

## CHAPTER 10

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## ARTICLE 1

### Criminal Code

#### Sec. 10-1. Jurisdiction.

This chapter shall apply to conduct and occurrences within the corporate limits of the city, the manner of which the city has jurisdiction and authority to regulate. (Prior code 9.04.030)

#### Sec. 10-2. Interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose. Articles and section headings of this article and adopted code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof. (Prior code 9.04.050)

#### Secs. 10-3—10-19. Reserved.

## ARTICLE 2

### Offenses by or Against Public Officers and Government

#### Sec. 10-20. Definitions.

As used in this chapter, unless the context otherwise requires:

*Government* includes any branch, subdivision, institution or agency of the government of this city.

*Governmental function* includes any activity which a public servant is legally authorized to undertake on behalf of a government.

*Public servant* means any officer or employee of the government, whether elected or appointed, and any person participating as an advisor or consultant, engaged in the service of process, or otherwise performing a governmental function, but the term does not include witnesses. (Ord. 374 §1, 1990)

#### Sec. 10-21. Obstructing government operations.

(a) It is unlawful to obstruct government operations.

(b) A person commits obstructing government operations if he or she intentionally obstructs, impairs or hinders the performance of a governmental function by a public official, employee or servant, by using or threatening to use violence, force or physical interference or obstacle.

(c) It is an affirmative defense that:

(1) The obstruction, impairment or hindrance was of unlawful action by a public servant;

(2) The obstruction, impairment or hindrance was of the making of an arrest; or

(3) The obstruction, impairment or hindrance of a governmental function was by lawful activities in connection with a labor dispute with the government. (Ord. 374 §1, 1990)

**Sec. 10-22. Obstructing a peace officer or fireman.**

(a) No person shall willfully fail or refuse to comply with any lawful order, signal or direction of a police officer made or given in the discharge of the police officer's duties.

(b) No person shall, in any way, interfere with or hinder any police officer who is discharging or apparently discharging the duties of the position.

(c) It is unlawful to obstruct a peace officer or fireman.

(d) A person commits obstructing a peace officer or fireman when, by using or threatening to use violence, force or physical interference or obstacle, such person knowingly obstructs, impairs or hinders the enforcement of the law or the preservation of the peace by a peace officer, acting under color of his or her official authority or knowingly obstructs, impairs or hinders the prevention, control or abatement of fire by a fireman, acting under color of his or her official authority.

(e) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, if the peace officer was acting under color of his or her official authority as defined in Section 10-23(c) of this code.

(f) This section does not apply to obstruction, impairment or hindrance of the making of an arrest. (Prior code 9.06.010, 9.06.020; Ord. 345 §1, 1988; Ord. 374 §1, 1990)

**Sec. 10-23. Resisting arrest.**

(a) It is unlawful to resist arrest.

(b) A person commits resisting arrest if he or she knowingly prevents or attempts to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another by:

(1) Using or threatening to use physical force or violence against the peace officer or another; or

(2) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another.

(c) It is no defense to a prosecution under this section that the peace officer was attempting to make an arrest which in fact was unlawful, if the peace officer was acting under color of his or her official authority, and in attempting to make the arrest, the peace officer was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A peace officer acts under color of his or her official authority when, in the regular course of assigned duties, the peace officer is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by the peace officer.

(d) The term peace officer as used in this section means a peace officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted. (Ord. 374 §1, 1990)

**Sec. 10-24. False reporting to authorities.**

It is unlawful for a person to falsely report to authorities. A person commits false reporting to authorities if:

(1) He or she knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, ambulance service or any other government agency which deals with emergencies involving danger to life or property;

(2) He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he or she knows that it did not occur; or

(3) He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false. (Ord. 374 §1, 1990)

**Sec. 10-25. Unlawful conduct on public property.**

(a) It is unlawful for any person to enter or remain in any public building or on any public property or to conduct himself or herself in or on them in violation of any order, rule or regulation concerning any matter prescribed in this section, limiting or prohibiting the use, activities or conduct in such public building or on such public property, issued by any officer or agency having the power of control, management or supervision of the building or property. In addition to any authority granted by any other law, each such officer or agency may adopt such orders, rules or regulations as are reasonably necessary for the administration, protection and maintenance of such public buildings and property, specifically, orders, rules and regulations upon the following matters:

(1) Preservation of property, vegetation, wildlife, signs, markers, statues, buildings, grounds and other structures, and any object of scientific, historical or scenic interest;

(2) Restriction or limitation of the use of such public buildings or property as to time, manner or permitted activities;

(3) Prohibition of activities or conduct within public buildings or on public property which may be reasonably expected to substantially interfere with the use and enjoyment of such places by others or which may constitute a general nuisance;

(4) Camping and picnicking, public meetings and assemblages and other individual or group usages, including the place, time and manner in which such activities may be permitted;

(5) Use of all vehicles as to place, time and manner of use;

(6) Control and limitations of fires and designation of places where fires are permitted.

