

**TOWN OF AVON, COLORADO**  
**AVON REGULAR MEETING FOR TUESDAY, APRIL 26, 2011**  
**MEETING BEGINS AT 5:30 PM**  
AVON TOWN HALL, ONE LAKE STREET



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	<b>PRESIDING OFFICIALS</b>
<b>MAYOR</b>	<b>RICH CARROLL</b>
<b>MAYOR PRO TEM</b>	<b>KRISTI FERRARO</b>
<b>COUNCILORS</b>	<b>DAVE DANTAS, CHRIS EVANS, TODD GOULDING</b>
	<b>AMY PHILLIPS, ALBERT "BUZ" REYNOLDS, JR.</b>

<b><u>TOWN STAFF</u></b>		
<b>TOWN ATTORNEY: ERIC HEIL</b>	<b>TOWN MANAGER: LARRY BROOKS</b>	<b>TOWN CLERK: PATTY MCKENNY</b>

ALL REGULAR MEETINGS ARE OPEN TO THE PUBLIC EXCEPT EXECUTIVE SESSIONS  
COMMENTS FROM THE PUBLIC ARE WELCOME DURING CITIZEN AND COMMUNITY INPUT AND PUBLIC HEARINGS  
PLEASE VIEW AVON'S WEBSITE, [HTTP://WWW.AVON.ORG](http://www.avon.org), FOR MEETING AGENDAS AND MEETING MATERIALS  
AGENDAS ARE POSTED AT AVON TOWN HALL AND RECREATION CENTER, ALPINE BANK, AND AVON LIBRARY  
THE AVON TOWN COUNCIL MEETS ON THE SECOND AND FOURTH TUESDAYS OF EVERY MONTH

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- 1. CALL TO ORDER AND ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST**
- 4. COMMUNITY & CITIZEN INPUT**
  - a. Snowball Music Festival Event Follow-Up Report (*Chad Donnelly, Scott Stoughton, et al*)
  - b. Input from the snowball event from Steven Wood, President of Beaver Bench Condo Owners Association (letter and response only)
- 5. CONSENT AGENDA**
  - a. Minutes from April 12, 2011
  - b. Sponsorship Contract between Town of Avon and Western Enterprise for Salute to the USA (*Meryl Jacobs, Recreation Director*) Agreement for 2011 Salute to U.S.A. July 3<sup>rd</sup> event
- 6. NEW BUSINESS**
  - a. Select Planning & Zoning Commission Members (Rich Carroll, Mayor)
- 7. ORDINANCES**
  - a. Ordinance No. 11-05, Series of 2011, First Reading, An Ordinance Adopting the 2010 Model Traffic Code by Reference and Repealing and Reenacting Sections of the Title 10 of the Municipal Code (*Eric Heil, Town Attorney*) *Ord. No. 11-05 repeals, reorders, replaces and updates all of the Article III Amendments in Avon Municipal Code sections 10.04.060 through 10.04.130. Many changes are simply to update cross-references.*
- 8. TOWN MANAGER REPORT**
- 9. TOWN ATTORNEY REPORT**
- 10. MAYOR REPORT**

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**11. EXECUTIVE SESSION**

For the purpose of receiving legal advice to specific legal questions pursuant to Colorado Revised Statute §24-6-402(4)(b) related to pending litigation regarding Town of Avon v Traer Creek Metropolitan District, 2008 CV 0385 and Traer Creek, LLC, *et.al.* v Town of Avon 2010 CV 316

**12. ADJOURNMENT**

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**FUTURE COUNCIL AGENDA DATES & PROPOSED TOPICS:**

**MAY 10<sup>TH</sup>:** IGA w/ Town of Vail for Ops & Maintenance of Rushworks (A/Video Production System), Draft Year End Audit Report, Review Special Events Program, Public Hearing for US Forest Service Multi-Party Land Exchange, Transit Service Funding Proposals

## MEMO

To: Honorable Mayor and Town Council  
Thru: Larry Brooks, Town Manager  
Legal Review: Eric Heil, Town Attorney  
Approved By: Meryl Jacobs – Director of Recreation and Cultural Services *MJ*  
From: Danita Chirichillo – Special Events Supervisor *DC*  
Date: April 21, 2011  
Re: 2011 Snow Ball Music Festival Recap Presentation

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### **Summary:**

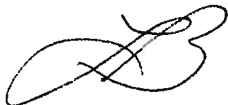
The inaugural Snow Ball Music Festival took place in Harry A. Nottingham Park on March 4-6, 2011. The music festival included 45 different musical acts which were anchored by the following headliners: Pretty Lights, Bassnectar and The Flaming Lips.

The event organizers Mr. Chad Donnelly and Mr. Scotty Stoughton will be presenting Town Council with a recap of the event to include a PowerPoint and/or video presentation.

### **Financial Implications:**

The Town of Avon secured a \$40,000 deposit from the event organizer prior to the event to cover the cost of police, transit, public works services. The entire deposit was used to cover expenses.

### **Town Manager Comments:**



# Stephen L. Wood

President

Beaver Bench Condominium Owners Association

PO Box 934

Avon, CO, 81620

April 15, 2010

Re: Expenses for Snow Ball Music Festival

To: Larry Brooks, Town Manager

Town of Avon

PO Box 975

Avon, CO 81620

CC: Silver Eagle Management

CC: *Vail Daily*

CC: Attorney

Dear Mr. Brooks,

I contact you regarding the recent Snow Ball Music Festival, held in early March. With spring weather arriving and winter snows now receding, the festival's aftermath continues to unfold at the Beaver Bench Condominium, located on Harry A. Nottingham Park adjacent to the main stage area.

Specifically, I submit to you a summary and copies of various bills for expenses incurred by the Beaver Bench Condominium Owners Association during the festival for security, snowplow and clean-up work. Please find attached the following invoices totaling \$1,786.13:

- Town of Vail, \$1,200 — police "extra duty"\*
- AAA Boot Parking, \$320 — traffic/parking control
- Freeman Irrigation, \$135 — snowplow work to block driveway to parking lot, subsequent removal and cleanup
- Merritt Services, \$105 — misc. labor
- Shop N Hop, Eagle-Vail, \$26.13 — Fuel for snowplow and misc. labor transportation\*

*\* Half of total expense shared by nearby Sunridge Condos*

Not included in this summary are the many hours spent above and beyond the call of duty by our property manager, Shawn Primmer of Silver Eagle Management (who also manages the nearby Sunridge Condos), myself and various other people on-site discussing, preparing for, fielding complaints about and defending our property from the throngs of concert-goers before, during and after the event.

On behalf of my fellow members on the BBCOA Board of Directors, the owners/residents of our 44-unit property and our neighbors residing on Nottingham Lake within earshot of the Snow Ball Music Festival, let me state, unequivocally and for the record, we are NOT in favor of this or any

other, similar event, being staged again at Harry A. Nottingham Park in the future. Moreover, we consider prompt reimbursement for our expenses by the Town of Avon a moral obligation.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Wood". The signature is fluid and cursive, with a large initial "S" and a long horizontal stroke at the end.

Stephen L. Wood  
President, Board of Directors  
Beaver Bench Condominium Owners Association



Town of Avon  
PO Box 975  
One Lake Street  
Avon, CO 81620  
970-748-4005  
lbrooks@avon.org

***Office of the Town Manager***

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Date: April 19, 2011

Mr. Stephen Wood  
President Beaver Bench Condominium Owners Association  
P.O. Box 934  
Avon, CO 81620

RE: Letter of April 15 hand delivered April 18, 2011

Mr Wood:

Thank you for your observations in the above referenced letter. We are placing the letter in the council packet for the council's consideration April 26, 2011. Please be advised that the Snow Ball event organizer is scheduled to provide an update to the council that evening and you may want to attend.

Sincerely,

Larry Brooks,  
Town Manager

**MINUTES OF THE REGULAR MEETING OF THE AVON TOWN COUNCIL  
HELD APRIL 12, 2011**

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A regular meeting of the Town of Avon, Colorado was held at the Avon Town Hall, One Lake Street, Avon, Colorado in the Council Chambers.

Mayor Rich Carroll called the meeting to order at 5:55 PM. A roll call was taken and Council members present were, Dave Dantas, Chris Evans, Kristi Ferraro, Todd Goulding, Amy Phillips, and Buz Reynolds. Also present were Town Attorney Eric Heil, Town Manager Larry Brooks, Assistant Town Manager Patty McKenny, Assistant Town Manager Community Development Sally Vecchio, Assistant Town Manager Finance Scott Wright, Town Engineer Justin Hildreth, Director PW&T Jenny Strehler, Community Relations Officer Jaime Walker and Deputy Town Clerk Catherine Mythen, as well as other staff members and the public.

**AGENDA APPROVAL & DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST**

Mayor Carroll noted that an executive session would be reconvened at the end of the regular meeting to further discuss the topics on the agenda. He also moved community input until after item # 5 "Council and Staff Updates". Town Attorney Eric Heil noted that there was no conflict of interest for the meeting.

Chris Green addressed the email that was presented to the town council from Dominic Mauriello referencing his suggestion to move the Planning & Zoning Meeting Day to another day because of conflicts. Mr. Green wanted to bring to Council's attention that he hadn't heard that the current date is a problem for either project applicants or applicants vying for the P&Z Commission vacancy.

**COUNCIL AND STAFF UPDATES**

Patty McKenny, Asst. Town Manager, and Rich Carroll, Mayor, awarded Town of Avon Certificates Recognizing employees for Years of Service to the following people:

- ✓ Five Year Awards to: Debbie Hoppe, Jeff Schneider, CJ Horn, Scott Stewart, Sergio Orellana
- ✓ Ten Year Awards to: Krista Jaramillo, Mike Lundblade, Penny Olesen, Dorothy Martinez
- ✓ Fifteen Year Award to: Dan Higgins
- ✓ Twenty Year Award to: Chris Peck
- ✓ Twenty Five Year Award to: Meryl Jacobs and Larry Brooks

Police Chief Ticer then presented a number of awards for other reasons as follows:

- ✓ A Life Saving Award was presented to Alberto Linares, Mario Medina, Hugo Castillo
- ✓ Teamwork Citation was awarded to Michelle Schlund and Jeff Dey,
- ✓ Chief's Community Partnership Award was awarded to Jeff Dey.
- ✓ Police Employee of the Year Award was given to Lieutenant Greg Daly, as selected by his sergeants.

Bob Ticer, Police Chief, also reviewed Police Department Updates on the following topics:

- ✓ Highlights of the "Suicide Coalition Media Event"
- ✓ 2010 Crime & Traffic Statistics

Rich Carroll, Mayor, gave a brief update on the Open Space Advisory Committee meeting  
Mayor Carroll noted the Memorial Park Bench Program as a memo only item.

### **COMMUNITY & CITIZEN INPUT**

Mayor Carroll noted the following information as email only to the Town of Avon:

- a. Brian Sipes Email only responding to Mr. Gennett's Email
- b. Matt Gennett Email only on Planning & Zoning Agenda
- c. Paul Gerhardt Email only on Transit Services
- d. CnNickel Email only on Snowball Festival

### **CONSENT AGENDA**

Mayor Carroll asked for a motion on the consent agenda. Mayor Pro Tem Ferraro moved to approve the consent agenda; Councilor Phillips seconded the motion and it passed unanimously.

