment of a processing fee as prescribed by Section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981;

(3) The name, address and telecommunications numbers of:

(A) The applicant;

(B) The property manager of such property (if any);

(C) Any consultants retained or consulted with regard to proposed lethal control measures; and

(4) All information required by the forms supplied by the city manager in Subsection 6-1-36(a);

(5) A description of:

(A) The reasons why lethal control measures are required;

(B) A description of any projected development that makes use of lethal control necessary;

(C) The proposed lethal control measures;

(D) The date and time on which the lethal control measures will be initiated; and

(E) The steps that will be taken in order to preclude re-colonization following the utilization of lethal control methods;

(6) Authorization to the city manager or to a designee to be present during all extermination activities;

(7) Documentation that the following options were considered and the reason that they were not utilized:

(A) Non-lethal control measures;

(B) Minimizing on-site conflicts between desired land uses and wildlife;

(C) Relocation alternatives;

(D) Where no reasonable relocation options exist, participation in an animal recovery program for the preservation of endangered species; and

(E) Trapping and individual euthanization as a method of lethal control;

(8) A description of steps considered in order to minimize potential negative impacts upon non-target species;

(9) A map of the property on which lethal control measures will be employed that includes the address or legal description of the property, and the general location of prairie dog burrows on that property;

(10) The number of acres of prairie dog habitat on the property;

(11) An estimate of the number of live prairie dogs inhabiting the site and an explanation of the methodology utilized for developing that estimate; and

(12) Demonstration, to a high degree of probability, that:

(A) The land on which the prairie dogs are located will be developed within 15 months of the date of the application and the continued presence of prairie dogs would make such development impractical or impossible;

(B) A principal use of the land will be adversely impacted in a significant manner by the presence of prairie dogs on the site; or

(C) Established landscaping or an open space feature established and installed prior to any prairie dog colonization will be adversely impacted by the establishment of new prairie dog colonies.

(13) The application shall establish that the applicant has adopted an adequate plan to protect, to the extent possible, non-prairie dog wildlife during the process of utilizing lethal control measures for prairie dogs;

(14) If pesticides are going to be used, the application shall establish that the applicant will utilize any measures required by state or federal regulations to protect, to the extent possible, non-prairie dog wildlife during the process of utilizing lethal control measures.

(15) The application shall establish an adequate plan designed to prevent the reentry of prairie dogs onto the land on which lethal control measures are to be utilized. No person shall fail to comply with the provisions of such a plan after having utilized lethal control measures based upon an application containing it;

(16) The application shall establish that reasonable efforts will be made to avoid utilizing lethal means of control for prairie dogs during prairie dog birthing periods;

(17) If the applicant is proposing to poison prairie dogs, the application shall establish that the applicant has:

(A) Identified and employed a person approved for that purpose by the State of Colorado; and

(B) Submitted a plan to comply with Chapter 6-10, "Pesticide Use," B.R.C. 1981, relating to the regulation of pesticide use and required notice.

(d) The city manager shall, within sixty days, review any application for completeness and shall accept the application upon determination that it is complete. An application shall only be deemed complete if it includes an adequate showing that the applicant has demonstrated reasonable efforts to identify and use relocation alternatives in lieu of lethal control measures. Factors to be considered by the manager in determining whether the showing is adequate shall include, without limitation, the following:

(A) Whether or not the manager has determined that city lands are available for relocation. Such determination shall be based upon the wildlife carrying capacity of city lands and upon the manager's consideration of the policies set forth in the Boulder Valley Comprehensive Plan bearing upon natural

ecosystem management and the management of wildlife-human conflicts. The manager's determination in this regard shall be final and not subject to appeal or review;

(B) Whether or not there are non-city lands available or feasible for relocation; and

(C) Additional information relied upon by an applicant to determine that relocation is unavailable, not feasible or otherwise inappropriate.