(b) No conviction may be obtained under this section unless notice of such limitations or prohibitions is prominently posted at all public entrances to such building or property or unless such notice is actually first given the person by the office or agency, including any agent thereof or by any law enforcement officer having jurisdiction or authority to enforce this section.

(c) Any person who violates this section is guilty of unlawful conduct on public property. (Ord. 374 §1, 1990)

**Sec. 10-26. Public buildings – Trespass – Interference.**

(a) No person shall so conduct himself or herself at or in any public building owned, operated or controlled by the city as to willfully deny to any public official, public employee or invitee on such premises the lawful rights of such official, employee or invitee to enter, to use the facilities of or to leave any such public building.

(b) No person shall, at or in any public building, willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion or intimidation or by force and violence or threat thereof.

(c) No person shall willfully refuse or fail to leave any such public building upon being requested to do so by the chief administrative officer or his or her designee charged with maintaining order in such public building, if the person has committed, is committing, threatens to commit or incites others to commit any act which did or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in the public building.

(d) No person shall, at any meeting or session conducted by any judicial, legislative or administrative body or official at or in any public building, willfully impede, disrupt or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce or hinder any member of such body or official engaged in the performance of duties at such meeting or session.

(e) No person shall, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official at or in any public building willfully impede, disrupt or hinder the normal proceedings of such body or official.

(f) The term *public building*, as used in this section, includes any premises being temporarily used by a public officer or employee in the discharge of his or her official duties.

(g) Any person who violates any of the provisions of this section commits an unlawful act. (Ord. 374 §1, 1990)

**Secs. 10-27—10-39. Reserved.**

## ARTICLE 3

### Offenses Against Public Decency

**Sec. 10-40. Public indecency.**

It is unlawful to commit public indecency. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

- (1) An act of sexual intercourse;
- (2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
- (3) A lewd fondling or caress of the body of another person. (Ord. 374 §1, 1990)

**Sec. 10-41. Indecent exposure.**

It is unlawful for a person to knowingly expose his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person. (Ord. 374 §1, 1990)

**Secs. 10-42—10-59. Reserved.**

## ARTICLE 4

### Offenses Against Property

**Sec. 10-60. Damaging city property.**

It is unlawful for any person to willfully, maliciously, wantonly or negligently injure or destroy real property or improvements thereon or movable or personal property belonging to the city. (Ord. 374 §1, 1990)

**Sec. 10-61. Criminal mischief.**

It is unlawful for any person to knowingly damage the real or personal property of one (1) or more other persons in the course of a single criminal episode where the aggregate damage to the real or personal property is less than five hundred dollars (\$500.00). (Ord. 374 §1, 1990; Ord. 542 §1, 2000)

**Sec. 10-62. Trespassing – Privately owned property.**

It is unlawful for any person to knowingly occupy, use or remain on or in any privately owned property, real or personal, without the permission of the owner or persons entitled to the possession thereof. (Ord. 374 §1, 1990)

**Sec. 10-63. Theft.**

(a) It is unlawful for a person to commit theft. A person commits theft when he or she knowingly obtains or exercises control over anything of another without authorization or by threat or deception when the value of the thing is less than five hundred dollars (\$500.00), and:

(1) Intends to deprive the other person permanently of the use or benefit of the thing of value;

(2) Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit;

(3) Uses, conceals or abandons the thing of value intending that such use, concealment or abandonment will deprive the other person permanently of its use and benefit; or

(4) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person.

(b) For purposes of this section, a thing of value is that of "another" if anyone other than the defendant has a possessory or proprietary interest therein. (Ord. 374 §1, 1990; Ord. 542 §2, 2000)

**Sec. 10-64. Theft of rental property.**

It is unlawful for a person to commit theft of rental property. A person commits theft of rental property if he:

(1) Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the personal property;

(2) Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return the property to the owner thereof or his or her representative or to the person from whom he or she has received it within seventy-two (72) hours after the time at which he or she agreed to return it; and

(3) The value of the property involved is less than five hundred dollars (\$500.00). (Ord. 374 §1, 1990; Ord. 542 §3, 2000)

**Sec. 10-65. Theft by receiving.**

It is unlawful to commit theft by receiving. A person commits theft by receiving when he or she receives, retains, loans money by pawn or pledge on or disposes of anything of value of another, knowing or believing that the thing of value has been stolen, and when he or she intends to deprive the lawful owner permanently of the use or benefit of the thing of value, where the value of the thing of value is less than five hundred dollars (\$500.00). (Ord. 374 §1, 1990; Ord. 542 §4, 2000)

**Sec. 10-66. Concealment of goods.**

If any person willfully conceals unpurchased goods, wares or merchandise valued at less than five hundred dollars (\$500.00) owned or held by and offered or displayed for sale by any store or other

mercantile establishment, whether the concealment is on his or her own person or otherwise and whether on or off the premises of the store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft. (Ord. 374 §1, 1990; Ord. 542 §5, 2000)

**Sec. 10-67. Tampering and unauthorized connection.**

(a) Any person who connects any pipe, tube, stopcock, wire, cord, socket, motor or other instrument or contrivance with any main, service pipe or other medium conducting or supplying gas, water or electricity to any building without the knowledge and consent of the person supplying such gas, water or electricity commits tampering and unauthorized connection, which is unlawful.