- a. Minutes from March 22, 2011

### **NEW BUSINESS**

Bob Ticer, Police Chief, reviewed the Intergovernmental Agreement between the Town of Avon, Town of Vail, Town of Eagle and Eagle County on Behalf of the Eagle County Sheriff's Department for the Continued Operation of a Joint Special Operations Unit ("SOR"). This is an IGA that formalizes Avon Police Department's participation on the "Eagle County Special Operations Unit" that provides regional police services in response to more serious incidents that occur in Eagle County. Mayor Carroll stated that the agreement requires a 2/3 majority vote for approval. Councilor Dantas moved to approve the Intergovernmental Agreement between the Town of Avon, Town of Vail, Town of Eagle and Eagle County on Behalf of the Eagle County Sheriff's Department for the Continued Operation of a Joint Special Operations Unit ("SOR"). Councilor Phillips seconded the motion and it passed unanimously.

Matt Pielsticker, Planner II, presented the Xcel Energy 1041 Permit Application for Pipeline Construction within Highway 6 & 24. He noted that the application requests approval to construct two portions of the natural gas transmission pipeline project within Avon's boundaries. Jimmy Smith, Project Manager for Enserca Engineering, presented the project on behalf of Xcel Energy with a powerpoint presentation. CDOT Representative, Mike Verketic, presented CDOT's review of the proposal from Xcel and noted his job was to ensure the safety of the public. The construction project is due to start May 16<sup>th</sup> with a projected completion date of September 30<sup>th</sup>. Mayor Carroll opened the public hearing, no comments were made, and the hearing was closed. Mayor Carroll also noted that an additional memo was distributed to council that noted the review considerations were erroneously cited as 7.40.160 of the Development Code, and noted the correct section was 7.40.780, with an analysis of the "Major Facility Project" section as the appropriate review criteria. Councilor Goulding move to approve the Xcel Energy 1041 application for a gas pipeline within the town boundaries including staff conditions as listed on page 5 & 6 with the clarification that # 4 includes all holidays and staff included the Bec Tri event on August 6 which was not included in the special events and the CDOT permit application needs Four (4) days for each three (3) day holiday weekend and the application conforms to the review criteria for "Major Facility Projects" in §7.40.780, Avon Development Code. Councilor Reynolds seconded the motion and it passed unanimously.

### **UNFINISHED BUSINESS**

Mayor Carroll opened the discussion with some summary comments about the transit topic. Jenny Strehler, Director PW&T presented Funding Options for Transit Services and Ballot Proposals for Funding Transportation Services. The presentation address the Sustainable Transit and Event Project "STEP" Project Proposal, review two funding options, 1) accommodation tax, 2) accommodations tax + sales tax. She spoke about current transit service level, and two options of transit service level as well as special events funding scenario. Council discussion ensued and some of the following topics were raised:



- ✓ Spoke about specific language of ballot questions
- ✓ Ask for funding that is appropriate and not too much...
- ✓ Question about creating the GID to pay for transit
- ✓ Reduce the sales tax proposal to .25% not .4%
- ✓ Time to do some surveying in order to find out what might get passed
- ✓ Get Beaver Creek committed to paying for a survey as well as commit to supporting the question
- ✓ Get Beaver Creek to ensure that the skier shuttle can operate
- ✓ What about service agreements with beaver creek
- ✓ Should have a ballot question this fall
- ✓ Must keep the question simple
- ✓ How was the special events number estimated

Staff was directed to provide deliverables relating to the following topics:

- Provide for .25% increase estimates
- Survey other towns on fares
- Estimate costs of conducting a community survey to poll
- Get Beaver Creek commitment for some funding of survey and 50% payment on skier shuttle services
- Present review of the GID option, possibly as a longer term deliverable
- What other tax increase are proposed for the ballot

#### **TOWN MANAGERS REPORT**

Lot B sold to Chicago Title Insurance Company, Omaha, NE

LIBOR Rate update on the URA Bonds, structure of loan as follows:

- ❖ loan resets on June 1<sup>st</sup>, started at 4.25%, set last year at 3.2%, projected to set at 2.8% if reset today, are not projecting that rate to increase at this point in time
- ❖ 20 year loan with Vectra bank

#### **MAYORS REPORT**

Mayor Carroll reported on the following topics

- Eagle Valley Land Exchange, appraisals will be underway at this time
- The town's conservation easement exceptions need to be submitted sometime in May to the US Forest Service

#### **EXECUTIVE SESSION**

Councilor Phillips moved to reconvene the Executive Session at 9:35 PM; Councilor Evans seconded the motion and it passed unanimously. The following reason was noted for the discussion:

- a. For the purpose of discussing potential acquisition of real estate pursuant to Colorado Revised Statute §24-6-402(4)(a), receiving legal advice related to specific legal questions pursuant to §24-6-402(4)(b), and for developing a strategy for negotiations and instructing negotiators pursuant to Colorado Revised Statute §24-6-402(4)(e) specifically related to the U.S. Forest Service Multi Party Land Exchange
- b. For the purpose of receiving legal advice to specific legal questions pursuant to Colorado Revised Statute §24-6-402(4)(b) related to pending litigation regarding Town of Avon v Traer Creek Metropolitan District, 2008 CV 0385 and Traer Creek, LLC, *et.al.* v Town of Avon 2010 CV 316

The Executive Session adjourned at 10:05 PM and convened to the regular meeting.

There being no further business to come before the Council, the meeting adjourned at 10:05 pm.

**RESPECTFULLY SUBMITTED:**

\_\_\_\_\_  
Patty McKenny, Town Clerk

**APPROVED:**

- Rich Carroll \_\_\_\_\_
- Dave Dantas \_\_\_\_\_
- Chris Evans \_\_\_\_\_
- Kristi Ferraro \_\_\_\_\_
- Todd Goulding \_\_\_\_\_
- Amy Phillips \_\_\_\_\_
- Albert "Buz" Reynolds \_\_\_\_\_

**MEMO**

To: Honorable Mayor and Town Council  
Thru: Larry Brooks, Town Manager  
Legal Review: Eric Heil, Town Attorney  
Approved By: Meryl Jacobs, Director of Recreation and Cultural Services  
From: Danita Chirichillo – Special Events Supervisor  
Date: April 19, 2011  
Re: Fireworks Production Contract between Town of Avon and Western Enterprises

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**Summary:**

Attached for signature is the contract with Western Enterprises to facilitate the 2011 *Westin Riverfront Resort & Spa Salute to the USA* fireworks display scheduled for Sunday, July 3. Last year, staff worked with Western Enterprises and the fire department to create an “Attachment A” which helped to clarify the operational procedures for perimeter security, discharge/display sites and responsibilities of each party. The “Attachment A” is being utilized again for the 2011 Salute to the USA event.

In addition, the contract includes an “Addendum No.1” as recommended by the Town Attorney which contains standard municipal protection provisions.


**Financial Implications:**

The contract price for 2011 is \$51,000. The Town will receive a discount of \$2,550 if the invoice is paid by May 10th.

**Recommended Action:**

Authorize the Mayor to sign the attached contract between the Town of Avon and Western Enterprises for the purchase and production of the fireworks display for the 2011 Westin Riverfront Resort & Spa Salute to the USA.

**Town Manager Comments:**



Attachments: Production Contract, Attachment A, Addendum No. 1

# FIREWORKS PRODUCTION CONTRACT

1 of 3

1. This Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between **WESTERN ENTERPRISES, INC.**, designated herein as the "**SELLER**", and **TOWN OF AVON**, designated herein as the "**PURCHASER**" for a fireworks production to be held on **JULY 3, 2011**.
2. **SELLER** will secure, prepare and deliver said fireworks as outlined, or will make necessary substitutions of equal or greater value. **SELLER** will include the services of a Pyrotechnic Operator to take charge of, set up and fire the display, along with such help as he deems necessary to perform the fireworks display safely, and in accordance with such Federal, State or Local laws that might be applicable.
3. **SELLER** agrees that the Operator and Assistant(s) are to check the display area after the presentation of the fireworks display for any "duds" or other material that might not have ignited. Any such material found by any person other than the Operator shall be turned over to the Operator, or the proper authority having jurisdiction, for safe handling or disposal of said material.
4. **PURCHASER** will furnish a secured area with minimum safety distances established by the **SELLER** after an on-site inspection of the proposed firing location. **PURCHASER** will provide adequate police protection and/or other adequate security to maintain these distances. **PURCHASER** also agrees to have a fire truck available on location during the display.
5. **No Purchaser Liability.** In carrying out any of the provisions of this Contract or in exercising any power or authority thereby, there shall be no personal liability of the **PURCHASER**, its officers, staff, consultants, officials, attorneys, representatives, agents, or employees.
6. **Indemnification.** The **SELLER** agrees to indemnify and hold harmless the **PURCHASER** and its officers, attorneys, agents, employees, representatives, insurers, and self-insurance pool from and against all liability, claims, and demands on account of injury, personal injury, sickness, disease, death, property loss, or damage, or any other loss of any kind whatsoever which arises out of or is in any manner connected with this Contract or the work, if such injury, loss, or damage is caused in whole or in part by the act, omission, error, professional error, mistake, negligence, or other fault of the **SELLER**, any subcontractor of the **SELLER**, or which arises out of any workers' compensation claim of any employee of the **SELLER** or of any employee of any subcontractor of the **SELLER**. The **SELLER** agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims, or demands at the expense of the **SELLER**. The **SELLER** also agrees to bear all other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.
7. **Insurance.**
  - a. **General.** The **SELLER** shall not commence work under this Contract until it has obtained all insurance required herein and such insurance has been approved by the **PURCHASER**. The **SELLER** shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Contract, the **SELLER** must maintain the insurance coverage required in this section.
  - b. **Insurance.**
    - (1) The **SELLER** agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the **SELLER** pursuant to this Contract. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The **SELLER** shall not be relieved of any liability, claims, demands, or other obligations assumed by this Contract by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

## FIREWORKS DISPLAY CONTRACT

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(2) **SELLER** shall procure and maintain, and shall cause each subcontractor of the **SELLER** to procure and maintain, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the **PURCHASER**. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the **SELLER** herein. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(a) Workers' compensation insurance to cover obligation imposed by applicable laws for any employee engaged in the performance of work under this Contract, and employers liability insurance with minimum limits of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** disease policy limit, and **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** disease - each employee. Evidence of qualified self-insured status may be substituted for the workers' compensation requirements of this paragraph.

(b) General liability insurance with minimum, combined single limits of **FIVE MILLION DOLLARS (\$5,000,000)** each occurrence and **FIVE MILLION DOLLARS (\$5,000,000)** aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall also include coverage for explosion and shall contain a severability of interest's provision.

(c) Comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than **ONE MILLION DOLLARS (\$1,000,000)** each occurrence and **ONE MILLION DOLLARS (\$1,000,000)** aggregate with respect to each of **SELLER'S** owned, hired, or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interest's provision.

(3) The policy required by paragraph (2) (b) above and by paragraph (2) (c) above shall be endorsed to include the **PURCHASER** and its officers, agents, officials, and employees as additional insured. Every policy required above shall be primary insurance, and any insurance carried by the **PURCHASER**, its officers, or its employees, or carried by or provided through any insurance pool of the **PURCHASER** shall be excess and not contributory insurance to that provided by **SELLER**. No additional insured endorsement to the policy required by paragraph (2) (a) above shall contain any exclusion for bodily injury or property damage arising from completed operations. The **SELLER** shall be solely responsible for any deductible losses under any policy required by the **PURCHASER**.

(4) The Certificate of Insurance provided to the **PURCHASER** shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the **PURCHASER** prior to commencement of the Contract. No other form of certificate shall be used. The Certificate of Insurance shall identify this Contract and shall provide that the coverage afforded under the policies shall not be canceled, terminated, or materially changed until at least 30 days' prior written notice has been given to the **PURCHASER**. The completed Certificate of Insurance shall be submitted to the **PURCHASER'S** Recreation Director.