(e) A property owner of a site on which burrow fumigation measures will be utilized shall post signs on the affected property designed to give reasonable notice to neighbors and passers by. Such signs shall be posted within one day of submission of an application and shall remain posted until two days after the use of lethal control measures is completed.

(f) Not less than fifteen days after accepting an application as complete, the manager shall commence a sixty day public comment period on the application, soliciting public comment on relocation alternatives for prairie dogs that would otherwise be lethally controlled under the permit application. The only information from the permit that the city manager shall make available to the public for purposes of this paragraph shall be information that is submitted by the applicant pursuant to (c)(7), (c)(10) and (c)(11).

(g) Not less than fifteen days after the close of the public comment period, the city manager shall determine whether or not to issue the permit.

(1) If the city manager determines that relocation alternatives exist, the city manager shall delay issuing the permit an additional twelve months to allow for relocation. If relocation has not occurred at the end of twelve months, the permit shall be issued.

(2) If the city manager determines that relocation alternatives do not exist, the city manager may issue the permit.

(h) Owners or occupants of residential lots containing a single residence may, at any time, obtain a lethal control permit to exterminate prairie dogs on their property. No fee shall be charged for such a lethal control permit and no waiting period longer than that period of time reasonably required to process an application shall be required.

(1) The intent of the permit process for such residential lots is to provide a mechanism for the city to monitor prairie dog populations and related ecological issues within its boundaries while allowing owners or occupants of small residential lots to respond to the presence of unwanted wildlife.

(2) Applications for a lethal control permit for such residential lots shall be approved upon receipt of the following information:

(A) Address of the subject property;

(B) The name and telephone number of the applicant;

(C) The date of application;

(D) A demonstration of compliance with any applicable state and federal regulations pertaining to the utilization of lethal control measures; and

(E) Such other information as the manager may require to adequately evaluate such requests, their purposes, and the expected outcomes of the use of lethal control measures.

(3) Lots containing multifamily residential structures shall not qualify for treatment under this subsection.

(i) The city manager may impose upon the exercise of the permit any conditions reasonably related to the purposes of this chapter.

(j) A permit issued under this chapter is specific to the property for which application is made and is not transferable.

(k) The requirements of this section apply to all private lands within the city limits of Boulder, all lands owned or managed by the city, and all city activities affecting prairie dogs inside or outside of the city limits.

(l) Any applicant for a lethal control permit aggrieved by a decision of the city manager concerning an application may appeal such decision to a hearing officer appointed by the manager by filing an appeal with the manager within fourteen days of the issuance or final denial of a permit. After giving notice to all interested parties, the hearing officer shall hear the appeal within thirty days of the notice of appeal, or at such other time to which the applicant and the city may agree, and the hearing shall be held pursuant to the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The hearing officer shall determine whether the permit meets the requirements of this chapter and shall grant or deny the application with conditions, as appropriate.

(m) The manager shall specify the term of each permit, which shall be a reasonable amount of time under the circumstances.

(n) The manager may revoke a permit issued under this chapter for the grounds and under the procedures prescribed by Section 4-1-10, "Revocation of Permits," B.R.C. 1981, and also for failure to abide by any provision of this chapter or condition of the permit.

(o) The manager may suspend any portion of this chapter in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city

or to the city's planning area or to the city's environment.

Section 11. A new section 6-1-37, B.R.C. 1981, is enacted to read:

6-1-37 **Procedures Affecting the Relocation of Prairie Dogs.**

(a) The landowner from whose land any relocation of prairie dogs is to be made shall provide the manager with at least twenty days' advance written notice of the initiation of relocation of prairie dogs, which notice shall include:

(1) The name, address and telecommunications numbers of the applicant;

(2) The name, address and telecommunications numbers of the owner of the property from which prairie dogs will be relocated and the name, address and telecommunications numbers of the owner of the property to which the prairie dogs will be relocated;

(3) The name, address and telecommunications numbers of the property manager of property from which prairie dogs will be relocated, if any, and the name, address and telecommunications numbers of the property manager of property to which the prairie dogs will be relocated, if any;