(b) Any person who in any manner alters, obstructs or interferes with any meter pit, meter or metering device provided for measuring or registering the quantity of gas, water or electricity passing through said meter without the knowledge and consent of the person owning said meter commits tampering and unauthorized connection, which is unlawful.

(c) A person who tampers with property of another with intent to cause injury, inconvenience or annoyance to that person or to another, or if he or she knowingly makes unauthorized connection with property of a utility, commits tampering and unauthorized connection, which is unlawful.

(d) Nothing in this section shall be construed to apply to any licensed electrical or plumbing contractor while performing usual and ordinary services in accordance with recognized customs and standards. (Ord. 289 §1, 1984)

**Sec. 10-68. Fraud by check.**

(a) As used in this section, unless the context otherwise requires:

*Check* means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer. *Check*, for the purposes of this section only, also includes a negotiable order of withdrawal and a share draft.

*Drawee* means the bank upon which a check is drawn or a bank, savings and loan association, industrial bank, or credit union on which a negotiable order of withdrawal or a share draft is drawn.

*Drawer* means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature be that of himself or herself or of a person authorized to draw the check on himself or herself.

*Insufficient funds* means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account, or share draft account with the drawee, or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance, and a check dishonored for "no account" shall also be deemed to be dishonored for insufficient funds.

*Issue*. A person issues a check when he or she makes, draws, delivers, or passes it or causes it to be made, drawn, delivered or passed.

*Negotiable order of withdrawal* and *share draft* mean negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.

*Negotiable order of withdrawal account* means an account in a bank, savings and loan association, or industrial bank, and *share draft account* means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, or industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

(b) Any person, knowing he or she has insufficient funds with the drawee, who with intent to defraud issues a check for the payment of services, wages, salary, commissions, labor, rent, money, property or other thing of value, commits fraud by check, which is unlawful. This section shall only apply where the fraudulent check was for the sum of less than five hundred dollars (\$500.00).

(c) Any person having acquired rights with respect to a check which is not paid because the drawer has insufficient funds shall have standing to file a complaint under this section, whether or not he or she is the payee, holder, or bearer of the check.

(d) Any person who opens a checking account, negotiable order of withdrawal account, or share draft account using false identification or an assumed name for the purpose of issuing fraudulent checks commits fraud by check, which is unlawful.

(e) If deferred prosecution is ordered, the court as a condition of supervision may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.

(f) A bank, a savings and loan association, an industrial bank, or a credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a sheriff, deputy sheriff, undersheriff, police officer, district attorney, assistant district attorney, deputy district attorney, or authorized investigator for a district attorney investigating or prosecuting a charge under this section.

(g) This section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of this section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:

(1) He has no account upon which the check or order is drawn with the bank or other drawee at the time he or she issues the check or order; or

(2) He has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty (30) days after issue. (Ord. 374 §1, 1990; Ord. 542 §6, 2000)

**Sec. 10-69. Littering of public or private property.**

(a) The term *litter* as used in this section means all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.

(b) The phrase *public or private property* as used in this section includes, but is not limited to, the right-of-way of any road or highway, any body of water or watercourse, including frozen areas or the shores or beaches thereof, any park, playground or building, any refuge, conservation or recreation area, and any residential, farm or ranch properties or timberlands.

(c) Any person who deposits, throws or leaves any litter on any public or private property or in any waters commits littering.

(d) It shall be an affirmative defense that:

(1) Such property is an area designated by law for the disposal of such material and the person is authorized by law to so use the property; or

(2) The litter is lawfully placed in a container or receptacle installed on such property for that purpose.

(e) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this section, the operator of said motor vehicle is presumed to have caused or permitted the litter to be so thrown, deposited, dropped or dumped therefrom.

(f) Littering shall be punishable upon conviction by a mandatory fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00) upon first conviction, by a mandatory fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) upon second conviction, and by a mandatory fine of not less than two hundred dollars (\$200.00) nor more than three hundred dollars (\$300.00) upon third or subsequent conviction. (Ord. 378 §3, 1990; Ord. 398 §§ 1-4, 1991)

**Sec. 10-70. Fuel piracy.**

It is unlawful to commit fuel piracy. A person commits fuel piracy when such person knowingly leaves the premises of an establishment that offers fuel for sale after dispensing fuel and knowingly fails to pay for such fuel. (Ord. 605 §1, 2002)

**Secs. 10-71—10-79. Reserved.**

**ARTICLE 5**

**Offenses Against Public Peace, Order and Safety**

**Sec. 10-80. Disorderly conduct.**

It is unlawful to commit disorderly conduct. A person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

(1) Openly urinates or defecates in or upon any street, alley or public place other than in a toilet facility provided for such purpose;

(2) Fights with another in a public place except in an amateur or professional contest of athletic skill; or

(3) Not being a peace officer, displays a deadly weapon in a public place in a manner calculated to alarm a member of the public. (Ord. 374 §1, 1990)

**Sec. 10-81. Obstructing highway or other passageway.**

(a) It is unlawful to obstruct a highway or other passageway, except in conformance with a valid permit issued by the City.