(5) Failure on the party of the **SELLER** to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the **PURCHASER** may immediately terminate this Contract, or at its discretion, the **PURCHASER** may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith as a cost of this project. All monies so paid by the **PURCHASER** shall be repaid by **SELLER** to the **PURCHASER** upon demand, or the **PURCHASER** may offset the cost of the premiums against any monies due to **SELLER** from the **PURCHASER**.

(6) The **PURCHASER** reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

# FIREWORKS PRODUCTION CONTRACT

3 of 3

(7) No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

8. It is agreed and understood that the PURCHASER will pay to the SELLER the sum of **FIFTY ONE THOUSAND DOLLARS & NO/100 (\$51,000.00)** to be paid within fifteen (15) days after the date of the display. **HOWEVER**, if payment is made in full by **April 20, 2011**, a five percent (5%) discount will apply. That discount can either be deducted from the total contract price, or the PURCHASER may elect to receive that amount of extra pyrotechnic product in lieu of the discount. Unpaid accounts are subject to one percent (1%) interest charge per month after fifteen days.

9. In the event of inclement weather or other adverse conditions, so as to cause postponement of the display, it is agreed and understood that PURCHASER will notify SELLER regarding the postponement date, normally the following night, or at some future date through **January 2, 2012**. If the PURCHASER will not re-schedule the display within the calendar year, or completely cancels the display, the PURCHASER agrees to pay to the SELLER Thirty percent (30%) of the cost of the display (**\$15,300.00**). If prepayment option has been exercised, SELLER will refund to PURCHASER the total amount paid, less the 30% mentioned above.

10. Witness whereof, we have caused our signatures to be affixed to this Document, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**WESTERN ENTERPRISES, INC.**  
**SELLER**

**TOWN OF AVON**  
**PURCHASER**

BY: \_\_\_\_\_  
authorized agent

BY: \_\_\_\_\_  
authorized agent

## **“Attachment A”**

The items contained herein provide for additional responsibilities or provisions that are to be adhered to by either the PURCHASER (“Western”) or the SELLER (“Town of Avon”).

The Discharge Site is herein defined as the immediate area from where the fireworks equipment and fireworks are located and/or discharged. The Display Site is herein defined as not only including the Discharge Site, but also the entire required security safety perimeter outside the Discharge Site as prescribed by the Eagle River Fire Protection District and “Western”.

### **Additional Responsibilities for Western Enterprises, Inc. (hereinafter noted as “Western”)**

1. Prior to delivery of fireworks to the Town of Avon, “Western” will notify the Eagle River Fire Protection District of the approximate delivery date and time. Once the fireworks arrive, “Western” will confirm delivery with the above mentioned parties.
2. “Western” will create specific credentials for all pyrotechnic crew members. These credentials will have photo identification for each crew member. A list of the pyrotechnic crew members will be provided to the Town of Avon prior to the display for verification. Only crew members with proper credential will be allowed into the Discharge Site.
3. Pyrotechnic crew members will begin load-in at Discharge Site beginning at approximately 8:00am on July 2, 2011. The Pyrotechnic crew members will be responsible for security of the Discharge Site upon arrival for load-in, and until the Town of Avon security team arrives at approximately 6:30 pm.
4. Pyrotechnic crew members will park only in designated area, as determined by the Town of Avon and/or Eagle River Fire Protection District.
5. “Western” designates Mr. Paul Zoch as the primary operator in charge of the firing of the fireworks display. “Western” will have an additional Pyrotechnic Operator that will be on site to help facilitate the proper communication between the Town of Avon, the studio engineer for the Radio Sponsor and also Mr. Paul Zoch. “Western”. This includes a coordinated “lights-out” countdown with all parties.
6. “Western” crew members will do an immediate after-show “sweep” of the safety perimeter within the (Discharge Site and Display Site) to pick up any unexploded pyrotechnic devices. No spectators can be allowed into these perimeter areas until the sweep is complete. This “sweep” is allocated to last approximately 25 minutes.
7. “Western” will work directly with Eagle River Fire Protection District officials for permitting fireworks display. “Western” will work directly with Eagle River Fire Protection District to ensure that fireworks equipment and fireworks display will be conducted in accordance to safety regulations established to NFPA 1123 (Code of Regulations for conducting outdoor fireworks displays). The safety regulations in this document may be increased to ensure the safety of everyone.
8. Designated pyrotechnic crew members will be responsible as “spotters”. These individuals are strategically positioned around the discharge site to watch all pyrotechnics during the firing of the display.
9. There will be designated “runners for food and beverages” for the pyrotechnic crew members. These designated individuals can be pyrotechnic crew members, but if they do not have the proper credentials with photo identification, they will not be allowed into the discharge site.

## **“Attachment A” (Page 2)**

### **Additional Responsibilities for Town of Avon**

- 1. Town of Avon will be responsible for providing security personnel on July 2, 2011 at approximately 6:00 p.m. until 8:00 a.m. on July 3, 2011 at which time they pyrotechnic crew arrives.**
- 2. Town of Avon will provide for a security fence for both the Discharge site and Display Site.**
- 3. Town of Avon will provide security personnel prior to, during and after the firing of the display on July 3<sup>rd</sup>. These individuals will be posted at designated locations. Immediately after the display, for approximately 25 minutes, these security personnel will not allow any spectators into the secured Display Site.**
- 4. Town of Avon will be responsible for coordinating/contracting with their designated Radio Sponsor. (Due to problems in 2009, it is necessary to have a specific studio engineer to coordinate with both Paul Zoch.)**
- 5. Town of Avon will provide equipment for radio communication that will be used between Fire Department, Studio Engineer, Pyrotechnic crew and a designated individual for Town of Avon coordinating the event. The Town of Avon agrees to have discussions regarding a dedicated/exclusive radio channel for this communication.**



## **ADDENDUM NO. 1: MUNICIPAL PROVISIONS**

In the event the terms and conditions of this Addendum No. 1 conflict in whole or in part with the terms and conditions of the Fireworks Production Contract dated April 26<sup>th</sup>, 2011 agreement the terms and conditions of this Addendum No. 1 shall control.

- A.1. No Waiver of Governmental Immunity:** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- A.2. Affirmative Action:** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- A.3. Article X, Section 20/TABOR:** The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Avon, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- A.4. Employment of or Contracts with Illegal Aliens:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien.

The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

- A.5. Ownership of Documents:** Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Avon upon delivery and shall not be made subject to any copyright unless authorized by the Town. Other materials, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.
- A.6. No Waiver of Rights:** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver by resolution of the Town Council of the Town of Avon, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- A.7. Binding Effect:** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns.
- A.8. Limitation of Damages:** The Parties agree that Contractor's remedies for any claims asserted against the Town shall be limited to proven direct damages in an amount to exceed amounts due under the Agreement and that Town shall not be liable for indirect, incidental, special or consequential damages, including but not limited to lost profits
- A.9. No Third Party Beneficiaries:** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**A.10. Governing Law, Venue, and Enforcement:** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Eagle County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

**A.11. Survival of Terms and Conditions:** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

**A.12. Assignment and Release:** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the Town Council for the Town of Avon. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Town Council for the Town of Avon. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

**A.13. Severability:** Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.



# MEMORANDUM

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**TO:** Honorable Mayor Carroll and Town Council members  
**FROM:** Eric Heil, Esq., Town Attorney  
**CC:** Robert Ticer, Avon Chief of Police; Larry Brooks, Town Manager  
**RE:** Ordinance No. 11-05 Adopting 2010 Model Traffic Code  
**DATE:** April 20, 2011

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**Summary:** Ordinance No. 11-05 adopts the 2010 Model Traffic Code ("MTC") by reference. Currently, the Avon Municipal Code refers to the 1995 Model Traffic Code, which is several versions out of date. The Avon Police Department, the Town Prosecutor and the Avon Municipal Court desire the adoption of the 2010 Model Traffic Code.

**Changes and Amendments:** Ord. No. 11-05 repeals, reorders, replaces and updates all of the *Article III Amendments* in Avon Municipal Code sections 10.04.060 through 10.04.130. Many changes are simply to update cross-references. Consideration was given to issues recognized by other municipalities. Unfortunately, the Colorado Department of Highways did not have a word version of the 2003 Model Traffic Code, therefore town staff is not able to provide a detailed comparison and explanation of MTC language changes.

Specific changes are explained as follows:

**MTC Sec. 111** – Obedience to members of fire department. This is an addition which has been incorporated by other municipalities to establish that failure to obey a member of the fire department when responding to an emergency constitutes a MTC violation.

**MTC Sec. 225** – this amendment changes the language to allow the Town of Avon to collect 100% of fines.

**MTC Sec. 706(1)** – no change from existing Avon Municipal Code.

**MTC Sec. 1212** – no change from existing Avon Municipal Code except numbering.

**MTC Sec. 1409(9)** – this amendment changes the language to allow the Town of Avon to collect 100% of fines.

**MTC Sec. 1416** – the language is the same but updated for the number in the 2010 MTC.

**MTC Sec. 1417** – the language is the same but updated for the number in the 2010 MTC.

**MTC Sec. 1418** – this is a new section which clarifies that driving on public park or public property is a violation of the MTC.

**MTC Sec. 1502(3)** – this is an amendment to correct a typo in the MTC which prohibited riding a motorcycle while carrying “codes”.

**MTC Sec. 1701** – the language is the same but updated for the number in the 2010 MTC.

**MTC Sec. 1709** – no change from existing Avon Municipal Code except numbering.

**MTC Sec. 1801** – no change from existing Avon Municipal Code except numbering.

**MTC Sec. 1903** – no change from existing Avon Municipal Code except numbering.

**Procedure for Adoption by Reference of a Model Code:** Pursuant to the Avon Charter Section 6.9 and C.R.S. §31-16-201 *et. seq.*, the Town may enact an ordinance which adopts a state code by reference. In addition to regular notice requirements, publication of the ordinance shall contain a summary of the subject matter of the ordinance, the penalty clause and a notice to the public that copies of the proposed ordinance and proposed code are available at the office of the Town Clerk. Avon Charter, §6.5(g). Copies of the MTC are being provided to the Avon Town Council members electronically prior to the meeting to avoid the requirement to read the entire code at the Council meeting. C.R.S. §31-16-203 and §31-16-107.

The penalties must be written out in full and published in the adopting ordinance. C.R.S. §31-16-204. After passage of the adopting ordinance it must be posted in accordance with the Town Charter §§6.7 and 6.9. Once the adopted by the Town Council, the officer who will be enforcing the ordinance may keep a copy of the MTC in his or her office instead of the Town Clerk’s office and this custodian must keep a reasonable supply of the code for purchase. C.R.S. §31-16-205.

**Requested Town Council action:** Adoption of first reading of Ordinance No. 2011-05 Adoption of the 2010 Model Traffic Code.

*Thank you, Eric*

**TOWN OF AVON, COLORADO  
ORDINANCE NO. 11-05  
SERIES OF 2011**

**AN ORDINANCE ADOPTING THE 2010 MODEL TRAFFIC CODE BY  
REFERENCE AND REPEALING AND REENACTING SECTIONS OF  
TITLE 10 OF THE AVON MUNICIPAL CODE**

**WHEREAS**, the Town Council finds that the adoption of the 2010 Model Traffic Code will improve the standards for road safety and will thereby promote the health, safety and general welfare of the Avon community; and

**WHEREAS**, pursuant to Avon Town Charter §6.9 and Title 31, Article 16, Parts 1 and 2, Colorado Revised Statutes, the Town Council may adopt by reference any statute, rule, regulation, model code, or standard that is promulgated by the federal government, the State of Colorado, an agency of either the federal government or the State, or another municipality; and

**WHEREAS**, Section 110 of the 2010 Model Traffic Code states that Town Council may enact, adopt and enforce traffic regulations which address the same subject matter as the various sections of the Model Traffic Code, state law or additional regulations included in C.R.S. §42-4-111; and

**WHEREAS**, the Town Council desires to adopt the 2010 Model Traffic Code by reference with certain amendments as described in this Ordinance; and

**WHEREAS**, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply the requirements of the Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO** the following:

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

**Section 2. 1995 Edition of Model Traffic Code Repealed.** The 1995 edition of the Model Traffic Code is hereby repealed.