(4) The name, address and telecommunications numbers of any consultants retained or consulted with regard to the proposed relocation measures;

(5) A description of the reasons why relocation measures are required;

(6) The date and time on which the physical relocation measures will be initiated;

(7) A plan detailing those steps that will be taken in order to prevent or discourage the re-entry of prairie dogs onto the land from which relocation is to take place. No person shall fail to comply with the provisions of such a plan after having conducted relocation activities based upon an application containing it;

(8) Seven days' written additional notice if relocation is not initiated on the date provided pursuant to the terms of a preceding notice; and

(9) Copies of all required state and federal permits, including any required permits from the Colorado Division of Wildlife.

(b) The city manager or a designee shall be allowed to be present on the land from which relocation is being made and on the land to which relocation is being made during the relocation procedure.

(c) No person shall relocate prairie dogs unless the property owner of the land from which relocation is to take place, or that person's agent, has obtained all required state and federal permits, including any required permits form the Colorado Division of Wildlife.

(d) Relocation shall not be permitted during the birthing, nursing and early rearing period of March 1 through June 1.

(e) No person shall trap or relocate prairie dogs in a way that results in unnecessary suffering to the animals.

(f) No person engaged in the relocation of prairie dogs shall maintain such prairie dogs in his or her possession for more than forty-eight hours, unless such animals are sick or injured, in which case the animals shall be turned over to a state permitted animal rehabilitator.

Section 12. A new Section 6-1-38, B.R.C. 1981, is enacted to read, with subsequent sections renumbered accordingly:

6-1-38 **Fees and Requirements for Issuance of Prairie Dog Lethal Control Permits.**

Private landowners seeking lethal control permits shall be required to pay a fee to mitigate the loss of prairie dog habitat as a consequence of the use of lethal control measures.

(a) The fee as prescribed in Section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981, shall be required on a prorated basis for each acre of active prairie dog habitat lost as a consequence of the use of lethal control measures. There shall be an offset against this fee for any costs incurred by a property owner in connection with the lawful relocation of prairie dogs from the property on which lethal control measures are to be utilized in order to avoid subjecting the relocated animals to lethal control measures.

(b) A processing fee shall be paid by an applicant for a lethal control permit for birds or prairie dogs in an amount prescribed by Section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981.

(c) No fee, other than processing fees, shall be charged to the city or its departments which obtain lethal control permits made necessary by city projects or programs.

(d) No fee, other than processing fees, shall be charged to any property owner who captures prairie dogs for the purpose of supplying them, either after euthanization or live, to wildlife recovery programs.

(e) The manager may adopt regulations allowing for the waiver of fees, or any portion of such fees, in situations in which a landowner establishes to the manager's satisfaction that the landowner would be entitled to utilize pesticides to poison prairie dogs but chooses instead to

capture individual animals and subject them to euthanasia in order to minimize their suffering.

(f) Fees collected pursuant to this section may be utilized for the following purposes:

(1) Offsetting administrative costs associated with operating the lethal control permit system;

(2) Acquiring additional public land to accommodate uses displaced by relocation of prairie dogs;

(3) Conducting relocation activities of wildlife;

(4) Creating new habitat for wildlife by converting selected parcels of public lands to conditions suitable for future relocation or habitat development;

(5) Enhancing the habitat quality of public land prior to relocation of prairie dogs, such as through weed management and supplemental seeding programs;

(6) Monitoring the success of wildlife relocation programs;

(7) Constructing and maintaining wildlife areas, such as by erecting fences and establishing natural barriers, to minimize impacts of existing or future wildlife on city residents, and monitoring the effectiveness of such barriers;

(8) Producing educational signs, brochures, or other materials related to wildlife conservation and management;

(9) Retaining consultant services to assist with wildlife management and to monitor prairie dog or bird population sizes that might be affected by city or private development projects;

(10) Offsetting ecological losses associated with the use of lethal control measures by enabling the city to provide new or enhanced habitat elsewhere or by allowing the city to preserve wildlife through relocation or other activities;

(11) Funding prairie dog-related research; or

(12) Funding other programs that are determined by the manager to be consistent with the wildlife protection policy objectives set forth in this chapter.