(b) An individual or corporation commits an offense if, without legal privilege, he or she intentionally, knowingly or recklessly:

(1) Obstructs a highway, street, sidewalk, railway, waterway, building, entrance, elevator, aisle, stairway or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles or conveyances, whether the obstruction arises from his or her acts alone or from his or her acts and the acts of others; or

(2) Disobeys a reasonable request or order to move issued by a person he or she knows to be a peace officer, a fireman or a person with authority to control the use of the premises, to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot or other hazard.

(3) For purposes of this Section, obstruct means to render impassible or to render passage unreasonably inconvenient or hazardous. (Ord. 374 §1, 1990; Ord. 606 §3, 2002)

**Sec. 10-82. Disrupting lawful assembly.**

It is unlawful to disrupt a lawful assembly. A person commits disrupting lawful assembly if, intending to prevent or disrupt any lawful meeting, procession or gathering, he or she significantly obstructs or interferes with the meeting, procession or gathering by physical action, verbal utterance or any other means. (Ord. 374 §1, 1990)

**Sec. 10-83. Throwing missiles.**

It is unlawful for any person to knowingly throw or shoot any stone, snowball or other missile at or upon any person, animal, motor vehicle, public property or at or upon any building, structure or other private property not belonging to that person. (Ord. 374 §1, 1990)

**Sec. 10-84. Discharge of firearms.**

(a) It is unlawful for any person to fire or discharge within the City any firearm. For purposes of this Section, *firearm* includes any device designed and intended to expel a projectile by action of gunpowder, any other explosive, compressed air, compressed gas or mechanical device. By way of example and not limitation, items that are to be considered firearms under this Section include guns,

pistols, rifles, shotguns, BB guns, pellet guns, air rifles, bows and arrows, paintball guns and paintball rifles.

(b) Exceptions. This Section shall not apply to:

(1) The discharge of a firearm by a law enforcement officer or military personnel acting within the line of duty, including but not limited to active operations, training exercises and ceremonies.

(2) The discharge of a firearm in lawful defense of person or property.

(3) The discharge of paintball guns or paintball rifles within a paintball establishment located within the I-1 district for which City Council has approved a paintball field pursuant to Article 7 of Chapter 16 of this Code.

(4) The discharge of a firearm in shooting galleries or at indoor shooting ranges located within the I-1 district for which City Council has approved such gallery or range pursuant to Article 7 of Chapter 16 of this Code, where such firearm may be discharged so as not to endanger persons or property and the projectile from such firearm is prevented from traversing any grounds or space outside such gallery or range, and where such gallery or range operates pursuant to rules and regulations regarding safety and patron conduct at the range that have been submitted to and approved by the chief of police. It shall be unlawful for any owner or operator of a shooting gallery or range to allow or permit the discharge of any firearm at such gallery or range without having first received approval from the chief of police of such rules and regulations, or in violation of such rules and regulations. (Ord. 673 §1, 2007; Ord. 706 §1, 2008)

#### **Sec. 10-85. Disturbing the peace.**

It is unlawful for any person to disturb the peace. A person disturbs the peace if the person intentionally, knowingly or recklessly:

(1) Makes a coarse and obviously offensive or violent utterance, gesture or display and the utterance, gesture or display tends to incite an immediate breach of the peace or if a person permits such conduct in any house or upon any premises owned or possessed by such person or under such person's management and control, when within such person's power to prevent, so that others in the vicinity are or may be disturbed thereby; or

(2) Makes unreasonable noise in a public place or near a private residence that such person has no right to occupy. (Ord. 431 §1, 1993)

#### **Sec. 10-86. Harassment.**

(a) It shall be unlawful to commit harassment. A person commits harassment if, with intent to harass, annoy or alarm any other person, the person:

(1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact; or

(2) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(3) Follows a person in or about a public place; or

(4) Engages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose; or

(5) Initiates communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone which is obscene; or

(6) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(7) Makes repeated communications in person at inconvenient hours or in offensively coarse language, if such communications are directed to a specific recipient in the privacy of the recipient's own residence or the real property on which such residence is located; or

(8) In a manner likely to provoke a violent or disorderly response from a specific recipient, insults, taunts or challenges the recipient or threatens bodily injury or property damage to the recipient.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Paragraph (5) of Subsection (a) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received. (Ord. 374 §1, 1990; Ord. 440 §1, 1994)

**Sec. 10-87. Assault.**

It is unlawful to commit assault. A person commits assault if he or she knowingly or recklessly causes bodily injury to another person, or with criminal negligence he or she causes bodily injury by means of a weapon. (Ord. 393 §1, 1991)

**Sec. 10-88. Menacing.**

It is unlawful to commit menacing. A person commits menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. (Ord. 393 §1, 1991)

**Sec. 10-89. Concealed weapons.**

(a) A person commits a misdemeanor if he or she knowingly and unlawfully:

(1) Carries a knife concealed on or about his or her person;