**Section 3. 2010 Edition of Model Traffic Code Adopted by Reference.** The 2010 edition of the *Model Traffic Code* is hereby adopted by reference. All amendments to the *Model Traffic Code* as set forth in Article III Amendments of Chapter 10.04 are hereby readopted as amendments to the 2010 *Model Traffic Code* except as provided in this Ordinance.

**Section 4. Repealed and Reenacted.** Avon Municipal Code Section 10.04.010(a) is hereby repealed and reenacted in its entirety to read as follows:

**“10.04.010 Adoption--Copies on File.**

(a) Pursuant to §6.9 of Chapter 6 of the Town Charter and C.R.S. Title 31, Article 16, Parts 1 and 2, as amended, there is adopted by reference Articles I and II, inclusive and with deletions and additions noted below, of the 2010 edition of the *Model Traffic Code for Colorado Municipalities*, promulgated by and published as such by the Colorado Department of Transportation, 4201 East Arkansas Ave., Denver, CO 80222, which shall be referred to as the *Model Traffic Code* or *MTC* in this Chapter 10.04. The subject matter of the *Model Traffic Code* relates primarily to comprehensive traffic control regulations for the Town. The purpose of the Ordinance codified in this chapter and the code adopted herein is to provide a system of traffic regulations consistent with state law generally conforming to similar regulations throughout the state and nation.”

**Section 5. Repealed.** Avon Municipal Code Sections 10.04.060, 10.04.070, 10.04.080, 10.04.090, 10.04.100, 10.04.110, 10.04.120, and 10.04.130 are hereby repealed in their entirety.

**Section 6. Enacted.** Avon Municipal Code Sections 10.04.060 through 10.04.170 are hereby enacted to read as follows:

**“10.04.060 MTC Section 111 Amended – Obedience to members of fire department.**

Section 111 of the *Model Traffic Code* is amended in its entirety to read as follows:

“111. Obedience to members of the fire department.

Members of the fire department, when at the scene of a fire, accident or matter involving the use of firefighting equipment, may direct, or assist the police in directing, traffic in the immediate vicinity. No person shall willfully fail or refuse to obey a lawful order or direction of a member of the fire department so acting.”

**10.04.070 MTC Section 225 Amended - Mufflers - prevention of noise.**

Section 225(3) of the *Model Traffic Code* is amended in its entirety to read as follows:

“(3) Any person who violates subsection (1) of this section commits a class B traffic infraction. Any person who violates subsection (1.5) of this section shall, upon conviction, be punished by a fine of five hundred dollars. One hundred percent (100%) of any fine for a violation of subsection (1.5) of this section occurring within the corporate limits of the Town of Avon shall be transmitted to the Town. Fifty percent (50%) of any fine for a violation of subsection (1.5) of this section occurring within the unincorporated area of a county shall be

transmitted to the treasurer or chief financial officer of the Town of Avon and the remaining fifty percent (50%) shall be transmitted to the state treasurer, credited to the highway users tax fund, and allocated and expended as specified in section 205 (5.5)(a), C.R.S.”

**10.04.080 MTC Section 706(1) Amended – obedience to railroad signal.**

Section 706(1) of the *Model Traffic Code* is amended in its entirety to read as follows:

“Section 706. Obedience to Railroad Signal.

(1) Whenever any person driving a motor vehicle approaches a railroad grade crossing under any circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he can do so safely. Such requirements shall apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.

(b) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(c) A railroad train approaching within approximately fifteen hundred feet of the highway crossing emits a signal audible from such distance, and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.”

**10.04.090 MTC Section 1212 Amended – Parking on private property.**

Section 1212 of the *Model Traffic Code* is amended in its entirety to read as follows:

“Section 1212. Unlawful Parking on Private Parking Lots or Private Property.

It shall be unlawful for any person to park or cause to be parked any vehicle upon any private parking lot or any other private property within the Town of Avon, without the consent of the owner thereof or the tenant or person in possession or control of said private parking lot or private property.

(a) Posting of Sign

Any, owner, tenant or person in possession or control of a private parking lot or private property wishing to avail himself of the provision of this section shall post



at each and every entrance to a private parking lot or private property a sign containing essentially the following words:

Private Parking Lot

Parking is reserved for persons having permission of the owner and any other person may be subject to the penalties imposed by Ordinance No. 11-05. Violating vehicles may be impounded.

All signs must be approved by the Chief of Police, who shall have the authority to determine size, shape and lettering of such signs.

(b) Signing of Complaints

No complaint shall be issued for any violation of this section unless the same is signed by the owner, tenant or person in possession or control of the private parking lot or private property within or upon which a violation of this section may have occurred or the agent of such person or entity.”

**10.04.100 MTC Section 1409(9) Amended – Compulsory insurance – penalty – legislative intent.**

Section 1409(9) of the *Model Traffic Code* is amended in its entirety to read as follows:

“(9) Of the moneys collected from fines pursuant to paragraphs (a) and (b) of subsection (4) of this section, one hundred percent (100%) of these moneys shall be transferred to the Town of Avon.”

**10.04.110 MTC Section 1416 Enacted – School zones – increase of penalties for moving traffic violations.**

Section 1416 of the *Model Traffic Code* is hereby enacted to read as follows:

“Section 1416. School zones - Increase of penalties for moving traffic violations.

(1) Any person who commits a moving traffic violation in a school zone is subject to increased penalties and surcharges imposed by Section 1701(6).

(2) For purposes of this section, 'school zone' means an area that is designated as a school zone and has appropriate signs posted indicating that the penalties and surcharges will be double. The state or local government having jurisdiction over the placement of traffic signs and traffic control devices in the school zone area shall designate when the area will be deemed to be a school zone for the purposes of this section. In making such designation, the state or local government shall consider when increased penalties are necessary to protect the safety of school

children.”

**10.04.120 MTC Section 1417 Enacted – Residential areas – increase of penalties for moving traffic violations.**

Section 1417 of the *Model Traffic Code* is hereby enacted to read as follows:

“From and after the posting of signs, any person who commits a moving traffic violation in the Wildridge Subdivision; on Hurd Lane east of Avon Road; on Stonebridge Drive; on Eaglebend Drive; or on West Beaver Creek Boulevard between Highway 6 and Benchmark Road, is subject to increased penalties and surcharges imposed by Section 1701(7).”

**10.04.130 MTC Section 1418 Enacted – Driving on Public Park.**

Section 1418 of the *Model Traffic Code* is hereby enacted to read as follows:

“1418. Driving on public park.  
No person shall drive or cause to be driven any vehicle on any portion of a public park or other public property other than established roadways specifically provided for public driving, unless specifically authorized so to do by a traffic control officer.”

**10.04.140 MTC Section 1502(3) Amended – Riding on motorcycles.**

Section 1502(3) of the *Model Traffic Code* is amended in its entirety to read as follows:

“(3) No person shall operate a motorcycle while carrying packages, bundles, or other articles which prevent the person from keeping both hands on the handlebars.”

**10.04.150 MTC Section 1701 Amended – Traffic offenses and infractions classified – penalties – penalty and surcharge schedule.**

Section 1701 of the *Model Traffic Code* is amended by the enactment of the following language:

“1701(9). The penalty and surcharge schedule imposed for any moving traffic violation under subsection (3) of Section 1701 are doubled if the violation occurs within a school zone pursuant to Section 1416 or if a violation of Section 1903(1)(a) occurs.

1701(10). The penalty and surcharge schedule imposed for any moving violation under subsection (3) of Section 1701 are doubled if the violation occurs within

any of the residential areas as designated pursuant to Section 1417.”

**10.04.160 MTC Section 1709 Amended – Penalty Assessment Notice for Traffic Offenses**

Section 1709 of the *Model Traffic Code* is amended by the addition of the following language:

"(5.5). If a person receives a penalty assessment notice for a violation under Section 1709 and such person pays the fine and surcharge for the violation on or before the date the payment is due, the points assessed for the violation are reduced as follows:

(a) For a violation having an assessment of three (3) or more points under Section 42-4-1701 (5), Colorado Revised Statutes, the points are reduced by two (2) points;

(b) For a violation having the assessment of two (2) points under Section 42-4-1701(5), Colorado Revised Statutes, the points are reduced by one (1) point.

(6). Whenever the Town of Avon reduces a traffic offense the reduced offense and the points assessed for such reduced offense shall conform to the point assessment schedule under Section 42-2-127(5), Colorado Revised Statutes."

**10.04.170 MTC Section 1801 Amended – Authority to impound vehicles.**

Section 1801 of the *Model Traffic Code* is hereby amended to read in its entirety as follows:

“Section 1801. Authority to Impound Vehicles.

(a) Whenever any police officer finds a vehicle, attended or unattended, standing upon any portion of a street or highway right-of-way within this municipality in such a manner as to constitute a violation of sections 1202 and 1204 of this Code, or left unattended, for a period of 24 hours or more and presumed to be abandoned under the conditions prescribed by 42-4-1802 et seq., C.R.S., such officer shall require such vehicle to be removed or cause the same to be removed and placed in storage at the nearest garage or other place of safety designated or maintained by this municipality.

(b) In the event of abandonment of a vehicle on property within this municipality other than public rights-of-way the owner of such property shall notify the police department, and said police after a period of 72 hours cause the abandoned vehicle to be removed and placed in storage in the nearest garage or other place of safety designated or maintained by the municipality.

(c) Whenever any police officer finds a vehicle parked on any street or at any place within this municipality in violation of any provision of this code or in

violation of a provision contained on any official sign, such officer may require such vehicle to be removed or cause the same to be removed and placed in storage.

(d) A vehicle illegally parked on private property shall not be impounded pursuant to Section 1801(c) hereof unless a complaint for said violation is signed by the owner, lessee, tenant, or authorized agent, who is legally in possession or control of said property.

(e) In the event a vehicle is impounded pursuant to subsection (a), (b) or (c) of Section 1801 hereof, the owner or driver of the vehicle shall pay as a fine a reasonable amount for said removal or removal and storage in addition to the penalty imposed for illegal parking or any other violation of any of the provisions hereof.

(f) Whenever the police officer or any other employee of the Town of Avon so authorized removes the vehicle and causes it to be impounded as authorized by law, and the officer or other employee knows or is able to ascertain from the registration, or other records in the vehicle or otherwise, the name of the owner and address of the owner, the officer or employee shall immediately give or cause to be given notice in writing to the owner of the fact of the removal, the reason for it and the place to which the vehicle has been removed.

(g) Whenever an officer or employee of the Town removes a vehicle from a public way or from public or private property and does not know or is not able to ascertain the name of the owner thereof, or for any other reason is unable to give the notice to the owner as provided in Section 1801(f), and in the event the vehicle is not returned to the owner within a period of three days, the Chief of Police or other employee of the Town designated by the Chief of Police shall immediately send or cause to be sent a written report of the removal by mail to the state department whose duty it is to register motor vehicles. The notice shall include a complete description of the vehicle, the date, time and place of removal, the reasons for the removal, and the name of the garage or other place where the vehicle is stored, with a request that the owner of the vehicle be notified immediately.

(h) Whenever, pursuant to the terms of this chapter, a vehicle has been impounded by the Town for period of thirty days and no claim of ownership or right to possession thereof has been made, or when a claim has been made but not established to the satisfaction of the town manager, and no suit or action to determine the claim has been instituted, the Town may dispose of the vehicle in the manner set out in subsection (i).