Section 13. A new Section 6-1-39, B.R.C. 1981, is enacted to read, with subsequent sections renumbered accordingly:

6-1-39 **Special Permit.**

(a) The city manager may grant or deny a special permit for the killing or the capturing and releasing of birds or prairie dogs when it is shown in writing that:

(1) The birds or prairie dogs constitute a health hazard in a particular location in the city and that the specific actions are needed in order to eliminate the health hazard; or

(2) The birds or prairie dogs must be removed in order to permit completion or maintenance of a public improvement project approved by the city council, but only after the city council has been provided with notice that bird or prairie dog removal will be required.

An applicant for special permit pursuant to this subsection must show in writing that he or she has taken reasonable steps to control the situation by exclusion devices, non-injurious repellants or other non-lethal means. Where such steps are not feasible, the applicant shall provide the reasons why such alternative measures are not feasible.

(b) The city manager may grant or deny a special permit to allow a landowner to damage prairie dog burrows on that landowner's property where that landowner produces proof satisfactory to the manager that the following conditions exist:

(1) The legal parcel or lot on which burrows may be damaged had no prairie dog habitation for a period of at least 365 consecutive days;

(2) Following the period without prairie dog habitation, at least one but not more than five new burrows were established;

(3) The landowner wants to be allowed to damage the new prairie dog burrows as part of an ongoing program to halt new colonization; and

(4) No permit shall be issued pursuant to this subsection between March 1 and June 1.

Section 14. A new Section 6-1-40, B.R.C. 1981, is enacted to read:

6-1-40 **City Manager May Issue Regulations.**

The city manager may adopt reasonable interpretive and administrative rules and regulations as deemed necessary to administer and enforce the provisions of this chapter.

Section 15. Subsection 8-3-5(a), B.R.C. 1981, is amended to read:

8-3-5 **Wildlife Protection.**

(a) No person shall hunt, trap, net, impede, harass, molest, chase, kill, or remove any wildlife or livestock or damage, destroy, or remove any nest, burrow, or animal dwelling from any park, recreation area, or open space, or other property of the city, including, without limitation, any street or other right-of-way controlled or maintained by the city, except pursuant to a written permit from the city manager for scientific purposes, or pursuant to the provisions of Title 6, Chapter 1 pertaining to animals, or when necessary to protect the public health, safety, and welfare or except for hunting and trapping allowed by the city manager in designated areas for game management. As to livestock, this prohibition does not apply to any lessee of such property managing its livestock on the leasehold, nor to any person driving herds of livestock along streets.

Section 16. A new section 4-20-58, B.R.C. 1981, is added to read:

4-20-58 **Prairie Dog Lethal Control Permit Fees.**

(a) An applicant for a prairie dog lethal control permit shall pay a processing fee of $1,500.00 to offset administrative costs associated with issuing and monitoring lethal control permits. This processing fee shall be in addition to any other mitigation cost or payment required in conjunction with approved wildlife management practices.

(b) An applicant for a prairie dog lethal control permit shall pay a fee of $1,200.00 per acre of active prairie dog habitat lost, prorated for any partial acres of lost habitat.

Section 17. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

Section 18. Because this ordinance deals with important environmental issues and because an interim ordinance pertaining to related matters expires on February 18, 2005, this is deemed to be an emergency measure and shall take effect on February 18, 2005, so that there will be no gap in coverage between the expiration of the interim ordinance and the effective date of this ordinance.

Section 19. 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.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 21st day of October, 2003.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of January, 2005.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

READ ON THIRD READING AS AN EMERGENCY MEASURE, AMENDED, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of January, 2005.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

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