(2) Carries a firearm concealed on or about his or her person;

(3) Without legal authority carries, brings or has in his or her possession a firearm or any explosive, incendiary or other dangerous device within any building in which any meeting of the city council or of a city board or commission is being or is to be conducted or in which the official offices of any officer or employee of the city are located; or

(4) Without a legal authority carries, brings or has in his or her possession a deadly weapon as defined in Section 18-1-901(3)(e), C.R.S., or on the real estate and all improvements erected thereon of the city or of any public or private elementary or secondary school or any public or private college, university or seminary except for the purpose of presenting an authorized public demonstration or exhibition pursuant to instruction in conjunction with an organized school or class for the purpose of carrying out the necessary duties and functions of an employee of an educational institution which require the use of a deadly weapon or for the purpose of participation in an authorized extracurricular activity or athletic team. This subparagraph shall not apply to any unloaded weapon which remains inside a motor vehicle while upon the real estate of any public or private elementary or secondary school or any public or private college, university or seminary. This subparagraph shall not apply to any person who is lawfully hunting in the immediate area where the facilities of the city or of any educational institution are located.

(b) It shall be an affirmative defense that the defendant was:

(1) A person in his or her own dwelling or place of business or on property owned or under his or her control at the time of the act of carrying;

(2) A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of his, her or another's person or property while traveling;

(3) A person who, prior to the time of carrying a concealed weapon, has been issued a written permit pursuant to Section 18-12-105.1, C.R.S., to carry the weapon by the chief of police of a city or city and county, or the sheriff of a county;

(4) A peace officer, level 1 or level 1a, as defined in Section 18-1-901(3)(1)(I) or (3)(1)(II), C.R.S.; or

(5) A peace officer, level 2, as defined in Section 18-1-901 (3)(1)(III), C.R.S., while on duty.

(c) Unlawfully carrying a concealed weapon shall be punishable upon conviction by a mandatory fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) upon first conviction, by a mandatory fine of not less than one hundred fifty dollars (\$150.00) nor more than three hundred dollars (\$300.00) upon second conviction, and by a mandatory fine of not less than two hundred dollars (\$200.00) nor more than three hundred dollars (\$300.00) upon third or subsequent conviction. (Ord. 402 §§1-3, 1991)

#### **Sec. 10-90. Marihuana.**

It is unlawful for any person to possess one (1) ounce or less of marihuana.

(1) Whenever a person is arrested or detained for a violation of this section, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in court. The

written notice or summons shall contain the name and address of such arrested or detained person, the date, time and place where such person shall appear, and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One (1) copy of said notice or summons shall be given to the person arrested or detained, one (1) copy shall be sent to the court where the arrested or detained person is to appear, and such other copies as may be required by the law enforcement agency employing the arresting or detaining officer shall be sent to the places designated by such law enforcement agency. The date specified in the notice or summons to appear shall be at least five (5) days after such arrest or detention unless the person arrested or detained demands an earlier hearing. The place specified in the notice or summons to appear shall be before a judge having jurisdiction of such petty offense with the city in which the petty offense charged is alleged to have been committed. The arrested or detained person, in order to secure release from arrest or detention, shall promise in writing to appear in court by signing the notice or summons prepared by the arresting or detaining officer. Any person who does not honor such written promise to appear commits a violation of this code.

(2) It is unlawful for any person to openly and publicly display, consume or use one (1) ounce or less of marihuana. (Ord. 407 §1, 1991; Ord. 496 §§1, 2, 1997)

#### **Sec. 10-91. Drug paraphernalia.**

(a) As used in this section, unless the context otherwise requires:

*Cocaine, controlled substance, marihuana and marihuana concentrate* shall have the same meanings as provided in Section 18-18-102, C.R.S.

*Drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this code or the laws of this state. *Drug paraphernalia* includes, but is not limited to:

- a. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances under circumstances in violation of this code or the laws of this state;
- b. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;
- c. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;
- d. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;
- e. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

f. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances; or

g. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
2. Waterpipes;
3. Carburetion tubes and devices;
4. Smoking and carburetion masks;
5. Roach clips, meaning objects used to hold burning material, such as a marihuana cigarette that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber pipes;
8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs; or
13. Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object to controlled substances;
- (3) The existence of any residue of controlled substances on the object;
- (4) Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he or she knows or reasonably should know could use the object to facilitate a violation of this Code or the laws of this state;
- (5) Instructions, oral or written, provided with the object concerning its use;

(6) Descriptive materials accompanying the object which explain or depict its use;

(7) National or local advertising concerning its use;

(8) The manner in which the object is displayed for sale;

(9) Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;

(10) The existence and scope of legal uses for the object in the community; and

(11) Expert testimony concerning its use.

(c) In the event a case brought pursuant to this Section is tried before a jury, the court shall hold an evidentiary hearing on issues raised pursuant to this Section. Such hearing shall be conducted in camera.

(d) A person commits possession of drug paraphernalia if he or she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Code or the laws of this state.

(e) Any person who commits possession of drug paraphernalia shall be punished by a fine of not more than one hundred dollars (\$100.00).