(i) The Chief of Police or other employee of the Town designated by the Chief of Police shall cause written notice to be given to all persons known by him to claim an interest in the vehicle. The notice shall be given by delivery in person, or by

certified mail, addressed to the last known address of the business or residence of the person to be notified. The notice shall contain the following:

(1) An itemized statement of the amount due to the Town for removal of and storage of the vehicle showing the amount due at the time of notice;

(2) A description of the vehicle.

(3) A demand that the amount due the Town, as stated in the notice, and such further claims as shall accrue, shall be paid and the right to the possession of the vehicle be established to the satisfaction of the Chief of Police on or before the date mentioned, being not less than ten days from the delivery of the notice if it is personally delivered, or from the date of registration of the letter, unless the person notified chooses to appear before the Chief of Police or his designee within such ten-day period and establishes that (1) the impounding of the vehicle was improper or (2) the amount demanded is unreasonable, and the statement that unless the amount due the Town is paid or determined not to be required and the right to the possession of the vehicle is established to the satisfaction of the Chief of Police within the time specified, the vehicle will be advertised for sale and sold by auction at a specified time and place.

(j) In accordance with the terms of the notice provided for in Section 1801(i)(3), a sale of the vehicle by auction may be had to satisfy the claim of the Town for the storage and removal of the vehicle and to discharge the Town from further responsibility in connection with the vehicle and from any duty to further retain or store the vehicle. The sale shall be held at the place where the vehicle is stored or impounded or, if it is manifestly unsuitable for the purpose, at the nearest suitable place and shall be made to the highest bidder of a price at least as great as the estimated value of the vehicle. After the time for the payment of the claim and the establishment to the satisfaction of the Chief of Police of the right to possession of the vehicle has elapsed and notice was given as required, an advertisement of the sale, describing the vehicle to be sold and stating the names of all persons known by the Chief of Police to claim an interest in the vehicle, if any, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the county. The sale shall be held not less than fifteen days from the date of the first publication. The Chief of Police shall execute and deliver a bill of sale, together with any report required by the Colorado Department of Revenue, evidencing transfer of title to the vehicle to any purchaser.

(k) From the proceeds of the sale provided for in Section 1801(j), the Chief of Police shall satisfy the claim of the Town for the charges for removal and storage of the vehicle, and for the reasonable charges or expenses for or of the notice, advertising and sale. The balance, if any, of the proceeds will be paid into the treasury of the Town and deposited to the general fund. No claim for refund shall

be made by any person entitled to it except if the claim is made within one year from the date of any sale resulting in the payment of any such proceeds into the treasury. A claim or refund shall be made to the town manager, who shall make a thorough examination of the claim. The failure on the part of any person to request the initiation of a refund to him within one year from the date of sale shall be conclusive of the fact that he has no meritorious claim for the refund within the set period of one year from the date of sale and he shall not thereafter commence any action, suit or proceeding whatsoever to obtain the refund and the Town shall be under no liability to him whatsoever by reason of the sale for the payment of any part of the proceeds of the sale or the entire proceeds of the sale in the treasury of the Town.

(l) When any vehicle is offered for sale at auction pursuant to the terms of this Chapter and there is no bid for the vehicle, the Chief of Police shall declare the vehicle to be sold to the Town for the amount of the charges for the removal and storage of the vehicle, and the charges and expenses of notice, advertisement, and sale, and shall place the vehicle in the custody of such department of the Town as he in his sole discretion may determine, for the sole benefit and use of the Town.

(m) There shall be no right of redemption from any sale made pursuant to the terms of this section and after a vehicle has been sold pursuant to such terms, neither the Town nor any officer, agent or employee of the Town shall be liable for failure to deliver the vehicle to anyone other than the purchaser or purchasers at the sale.

(n) Nothing contained herein shall be construed as imposing any obligation or liability on the Town for any negligence in the towing or storage of any vehicle or with respect to the quality of title to any vehicle.”

**10.04.180 MTC Section 1903 amended – school bus violations – increase of penalties for traffic violations.**

Section 1903 of the *Model Traffic Code* is amended by the addition of the following

(1) It is a traffic infraction for any person to violate any of the provisions of Codes 1 to 3 of this title and parts 1 to 3 and 5 to 19 of this Code unless such violation is, by Codes 1 to 3 of this title and parts 1 to 3 and 5 to 19 of this Code or by any other law of this state, declared to be a felony, misdemeanor, petty offense, or misdemeanor traffic offense. Such a traffic infraction shall constitute a civil matter.

(2) (a) For the purposes of this part 17, “judge” shall include any county court magistrate who hears traffic infraction matters, but no person charged with a traffic violation other than a traffic infraction or class 2 misdemeanor traffic offense shall be taken before a county court magistrate.

(b) For the purposes of this part 17, “magistrate” shall include any county court judge who is acting as a county court magistrate in traffic infraction and class 2 misdemeanor traffic offense matters.

(3) (a) (I) Except as provided in subsections (4) and (5) of this section, traffic infractions are divided into two classes which shall be subject to the following penalties which are authorized upon entry of judgment against the defendant:

<b>Class</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
A	\$15 penalty	\$100 penalty
B	\$15 penalty	\$100 penalty

(II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), subsections (4) and (5) of this section, and sections 42-4-1301 (7), 42-4-1301.3, and 42-4-1301.4, misdemeanor traffic offenses are divided into two classes that are distinguished from one another by the following penalties that are authorized upon conviction:

<b>Class</b>	<b>Minimum Sentence</b>	<b>Maximum Sentence</b>
1	Ten days imprisonment or \$300 fine, or both	One year imprisonment, or \$1,000 fine, or both
2	Ten days imprisonment or \$150 fine, or both	Ninety days imprisonment, or \$300 fine, or both

(B) Any person convicted of a class 1 or class 2 misdemeanor traffic offense shall be required to pay restitution as required by Code 18.5 of title 16, C.R.S., and may be sentenced to perform a certain number of hours of community or useful public service in addition to any other sentence

provided by sub-subparagraph (A) of this subparagraph (II), subject to the conditions and restrictions of section 18-1.3-507, C.R.S.

(b) Any traffic infraction or misdemeanor traffic offense defined by law outside of Codes 1 to 4 of this title shall be punishable as provided in the statute defining it or as otherwise provided by law.

(c) The department has no authority to assess any points under section 42-2-127 upon entry of judgment for any class B traffic infractions.

(4) (a) (I) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which the provisions of paragraph (a) or (b) of subsection (5) of this section apply shall be fined or penalized, and have a surcharge levied thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104(1) (b) (I), C.R.S., in accordance with the penalty and surcharge schedule set forth in sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or surcharge is specified in the schedule, the penalty for class A and class B traffic infractions shall be fifteen dollars, and the surcharge shall be four dollars.

These penalties and surcharges shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate. Penalties and surcharges for violating specific sections shall be as follows:

<b>Section Violated</b>	<b>Penalty</b>	<b>Surcharge</b>
<b>(A) Drivers' license violations:</b>		
42-2-101 (1) or (4)	\$ 35.00	\$ 10.00
42-2-101 (2), (3), or (5)	15.00	6.00
42-2-103	15.00	6.00
42-2-105	70.00	10.00
42-2-105.5(4)	65.00	10.00
42-2-106	70.00	10.00
42-2-116 (6) (a)	30.00	6.00
42-2-119	15.00	6.00
42-2-134	35.00	10.00
42-2-136	35.00	10.00
42-2-139	35.00	10.00
42-2-140	35.00	10.00
42-2-141	35.00	10.00
<b>(B) Registration and taxation violations:</b>		
42-3-103	\$ 50.00	\$ 16.00
42-3-113	15.00	6.00
42-3-202	15.00	6.00
42-3-116	50.00	16.00
42-3-121 (1)(a)	75.00	24.00



42-3-121 (1)(c)	35.00	10.00
42-3-121 (1)(f), (1)(g), and (1)(h)	75.00	24.00
42-3-304 to 42-3-306	50.00	16.00

**(C) Traffic regulation generally:**

42-4-1412	\$ 15.00	\$ 6.00
42-4-109 (13)(a)	15.00	6.00
42-4-109 (13)(b)	100.00	15.00
42-4-1211	30.00	6.00
42-4-1405	15.00	6.00

**(D) Equipment violations:**

42-4-201	\$ 35.00	\$ 10.00
42-4-202	35.00	10.00
42-4-204	15.00	6.00
42-4-205	15.00	6.00
42-4-206	15.00	6.00
42-4-207	15.00	6.00
42-4-208	15.00	6.00
42-4-209	15.00	6.00
42-4-210	15.00	6.00
42-4-211	15.00	6.00
42-4-212	15.00	6.00
42-4-213	15.00	6.00
42-4-214	15.00	6.00
42-4-215	15.00	6.00
42-4-216	15.00	6.00
42-4-217	15.00	6.00
42-4-218	15.00	6.00
42-4-219	15.00	6.00
42-4-220	15.00	6.00
42-4-221	15.00	6.00
42-4-222 (1)	15.00	6.00
42-4-223	15.00	6.00
42-4-224	15.00	6.00
42-4-225 (1)	15.00	6.00
42-4-226	15.00	6.00
42-4-227 (1)	50.00	16.00
42-4-227 (2)	15.00	6.00
42-4-228 (1), (2), (3), (5), or (6)	15.00	6.00
42-4-229	15.00	6.00
42-4-230	15.00	6.00
42-4-231	15.00	6.00
42-4-232	15.00	6.00
42-4-233	75.00	24.00

42-4-234	15.00	6.00
42-4-235	50.00	16.00
42-4-236	65.00	16.00
42-4-237	65.00	6.00
42-4-1411	15.00	6.00
42-4-1412	15.00	6.00
42-4-1901	35.00	10.00

**(E) Emissions inspections:**

42-4-313 (3)(c)	\$ 50.00	\$ 16.00
42-4-313 (3)(d)	15.00	6.00

**(F) Size, weight, and load violations:**

42-4-502	\$ 75.00	\$ 24.00
42-4-503	15.00	6.00
42-4-504	75.00	24.00
42-4-505	75.00	24.00
42-4-506	15.00	6.00
42-4-509	50.00	16.00
42-4-510 (12)(a)	35.00	10.00
42-4-106 (1), (3), (4), (6), or (7)	35.00	10.00
42-4-106 (5)(a)(I)	100.00	32.00
42-4-106 (5)(a)(II)	500.00	156.00
42-4-106 (5)(a)(III)	500.00	78.00
42-4-106 (5)(a)(IV)	1,000.00	156.00
42-4-512	75.00	24.00
42-8-105 (1) to (5)	50.00	16.00
42-8-106	50.00	16.00

**(G) Signals, signs, and markings violations:**

42-4-603	\$ 100.00	\$ 10.00
42-4-604	100.00	10.00
42-4-605	70.00	10.00
42-4-606	15.00	6.00
42-4-607 (1)	50.00	16.00
42-4-607 (2)(a)	100.00	32.00
42-4-608 (1)	70.00	6.00
42-4-608 (2)	15.00	6.00
42-4-609	15.00	6.00
42-4-610	15.00	6.00
42-4-612	70.00	10.00
42-4-613	35.00	10.00

**(H) Rights-of-way violations:**

42-4-701	\$ 70.00	\$ 10.00
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42-4-702	70.00	10.00
42-4-703	70.00	10.00
42-4-704	70.00	10.00
42-4-705	70.00	16.00
42-4-706	70.00	10.00
42-4-707	70.00	10.00
42-4-708	35.00	10.00
42-4-709	70.00	10.00
42-4-710	70.00	10.00
42-4-711	100.00	10.00
42-4-712	70.00	10.00