(f) Any person who sells or delivers, possesses with intent to sell or deliver, or manufactures with intent to sell or deliver equipment, products or materials knowing, or under circumstances where one reasonably should know, that such equipment, products or materials could be used as drug paraphernalia shall be punished as provided in Chapter 1, Article 5 of this Code.

(g) Any person who places an advertisement in any newspaper, magazine, handbill or other publication and who intends thereby to promote the sale in the City of equipment, products or materials designed and intended for use as drug paraphernalia shall be punished as provided in Chapter 1, Article 5 of this Code.

(h) The common law defense known as the *procuring agent defense*, under which a defendant claims to be acting as an exclusive agent of a buyer of drug paraphernalia and therefore to be a principal in the purchase but not the sale of drug paraphernalia, is not a defense to any offense under this Section.

(i) In connection with a not guilty judgment in any case brought pursuant to this Section, the court shall make a determination whether the equipment, product or material on which the case was based falls within the definition of drug paraphernalia as set forth in Paragraph (a)(2) above. If the court determines that such equipment, product or material does not fall within said definition, the court shall order it returned to the defendant, unless it is otherwise needed for law enforcement purposes. (Ord. 439 §1, 1993)

**Secs. 10-92 —10-99. Reserved.**

## ARTICLE 6

### Curfew

#### **Sec. 10-100. Responsibility – Parent.**

(a) It is unlawful for any parent, guardian or other person having care or custody of any child who has reached his or her tenth birthday, but not his or her sixteenth birthday, to allow or permit any such child to loiter or remain upon any street, alley or other public place on foot or in or upon a vehicle subsequent to the hour of 10:00 p.m. or prior to 5:00 a.m., except for lawful employment, school, church or other organized activity or unless there exists a reasonable necessity therefor or unless such child is accompanied by the parent, guardian or other person of the age of twenty-one (21) years having permission of the parent or guardian to have the custody or care of such child.

(b) It is unlawful for any parent, guardian or other person having care or custody of any child who has reached his or her sixteenth birthday, but not his or her eighteenth birthday, to allow or permit any such child to loiter or remain upon any street, alley or other public place on foot or in or upon a vehicle subsequent to the hour of 11:00 p.m. or prior to 5:00 a.m., except for lawful employment, school, church or other organized activity or unless there exists a reasonable necessity therefor or unless such child is accompanied by the parent, guardian or other person of the age of twenty-one (21) years having permission of the parent or guardian to have the custody or care of such child. (Prior code 9.08.010; Ord. 270 §2, 1982; Ord. 318 §1, 1986; Ord. 459 §1, 1995)

#### **Sec. 10-101. Responsibility – Child.**

(a) It shall be unlawful for any child who has reached his or her tenth birthday, but not his or her sixteenth birthday, to loiter or remain upon any street, alley or other public place on foot or in or upon a vehicle subsequent to the hour of 10:00 p.m. or prior to 5:00 a.m., except for lawful employment, school, church or other organized activity or unless there exists a reasonable necessity therefor or unless such child is accompanied by the parent, guardian or other person of the age of twenty-one (21) years having permission of the parent or guardian to have the custody or care of such child.

(b) It shall be unlawful for any child who has reached his or her sixteenth birthday, but not his or her eighteenth birthday, to loiter or remain upon any street, alley or other public place on foot or in or upon a vehicle subsequent to the hour of 11:00 p.m. or prior to 5:00 a.m., except for lawful employment, school, church or other organized activity or unless there exists a reasonable necessity therefor or unless such child is accompanied by the parent, guardian or other person of the age of twenty-one (21) years having permission of the parent or guardian to have the custody or care of such child. (Prior code 9.08.020; Ord. 270 §2, 1982; Ord. 318 §1, 1986; Ord. 459 §2, 1995)

#### **Secs. 10-102—10-119. Reserved.**

## ARTICLE 7

### Noise

#### **Sec. 10-120. Definitions.**

*Continuous sound* means a steady, fluctuating or impulsive noise which exists, essentially without interruption, for a period of ten (10) minutes more.

*Domestic power equipment* means any power equipment rated five-horsepower or less used for home or building repair or grounds maintenance including, but not limited to, lawn mowers, garden tools, snowblowers and chain saws.

*Dynamic braking device* (commonly referred to as "Jacobs Brake" or "Jake Brake") means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

*Emergency vehicle or emergency work* means a motor vehicle designed to be used in response to a public calamity or to protect person or property from an imminent exposure to danger, work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent public exposure to danger.

*Impulsive noise* means a noise of short duration, usually less than one (1) second, with an abrupt onset and rapid decay.

*Plainly audible* means that the information content of sound is unambiguously transferred to the auditor, such as, but not limited to understanding spoken speech, comprehension of raised or normal voices or comprehension of musical rhythms. (Ord. 423 §1, 1992; Ord. 656 §1, 2005; Ord. 676 §§1, 2, 2007)

#### **Sec. 10-121. Prohibited noise level standards; dynamic braking devices prohibited.**

(a) It shall be unlawful for any person to make or cause to be made any continuous, impulsive or periodic noise within the city that is of such unusual or exceptional character, intensity or duration that it disturbs, injures or endangers the comfort, health, peace or safety of any person, or causes damage to any property.