**(I) Pedestrian violations:**

42-4-801	\$ 15.00	\$ 6.00
42-4-802 (1)	30.00	6.00
42-4-802 (3)	15.00	6.00
42-4-802 (4)	30.00	6.00
42-4-802 (5)	30.00	6.00
42-4-803	15.00	6.00
42-4-805	15.00	6.00
42-4-806	70.00	10.00
42-4-807	70.00	10.00
42-4-808	70.00	10.00

**(J) Turning and stopping violations:**

42-4-901	\$ 70.00	\$ 10.00
42-4-902	70.00	10.00
42-4-903	70.00	10.00

**(K) Driving, overtaking, and passing violations:**

42-4-1001	\$ 70.00	\$ 10.00
42-4-1002	100.00	10.00
42-4-1003	100.00	10.00
42-4-1004	100.00	10.00
42-4-1005	100.00	10.00
42-4-1006	70.00	10.00
42-4-1007	100.00	10.00
42-4-1008	100.00	10.00
42-4-1009	70.00	10.00
42-4-1010	70.00	10.00
42-4-1011	200.00	32.00
42-4-1012 (3)(a)	65.00	(NONE)
42-4-1012 (3)(b)	125.00	(NONE)
42-4-1013	100.00	(NONE)

**(L) Speeding violations:**

42-4-1101 (1) or (8) (b) (1 to 4 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)	\$ 30.00	\$ 6.00
42-4-1101 (1) or (8) (b) (5 to 9 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)	70.00	10.00
42-4-1101 (1) or (8) (b) (10 to 19 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)	135.00	16.00
42-4-1101 (1) or (8) (b) (20 to 24 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)	200.00	32.00
42-4-1101 (8) (g) (1 to 4 miles per hour over the maximum lawful speed limit of 40 miles per hour driving a low-power scooter)	50.00	6.00
42-4-1101 (8) (g) (5 to 9 miles per hour over the maximum lawful speed limit of 40 miles per hour driving a low-power scooter)	75.00	10.00
42-4-1101 (8) (g) (greater than 9 miles per hour over the maximum lawful speed limit of 40 miles per hour driving a low-power scooter)	100.00	16.00
42-4-1101 (3)	100.00	10.00
42-4-1103	50.00	6.00
42-4-1104	30.00	6.00

**(M) Parking violations:**

42-4-1201	\$ 30.00	\$ 6.00
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42-4-1202	30.00	6.00
42-4-1204	15.00	6.00
42-4-1205	15.00	6.00
42-4-1206	15.00	6.00
42-4-1207	15.00	6.00
42-4-1208 (6) or (9)	100.00	32.00

**(N) Other offenses:**

42-4-1301 (2)(a.5)	\$ 100.00	\$ 16.00
42-4-1305	50.00	16.00
42-4-1402	150.00	16.00
42-4-1403	30.00	6.00
42-4-1404	15.00	6.00
42-4-1406	35.00	10.00
42-4-1407 (3)(a)	35.00	10.00
42-4-1407 (3)(b)	100.00	30.00
42-4-1407 (3)(c)	500.00	200.00
42-4-314	35.00	10.00
42-4-1408	15.00	6.00
42-4-1414 (2)(a)	500.00	156.00
42-4-1414 (2)(b)	1,000.00	312.00
42-4-1414 (2)(c)	5,000.00	1,560.00
42-20-109 (2)	250.00	66.00

**(O) Motorcycle violations:**

42-4-1502 (1), (2), (3), or (4)	\$ 30.00	\$ 6.00
42-4-1502 (4.5)	100.00	15.00
42-4-1503	30.00	6.00
42-4-1504	30.00	6.00

**(P) Offenses by persons controlling vehicles:**

42-4-239 (5)(a)	\$ 50.00	\$ 6.00
42-4-239 (5)(b)	100.00	6.00
42-4-1704	15.00	6.00

(II) (A) Any person convicted of violating section 42-4-507 or 42-4-508 shall be fined pursuant to this subparagraph (A), whether the defendant acknowledges the defendant's guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction. Any violation of section 42-4-507 or 42-4-508 shall be punished by a fine and surcharge as follows:

<b>Excess Weight - Pounds</b>	<b>Penalty</b>	<b>Surcharge</b>
1 - 3,000	\$ 15.00	\$ 14.00
3,001 - 4,250	25.00	24.00
4,251 - 4,500	50.00	46.00

4,501 - 4,750	55.00	52.00
4,751 - 5,000	60.00	58.00
5,001 - 5,250	65.00	62.00
5,251 - 5,500	75.00	70.00
5,501 - 5,750	85.00	80.00
5,751 - 6,000	95.00	92.00
6,001 - 6,250	105.00	98.00
6,251 - 6,500	125.00	120.00
6,501 - 6,750	145.00	138.00

(B) The state, county, city, or city and county issuing a citation that results in the assessment of the penalties in sub-subparagraph (A) of this subparagraph (II) may retain and distribute the following amount of the penalty according to the law of the jurisdiction that assesses the penalty, but the remainder of the penalty shall be transmitted to the state treasurer, who shall credit the moneys to the commercial vehicle enterprise tax fund created in section 42-1-225:

<b>Excess Weight – Pounds</b>	<b>Penalty Retained</b>
1 - 3,000	\$ 15.00
3,001 - 4,250	25.00
4,251 - 4,500	50.00
4,501 - 4,750	55.00
4,751 - 5,000	60.00
5,001 - 5,250	65.00
5,251 - 5,500	75.00
5,501 - 5,750	85.00
5,751 - 6,000	95.00
6,001 - 6,250	105.00
6,251 - 6,500	125.00
6,501 - 6,750	145.00
6,751 - 7,000	165.00
7,001 - 7,250	185.00
7,251 - 7,500	215.00
7,501 - 7,750	245.00
7,751 - 8,000	275.00
8,001 - 8,250	305.00
8,251 - 8,500	345.00

8,501 - 8,750	385.00
8,751 - 9,000	425.00
9,001 - 9,250	465.00
9,251 - 9,500	515.00
9,501 - 9,750	565.00
9,751 - 10,000	615.00
10,001 - 10,250	665.00
Over 10,250	\$ 30.00 for each 250 pounds additional overweight, plus \$ 665.00

(III) Any person convicted of violating any of the rules promulgated pursuant to section 42-4-510, except section 42-4-510 (2) (b) (IV), shall be fined as follows, whether the violator acknowledges the violator's guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction:

(A) Except as provided in sub-subparagraph (D) of this subparagraph (III), any person who violates the maximum permitted weight on an axle or on gross weight shall be punished by a fine and surcharge as follows:

**Excess Weight Above Maximum**

<b>Permitted Weight - Pounds</b>	<b>Penalty</b>	<b>Surcharge</b>
1 - 2,500	\$ 50.00	\$ 46.00
2,501 - 5,000	100.00	96.00
5,001 - 7,500	200.00	192.00
7,501 - 10,000	400.00	384.00
Over 10,000	\$150.00 for each 1,000 pounds additional overweight, plus \$400.00	\$ 144.00 for each 1000 pounds additional overweight, plus \$296.00

(B) Any person who violates any of the requirements of the rules and regulations pertaining to transport permits for the movement of overweight or oversize vehicles or loads, other than those violations specified in sub-subparagraph (A) or (C) of this subparagraph (III), shall be punished by a fine of fifty dollars.

(C) Any person who fails to have an escort vehicle when such vehicle is required by the rules and regulations pertaining to transport permits for the movement of overweight or oversize vehicles or loads or who fails to reduce speed when such speed reduction is required by said rules and regulations shall be punished by a fine of two hundred fifty dollars.

(D) The fines for a person who violates the maximum permitted weight on an axle or on gross weight under a permit issued pursuant to section 42-4-510 (1) (b) (II) shall be doubled.

(IV) (A) Any person convicted of violating section 42-3-114 who has not been convicted of a violation of section 42-3-114 in the twelve months preceding such conviction shall be fined as follows, whether the defendant acknowledges the defendant's guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction:

<b>Number of days beyond renewal period that registration has been expired</b>	<b>Penalty</b>	<b>Surcharge</b>
1 - 29	\$ 35.00	\$ 8.00
30 - 59	50.00	12.00
60 and over	75.00	18.00

(B) Any person convicted of violating section 42-3-114 who has been convicted of violating said section within the twelve months preceding such conviction shall be fined pursuant to subparagraph (I) of paragraph (a) of subsection (3) of this section.

(V) Any person convicted of violating section 42-20-204 (2) shall be fined twenty-five dollars, whether the violator acknowledges guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction.

(VI) (A) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which the provisions of paragraph (a) or (b) of subsection (5) of this section apply, shall, in addition to any other fine or penalty or surcharge, be assessed a surcharge of one dollar, which amount shall be transmitted to the state treasurer for deposit in the family-friendly court program cash fund created in section 13-3-113 (6), C.R.S. This surcharge shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate.

(B) Repealed.

(VII) The penalties and surcharges for a second or subsequent violation of section 42-20-109 (2) within twelve months shall be doubled.

(b) (I) The schedule in subparagraph (I) of paragraph (a) of this subsection (4) shall not apply when the provisions of paragraph (c) of subsection (5) of this section prohibit the issuance of a penalty assessment notice for a violation of the aforesaid traffic violation.



(II) The schedules in subparagraphs (II) and (III) of paragraph (a) of this subsection (4) shall apply whether the violator is issued a penalty assessment notice or a summons and complaint.

(c) (I) The penalties and surcharges imposed for speeding violations under subsection (4) (a) (I) (L) of this section shall be doubled if a speeding violation occurs within a maintenance, repair, or construction zone that is designated by the department of transportation pursuant to section 42-4-614 (1) (a); except that the penalty for violating section 42-4-1101 (1) or (8) (b) by twenty to twenty-four miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of seventy-five miles per hour shall be five hundred forty dollars.

(II) (A) The penalties and surcharges imposed for violations under sub-subparagraphs (C), (G), (H), (I), (J), (K), (N), and (O) of subparagraph (I) of paragraph (a) of this subsection (4) shall be doubled if a violation occurs within a maintenance, repair, or construction zone that is designated by the department of transportation pursuant to section 42-4-614 (1) (a); except that the fines for violating sections 42-4-314, 42-4-610, 42-4-613, 42-4-706, 42-4-707, 42-4-708, 42-4-709, 42-4-710, 42-4-1011, 42-4-1012, 42-4-1404, 42-4-1408, and 42-4-1414 shall not be doubled under this subparagraph (II).

(B) There is hereby created, within the highway users tax fund, the highway construction workers' safety account.

(C) If a fine is doubled under subparagraph (I) or (II) of this paragraph (c), one-half of the fine allocated to the state by sections 42-1-217 and 43-4-205, C.R.S., shall be transferred to the state treasurer, who shall deposit it in the highway construction workers' safety account within the highway users tax fund to be continuously appropriated to the department of transportation for work zone safety equipment, signs, and law enforcement.

(D) This subparagraph (II) is effective July 1, 2006.

(III) The penalties and surcharges imposed for speeding violations under sub-subparagraph (L) of subparagraph (I) of paragraph (a) of this subsection (4) shall be doubled if a speeding violation occurs within a maintenance, repair, or construction zone that is designated by a public entity pursuant to section 42-4-614 (1) (b).

(IV) The penalties and surcharges imposed for violations under sub-subparagraphs (C), (G), (H), (I), (J), (K), (N), and (O) of subparagraph (I) of paragraph (a) of this subsection (4) shall be doubled if a violation occurs within a maintenance, repair, or construction zone that is designated by a public entity pursuant to section 42-4-614 (1) (b); except that the fines for violating sections 42-4-314, 42-4-610, 42-4-613, 42-4-706, 42-4-707, 42-4-708, 42-4-709, 42-4-710, 42-4-1011, 42-4-1012, 42-4-1404, 42-4-1408, and 42-4-1414 shall not be doubled under this subparagraph (IV).

(d) The penalty and surcharge imposed for any moving traffic violation under subparagraph (I) of paragraph (a) of this subsection (4) are doubled if the violation occurs within a school zone pursuant to section 42-4-615.

(d.5) (I) The penalty and surcharge imposed for any moving traffic violation under subparagraph (I) of paragraph (a) of this subsection (4) are doubled if the violation occurs within a wildlife crossing zone pursuant to section 42-4-616.

(II) (A) There is hereby created, within the highway users tax fund, the wildlife crossing zones safety account.

(B) If a penalty and surcharge are doubled pursuant to subparagraph (I) of this paragraph (d.5), one-half of the penalty and surcharge allocated to the state by sections 42-1-217 and 43-4-205, C.R.S., shall be transferred to the state treasurer, who shall deposit the moneys in the wildlife crossing zones safety account within the highway users tax fund to be continuously appropriated to the department of transportation for wildlife crossing zones signs and law enforcement.

(e) (I) An additional fifteen dollars shall be assessed for speeding violations under sub-subparagraph (L) of subparagraph (I) of paragraph (a) of this subsection (4) in addition to the penalties and surcharge stated in said sub-subparagraph (L). Moneys collected pursuant to this paragraph (e) shall be transmitted to the state treasurer who shall deposit such moneys in the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in sections 26-1-301 to 26-1-310, C.R.S.

(II) If the surcharge is collected by a county or municipal court, the surcharge shall be seventeen dollars of which two dollars shall be retained by the county or municipality and the remaining fifteen dollars shall be transmitted to the state treasurer and credited to the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in sections 26-1-301 to 26-1-310, C.R.S.

(III) An additional fifteen dollars shall be assessed for a violation of a traffic regulation under sub-subparagraph (C) of subparagraph (I) of paragraph (a) of this subsection (4) for a violation of section 42-4-109 (13) (b), in addition to the penalties stated in said sub-subparagraph (C). An additional fifteen dollars shall be assessed for a motorcycle violation under sub-subparagraph (O) of subparagraph (I) of paragraph (a) of this subsection (4) for a violation of section 42-4-1502 (4.5), in addition to the penalties stated in said sub-subparagraph (O). Moneys collected pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall deposit the moneys in the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S., to be used for the purposes set forth in sections 26-1-301 to 26-1-310, C.R.S.

(f) (I) In addition to the surcharge specified in sub-subparagraph (N) of subparagraph (I) of paragraph (a) of this subsection (4), an additional surcharge of five dollars shall be assessed for a violation of section 42-4-1301 (2) (a.5). Moneys collected pursuant to this paragraph (f) shall be transmitted to the state treasurer who shall deposit such moneys in the rural alcohol and substance abuse cash fund created in section 27-80-117 (3), C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in section 27-80-117, C.R.S.

(II) If the additional surcharge is collected by a county court, the additional surcharge shall be six dollars of which one dollar shall be retained by the county and the remaining five dollars shall be transmitted to the state treasurer and credited to the rural alcohol and substance abuse cash fund created in section 27-80-117 (3), C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in section 27-80-117, C.R.S.

(III) This paragraph (f) is repealed, effective July 1, 2016, unless the general assembly extends the repeal of the rural alcohol and substance abuse prevention and treatment program created in section 27-80-117, C.R.S.

(5) (a) (I) At the time that any person is arrested for the commission of any misdemeanors, petty offenses, or misdemeanor traffic offenses set forth in subsection (4) of this section, the arresting officer may, except when the provisions of paragraph (c) of this subsection (5) prohibit it, offer to give a penalty assessment notice to the defendant. At any time that a person is charged with the commission of any traffic infraction, the peace officer shall, except when the provisions of paragraph (c) of this subsection (5) prohibit it, give a penalty assessment notice to the defendant. Such penalty assessment notice shall contain all the information required by section 42-4-1707 (3) or by section 42-4-1709, whichever is applicable. The fine or penalty specified in subsection (4) of this section for the violation charged and the surcharge thereon may be paid at the office of the department of revenue, either in person or by postmarking such payment within twenty days from the date the penalty assessment notice is served upon the defendant; except that the fine or penalty charged and the surcharge thereon shall be paid to the county if it relates to a traffic offense authorized by county ordinance. The department of revenue shall accept late payment of any penalty assessment up to twenty days after such payment becomes due. Except as otherwise provided in subparagraph (II) of this paragraph (a), in the case of an offense other than a traffic infraction, a defendant who otherwise would be eligible to be issued a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard the summons portion of such notice may be issued a penalty assessment notice if the defendant consents to be taken by the officer to the nearest mailbox and to mail the amount of the fine or penalty and surcharge thereon to the department. The peace officer shall advise the person arrested or cited of the points to be assessed in accordance with section 42-2-127. Except as otherwise provided in section 42-4-1710 (1) (b), acceptance of a penalty assessment notice and payment of the prescribed fine or penalty and surcharge thereon to the department shall be deemed a complete satisfaction for the violation, and the defendant shall be given a receipt which so states when such fine or penalty and surcharge thereon is paid in currency or other form of legal tender. Checks tendered by the defendant to and accepted by the department and on which payment is received by the department shall be deemed sufficient receipt.

(II) In the case of an offense other than a traffic infraction that involves a minor under the age of eighteen years, the officer shall proceed in accordance with the provisions of section 42-4-1706 (2) or 42-4-1707 (1) (b) or (3) (a.5). In no case may an officer issue a penalty assessment notice to a minor under the age of eighteen years and require or offer that the minor consent to be taken by the officer to the nearest mailbox to mail the amount of the fine or penalty and surcharge thereon to the department.

(b) In the case of an offense other than a traffic infraction, should the defendant refuse to accept service of the penalty assessment notice when such notice is tendered, the peace officer shall proceed in accordance with section 42-4-1705 or 42-4-1707. Should the defendant charged with an offense other than a traffic infraction accept service of the penalty assessment notice but fail to post the prescribed penalty and surcharge thereon within twenty days thereafter, the notice shall be construed to be a summons and complaint unless payment for such penalty assessment

has been accepted by the department of revenue as evidenced by receipt. Should the defendant charged with a traffic infraction accept the notice but fail to post the prescribed penalty and surcharge thereon within twenty days thereafter, and should the department of revenue not accept payment for such penalty and surcharge as evidenced by receipt, the defendant shall be allowed to pay such penalty and surcharge thereon and the docket fee in the amount set forth in section 42-4-1710 (4) to the clerk of the court referred to in the summons portion of the penalty assessment notice during the two business days prior to the time for appearance as specified in the notice. If the penalty for a misdemeanor, misdemeanor traffic offense, or a petty offense and surcharge thereon is not timely paid, the case shall thereafter be heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the same manner as is provided by law for prosecutions of the misdemeanors not specified in subsection (4) of this section. If the penalty for a traffic infraction and surcharge thereon is not timely paid, the case shall thereafter be heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the manner provided for in this article for the prosecution of traffic infractions. In either case, the maximum penalty that may be imposed shall not exceed the penalty set forth in the applicable penalty and surcharge schedule in subsection (4) of this section.

(b.5) The provisions of section 42-4-1710 (1) (b) shall govern any case described in paragraph (b) of this subsection (5) in which a minor under the age of eighteen years submits timely payment for an infraction or offense in a penalty assessment notice but such payment is not accompanied by the penalty assessment notice signed and notarized in the manner required by section 42-4-1707 (3) (a.5) or 42-4-1709 (1.5).

(c) (I) The penalty and surcharge schedules of subsection (4) of this section and the penalty assessment notice provisions of paragraphs (a) and (b) of this subsection (5) shall not apply to violations constituting misdemeanors, petty offenses, or misdemeanor traffic offenses not specified in said subsection (4) of this section, nor shall they apply to the violations constituting misdemeanors, petty offenses, misdemeanor traffic offenses, or traffic infractions specified in said subsection (4) of this section when it appears that:

(A) (Deleted by amendment, L. 96, p. 580, § 4, effective May 25, 1996.)

(B) In a violation of section 42-4-1101 (1) or (8) (b), the defendant exceeded the reasonable and prudent speed or the maximum lawful speed of seventy-five miles per hour by more than twenty-four miles per hour;

(C) The alleged violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of another or in injury or death to any person;

(D) The defendant has, in the course of the same transaction, violated one of the provisions of this title specified in the penalty and surcharge schedules in subsection (4) of this section and has also violated one or more provisions of this title not so specified, and the peace officer charges such defendant with two or more violations, any one of which is not specified in the penalty and surcharge schedules in subsection (4) of this section.

(II) In all cases where this paragraph (c) prohibits the issuance of a penalty assessment notice, the penalty and surcharge schedule contained in subparagraph (I) of paragraph (a) of subsection (4) of this section shall be inapplicable; except that the penalty and surcharge provided in the schedule contained in sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection

(4) of this section for any violation of section 42-3-121 (1) (a) shall always apply to such a violation. In all cases where the penalty and surcharge schedule contained in subparagraph (I) of paragraph (a) of subsection (4) of this section is inapplicable, the provisions of subsection (3) of this section shall apply.

(d) In addition to any other cases governed by this section, the penalty and surcharge schedule contained in subparagraph (I) of paragraph (a) of subsection (4) of this section shall apply in the following cases:

(I) In all cases in which a peace officer was authorized by the provisions of this subsection (5) to offer a penalty assessment notice for the commission of a misdemeanor, petty offense, or misdemeanor traffic offense but such peace officer chose not to offer such penalty assessment notice;

(II) In all cases involving the commission of a misdemeanor, petty offense, or misdemeanor traffic offense in which a penalty assessment notice was offered by a peace officer but such penalty assessment notice was refused by the defendant.

(6) An officer coming upon an unattended vehicle that is in apparent violation of any provision of the state motor vehicle law may place upon the vehicle a penalty assessment notice indicating the offense or infraction and directing the owner or operator of the vehicle to remit the penalty assessment provided for by subsection (4) of this section and the surcharges thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1), C.R.S., to the Colorado department of revenue within ten days. If the penalty assessment and surcharge thereon is not paid within ten days of the issuance of the notice, the department shall mail a notice to the registered owner of the vehicle, setting forth the offense or infraction and the time and place where it occurred and directing the payment of the penalty assessment and surcharge thereon within twenty days from the issuance of the notice. If the penalty assessment and surcharge thereon is not paid within the twenty days from the date of mailing of such notice, the department shall request the police officer who issued the original penalty assessment notice to file a complaint with a court having jurisdiction and issue and serve upon the registered owner of the vehicle a summons to appear in court at a time and place specified therein as in the case of other offenses or infractions.

(7) Notwithstanding the provisions of paragraph (b) of subsection (5) of this section, receipt of payment by mail by the department or postmarking such payment on or prior to the twentieth day after the receipt of the penalty assessment notice by the defendant shall be deemed to constitute receipt on or before the date the payment was due.

(8) The surcharges described in subsections (4) to (6) of this section are separate and distinct from a surcharge levied pursuant to section 24-33.5-415.6, C.R.S.

**1702. Counties - traffic offenses classified - schedule of fines.**

(1) Pursuant to sections 30-15-402 (1), C.R.S., and 42-4-1701, C.R.S., it is a traffic infraction for any person to violate parts 1 and 2, and 5 to 19 of this Code except as otherwise provided in subsections (2), (3),(4), and (5) of this section.

(2) Violation of sections 238, 239, 607 (2)(a), 1402 (2), and 1409, of this Code are class 1 traffic misdemeanors

(3) Violations of sections 107, 228 (8), 233, 507, 508, 509, 510, 1105, 1401, 1402 (1), 1407, 1412, 1413, 1704, 1716(2) and 1903 (1)(a) of this Code are class 2 traffic misdemeanors.