(b) It shall be unlawful for any person to operate a motor vehicle with a dynamic braking device engaged except to avert an imminent danger.

(c) The provisions of this Article shall not apply to emergency vehicles or to persons engaged in emergency work; provided, however, nothing in this subsection shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary. (Ord. 676 §3, 2007)

**Src. 10-122. Reserved.**

**Sec. 10-123. Amplified sound.**

It is unlawful to intentionally, knowingly or recklessly produce, permit or assist another to produce unreasonable amplified sounds in a public place or near a private residence that a person has no right to occupy which, under the circumstances presented, would cause a person significant annoyance and irritation. The following noises and circumstances shall constitute prima facie evidence that such sounds are unreasonable amplified sounds and, as such, are prohibited hereunder.

(1) Places of public entertainment. No person shall use, operate or allow to be used or operated on premises owned or controlled by such person any loudspeaker, public address system or other sound-amplifying equipment in such a manner as to be plainly audible at the property line of the property upon which said equipment is being used or operated between the hours of 11:00 p.m. and 7:00 a.m., except that such sound-amplifying equipment may be used until 12:00 midnight on Fridays and Saturdays.

(2) All zone districts. It shall be unlawful for any person to use or operate a loudspeaker or sound-amplifying equipment, including a radio, tape player, disc player or other audio equipment, within any zone district of the city that is plainly audible twenty-five (25) feet from the source of said sound or within a private residence that the person responsible for the sound has no right to occupy.

(3) Engine or power equipment noise. It shall be unlawful for any person to use, operate or permit the use or operation of nonlicensed motor vehicle gasoline engines, nonvehicular gasoline engines or domestic power equipment or to engage in the repair or motor vehicle gasoline engines, between 11:00 p.m. and 7:00 a.m., if said activity results in sound audible twenty-five (25) feet from the source of said sound or within a private residence that the person responsible for the sound has no right to occupy.

(4) Noise from gatherings. It shall be unlawful to permit or promote a gathering of persons engaged in loud activities continuing for a period of fifteen (15) or more minutes between 11:00 p.m. and 7:00 a.m. if said gathering is plainly audible twenty-five (25) feet from the source of said sound or within a private residence that the person responsible for the sound has no right to occupy. (Ord. 676 §5, 2007)

**Sec. 10-124. Penalty.**

Penalty assessment shall be subject to sections 1-70 and 10-85 of this code. (Ord. 423 §1, 1992)

**Secs. 10-125—10-139. Reserved.**

## ARTICLE 8

### Street Gangs

#### **Sec. 10-140. Gang activity.**

(a) It shall be unlawful for any person to actively participate in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers or assists in any criminal conduct by members of that gang as defined by either this Article or state law.

(b) Any person who engages in an illegal act which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, shall be subject to an additional and separate charge of violating this provision and shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or one (1) year incarceration or both

(c) As used in this Article, *pattern of criminal gang activity* means the commission, attempted commission or solicitation by a particular street gang of two (2) or more offenses of any ordinance of the city or Title 18 of C.R.S., provided that at least one (1) of those offenses occurred after the effective date of the ordinance codified herein, and the last of those offenses occurred within three (3) years after a prior offense, and the offenses are committed on separate occasions.

(d) As used in this Article, *criminal street gang* means any ongoing organization, association or group of three (3) or more persons, whether formal or informal, which is involved in the commission of one (1) or more of the criminal acts enumerated in the ordinances of the city or Title 18 of C.R.S., which has a common name or common identifying sign or symbol, whose

members individually or collectively engage in or have engaged in a pattern of criminal gang activity. (Ord. 422 §2, 1992)

#### **Sec. 10-141. Gang-related nuisances.**

It shall be unlawful for every building or place to be used by members of a criminal street gang for the purpose of the commission of the offenses listed in the ordinances of the city or Title 18 of C.R.S., and every building or place, wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated and prevented, and for which damages may be recovered, whether it is a public or private nuisance. (Ord. 422 §3, 1992)

#### **Sec. 10-142. Unlawful encouragement to gang activity.**

It shall be unlawful for every person to commit any act or omit the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of eighteen (18) years to come within the provisions of this Article, or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands or persuasion, induces or endeavors to induce any person under the age of eighteen (18) years to fail or refuse to conform to a lawful order of the municipal court, or to do or to perform any act or to follow any course of conduct as would cause or

manifestly tend to cause any such person to become or to remain a person within the provisions of this Article. (Ord. 422 §4, 1992)

**Sec. 10-143. Parental responsibility.**

(a) For the purposes of this section, a parent or legal guardian to any person under the age of eighteen (18) years, who is residing with the parent or legal guardian, shall have the duty to exercise care, supervision, protection and control over their minor child in the context of gang activity.