(4) In section 1101 of this Code a violation of driving one to twenty-four miles per hour in excess of the reasonable and prudent speed or in excess of the maximum lawful speed limit of seventy-five miles per hour is a traffic infraction; a violation of driving twenty-five or more miles per hour in excess of the reasonable and prudent speed or in excess of the maximum lawful speed limit of seventy-five miles per hour is a class 2 misdemeanor traffic offense.

(5) Violation of subsection (1.5) of section 225 shall, upon conviction, be punished by a fine of five hundred dollars.

(6) The County Commissioners may adopt a fine and surcharge schedule for penalty assessment violations.

**1703. Parties to a crime.**

Every person who commits, conspires to commit, or aids or abets in the commission of any act declared in this Code to be a traffic offense, whether individually or in connection with one or more other persons or as principal, agent, or accessory, is guilty of such offense or liable for such offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this Code is likewise guilty of such offense or liable for such offense.

**1704. Offenses by persons controlling vehicles.**

It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law or this Code.

**1705.**

**1706. Juveniles - convicted - arrested and incarcerated - provisions for confinement.**

(1) Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., convicted of a misdemeanor traffic offense under this Code, violating the conditions of probation imposed under this Code, or found in contempt of court in connection with a violation or alleged violation under this Code shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders if the court with jurisdiction is located in a county in which there is a juvenile detention facility operated by or under contract with the department of human services that shall receive and provide care for such child or if the jail is located within forty miles of such facility. The court imposing penalties under this section may confine a child for a determinate period of time in a juvenile detention facility operated by or under contract with the department of human services. If a juvenile detention facility operated by or under contract with the department of human services is not located within the county or within forty miles of the jail, a child may be confined for up to forty-eight hours in a jail pursuant to section 19-2-508 (4), C.R.S.

(2)(a) Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., arrested and incarcerated for an alleged misdemeanor traffic offense under this Code, and not released on bond, shall be taken before a county judge who has jurisdiction of such offense within forty-eight hours for fixing of bail and conditions of bond pursuant to section 19-2-508

(4)(d), C.R.S. Such child shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders for longer than seventy-two hours, after which the child may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection (2), Saturdays, Sundays, and court holidays shall be included.

(b) In any case in which a child is taken before a county judge pursuant to paragraph (a) of this subsection (2), the child's parent or legal guardian shall immediately be notified by the court in which the county judge sits. Any person so notified by the court under this paragraph (b) shall comply with the provisions of section 42-4-1716 (4), C.R.S.

**1707.**

**1708. Burden of proof - appeals.**

(1) The burden of proof shall be upon the people, and the court shall enter judgment in favor of the defendant unless the people prove the liability of the defendant beyond a reasonable doubt.

(2) Appeals from courts of record shall be in accordance with Rule 37 of the Colorado Rules of Criminal Procedure.

**1709. Penalty assessment notice for traffic offenses - violations of provisions by officer - driver's license.**

(1) Whenever a penalty assessment notice for a traffic infraction is issued the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for such traffic infraction, the amount of the surcharge thereon pursuant to section 24-4.2-104 (1), C.R.S., the number of points, if any, prescribed for such traffic infraction pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty and surcharge thereon is not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed and surcharge thereon within twenty days, as well as such other information as may be required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharge thereon not be paid within the time allowed in section 42-4-1701.

(1.5) A penalty assessment notice issued and served pursuant to subsection (1) of this section on a minor under the age of eighteen years shall also contain or be accompanied by a document containing:

(a) A preprinted declaration stating that the minor's parent or legal guardian has reviewed the contents of the penalty assessment notice with the minor;

(b) Preprinted signature lines following the declaration on which the reviewing person described in paragraph (a) of this subsection (1.5) shall affix his or her signature and for a notary public to duly acknowledge the reviewing person's signature; and

(c) An advisement to the minor that:

(I) The minor shall, within seventy-two hours after service of the penalty assessment notice, inform his or her parent or legal guardian that the minor has received a penalty assessment notice;

(II) The parent or legal guardian of the minor is required by this Code to review and sign the penalty assessment notice and to have his or her signature duly acknowledged by a notary public; and

(III) Noncompliance with the requirement set forth in subparagraph (II) of this paragraph (c) shall result in the minor and the parent or legal guardian of the minor being required to appear in court pursuant to sections 1710 (1)(b), 1710 (1.5), and 1716 (4).

(2) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the clerk of the court and such other copies sent as may be required by ordinance or the court.

(3) The time specified in the summons portion of said penalty assessment notice must be at least thirty days but not more than ninety days after the date such penalty assessment notice is served, unless the defendant shall demand an earlier hearing.

(4) The place specified in the summons portion of said penalty assessment notice must be a court within the county in which the traffic infraction is alleged to have been committed.

(5) Whenever the defendant refuses to accept service of the penalty assessment notice, tender of such notice by the peace officer to the defendant shall constitute service thereof upon the defendant.

**1710. Failure to pay penalty for traffic offenses - failure of parent or guardian to sign penalty assessment notice - procedures.**

(1)(a) Unless a person who has been cited for a traffic infraction pays the penalty assessment as provided in this Code and surcharge thereon pursuant to section 24-4.2-104 (1), C.R.S., the person shall appear at a hearing on the date and time specified in the citation and answer the complaint against such person.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), a minor under the age of eighteen years shall be required to appear at a hearing on the date and time specified in the citation and answer the complaint if the penalty assessment was timely paid but not signed and notarized in the manner required by section 1709 (1.5).

(1.5) If a minor under the age of eighteen years is required to appear at a hearing pursuant to subsection (1) of this section, the minor shall so inform his or her parent or legal guardian, and the parent or legal guardian shall also be required to appear at the hearing.

(2) If the violator answers that he or she is guilty or if the violator fails to appear for the hearing, judgment shall be entered against the violator.

(3) If the violator denies the allegations in the complaint, a final hearing on the complaint shall be held subject to the provisions regarding a speedy trial which are contained in section 18-1-405, C.R.S. If the violator is found guilty or liable at such final hearing or if the violator fails to appear for a final hearing, judgment shall be entered against the violator.

(4) If judgment is entered against a violator, the violator shall be assessed an appropriate penalty and surcharge thereon, a docket fee, and other applicable costs authorized by ordinance or the court. If the violator had been cited by a penalty assessment notice, the penalty shall be assessed pursuant to this Code.

**1711. Compliance with promise to appear.**

A written promise to appear in court may be complied with by an appearance by counsel.

**1712. Procedure prescribed not exclusive.**

The foregoing provisions of this Code shall govern all police officers in making arrests without a warrant or issuing citations for violations of this Code, for offenses or infractions committed in their presence, but the procedure prescribed in this Code shall not otherwise be exclusive of any other method prescribed by law or ordinance for the arrest and prosecution of a person for an offense or infraction of like grade.

**1713. Conviction record inadmissible in civil action.**



Except as provided in sections 42-2-201 to 42-2-208, C.R.S., no record of the conviction of any person for any violation of this Code shall be admissible as evidence in any court in any civil action.

**1714. Traffic violation not to affect credibility of witness.**

The conviction of a person upon a charge of violating any provision of this Code or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

**1715. Convictions, judgments, and charges recorded - public inspection.**

(1) Every judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Code or any other law regulating the operation of vehicles on highways.

(2) Within ten days after the entry of a judgment, conviction, or forfeiture of bail of a person upon a charge of violating any provision of this Code or other law regulating the operation of vehicles on highways, the judge or clerk of the court in which the entry of a judgment was made or the conviction was had or bail was forfeited shall prepare and immediately forward to the motor vehicle division of the department of revenue an abstract of the record of said court covering every case in which said person had a judgment entered against him or her, was so convicted, or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

(3) Said abstract must be made upon a form furnished by the department of revenue and shall include the name, address, and driver's license number of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail forfeited, and the amount of the fine or forfeiture as the case may be.

**1716. Notice to appear or pay fine - failure to appear - penalty.**

(1) For the purposes of this part 17, tender by an arresting officer of the summons or penalty assessment notice shall constitute notice to the violator to appear in court at the time specified on such summons or to pay the required fine and surcharge thereon.

(2) Except as otherwise provided in subsection (4) of this section, a person commits a traffic offense if the person fails to appear to answer any offense other than a traffic infraction charged under this part 17.

(3) Deleted.

(4)(a)(I) Except as otherwise provided in subparagraph (II) of this paragraph (a), a person who is a parent or legal guardian of a minor under the age of eighteen years and who is required to appear in court with the minor pursuant to the provisions of this part 17 including but not limited to section 1706 (2)(b) or 1710 (1.5), shall appear in court at the location and on the date stated in the penalty assessment notice or in the summons and complaint or as instructed by the court.

(II) The provisions of subparagraph (I) of this paragraph (a) concerning the appearance of a parent or legal guardian shall not apply in a case where the minor under the age of eighteen years or the parent of the minor demonstrates to the court by clear and convincing evidence that the minor is an emancipated minor.

(III) For purposes of this subsection (4), "emancipated minor" means a minor under the age of eighteen years who has no legal guardian and whose parents have entirely surrendered the right to the care, custody, and earnings of the minor, no longer are under any duty to support or maintain the minor, and have made no provision for the support of the minor.

(b) A person who violates any provision of paragraph (a) of subparagraph (I) of this subsection (4) commits a class 1 petty offense and shall be punished pursuant to section 18-1.3-503, C.R.S.

**1717. Conviction - attendance at driver improvement school.**

(1) Except as otherwise provided in subsection (2) of this section, whenever a person has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court, in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for a violation other than a traffic infraction, may require the defendant, at the defendant's own expense, if any, to attend and satisfactorily complete a course of instruction at any designated driver improvement school located and operating in the county of the defendant's residence and providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. Such school shall be approved by the court.

(2) Whenever a minor under eighteen years of age has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court may require the minor to attend and satisfactorily complete a course of instruction at any designated driver improvement school providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. The court may impose the driver improvement school requirement in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for the violation. The minor, or the minor's parent or parents who appear in court with the minor in accordance with section 1716 (4), of this Code, shall pay the cost of attending the designated driver improvement school. The court shall make available information on scholarships and other financial assistance available to help minors or their parents offset the costs of driver improvement school. Such school shall be approved by the court.

**Section 8. Codification of Amendments.** The codifier of the Town's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 9. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 10. Effective Date.** This Ordinance shall take effect seven days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

**Section 11. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 12. No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 13. Publication by Posting.** The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the ordinance in full and a statement that a complete copies of the 2010 Model Traffic Code adopted by reference are available for inspection for public inspection in the office of the Town Clerk during normal business hours and which notice shall contain the penalty clauses in full.

*[Signature Pages Follow]*

**INTRODUCED, APPROVED, PASSED ON FIRST READING, ORDERED POSTED AND REFERRED TO PUBLIC HEARING** and setting such public hearing for May 10, 2011 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado, on April 26, 2011.

\_\_\_\_\_  
Rich Carroll, Mayor

Published by posting in at least three public places in Town and posting at the office of the Town Clerk at least seven days prior to final action by the Town Council.

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Patty McKenny, Town Clerk

\_\_\_\_\_  
Eric Heil, Town Attorney

**INTRODUCED, FINALLY APPROVED, AND PASSED ON SECOND READING, AND ORDERED PUBLISHED BY POSTING** on May 10, 2011.

\_\_\_\_\_  
Rich Carroll, Mayor

Published by posting by title in at least three public places in Town and posting by title at the office of the Town Clerk.

ATTEST:

\_\_\_\_\_  
Patty McKenny, Town Clerk