(b) For the purposes of this section, a parent or legal guardian will be deemed to have violated this section if his or her conduct is determined to reflect a reckless disregard to the conduct of a minor child in the context of gang activity as defined by this Article. A person acts *with a reckless disregard* when he or she consciously disregards a substantial and unjustified risk that a result will occur or that a circumstance exists. Furthermore, a prosecution of this section shall be predicated upon proof beyond a reasonable doubt that the parent or legal guardian knew or should have known that his or her conduct was likely to result in their minor child coming within the purview of this Article. The parent or legal guardian shall have the affirmative defense of an inability to control the minor child despite reasonable efforts to do so.

(c) In determining whether a prosecution of a parent or legal guardian under the provisions of this section is appropriate, the city prosecutor may consider the following criteria:

(1) A review of a detailed description and/or relevant police reports which state the acts or circumstances which have brought a minor child within the purview of this Article;

(2) The number and type of warnings given to the parent or legal guardian and by whom;

(3) Whether any parenting programs have been offered to the parent or legal guardian;

(4) The statements and attitude of the parent or legal guardian and the minor child during the investigation (Every effort should be made to thoroughly interview the parent or legal guardian concerning the alleged delinquency problem and their efforts to correct it; *Miranda* warnings should be given when appropriate.);

(5) The parents or legal guardians present actual ability or inability to supervise and control the offending minor child (Identify whether there are any circumstances beyond the control of the parent or legal guardian that may contribute to the inability to effectively supervise and control.);

(6) The experience and training of officers involved in the investigation; and

(7) Neighborhood complaints or other corroboration of the problem with the minor child and/or the parent or legal guardian.

(d) The city prosecutor shall be empowered to utilize during the plea bargain process and the municipal court during any sentencing for a violation of this section, the mandatory attendance of a parent or legal guardian at a parental responsibility training program administered through the Colorado State Department of Social Services. If mandatory attendance of a parent or legal guardian fails to

successfully complete such training, the municipal court may subject the parent or legal guardian to the contempt sanctions of the court. (Ord. 422 §5, 1992)

**Sec. 10-144. Gang-related threats.**

It shall be unlawful for any member of a criminal street gang to willfully threaten to commit a crime which will result in death or great bodily injury to another person with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution. (Ord. 422 §6, 1992)

**Sec. 10-145. Report.**

The city council hereby directs the chief of police to compile a report which details the effects and results of this Article. This report shall be prepared and delivered to the city council after the ordinance codified herein has been in effect for one (1) year. The city council shall consider whether to repeal or modify this Article after having reviewed the contents of the report. (Ord. 422 §7, 1992)

**Secs. 10-146—10-149. Reserved.**

**ARTICLE 9**

**Graffiti**

**Sec. 10-150. Graffiti; defacing property.**

(a) It is unlawful to deface, or to cause, aid in or permit the defacing of public or private property by means of painting, drawing, writing, etching, or carving with paint, spray paint, ink, knife or any other similar method.

(b) In addition to any other penalty, the court may order any person convicted under this section to personally repair the property that was defaced.

(c) If a person convicted of violating this section is under eighteen (18) years of age, the court may require the parent or guardian of such person to pay the fine imposed, personally repair the property that was defaced, or both. (Ord. 679 §1, 2006)

**Sec. 10-151. Graffiti nuisances; abatement.**

(a) As used in this Article, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

*Graffiti* means the defacing of public or private property by means of painting, drawing, writing, etching or carving with paint, spray paint, ink, knife or any other similar method.

*Owner* means each person who owns, occupies or has under the person's control any building, property, lot or premises.

(b) It shall be the responsibility of the owner to promptly report to the police department any graffiti upon the owner's property and to cooperate with the department to ensure that such graffiti is removed.

(c) Upon the discovery of graffiti on public or private property, the city may send a "Notice of Intent to Enter Property and Remove Graffiti" to the owner thereof, directing the removal of the graffiti. The notice shall be prepared on forms by the chief of police and shall contain at least the following information:

(1) A statement that the owner may elect to remove the graffiti or to have the graffiti removed by the city. The notice shall include provisions for the owner to make the election and to defend, indemnify and hold the city, its officers and its employees harmless from any and all liability, claims and demands resulting therefrom.

(2) A statement that, if no action is taken by a specified date, which date shall be at least ten (10) days after the date of mailing of the notice, the city shall enter the property and remove the graffiti.

(3) A statement that, if the person to whom the notice was issued believes the notice was issued in error, the person shall have three (3) days from the date of mailing of the notice to request a hearing before the chief of police as provided in subsection (d) below. If the person fails to request a hearing within such time, the city may proceed to remove the graffiti on or after the date specified in the notice.

(d) If the person to whom the notice was issued requests a hearing as referred to in subparagraph (c)(3) above, the chief of police or his or her designee shall hold a hearing. The hearing shall be held on a date determined by the chief of police or his or her designee, but shall be held prior to the date specified on the notice as the date for removal of the graffiti. The hearing shall be limited to a determination of whether there is graffiti upon the owner's property as defined in this section. The person who requested the hearing shall have the burden of proof. If the chief of police or his or her designee determines that there is graffiti upon the owner's property as defined in this section, the city may proceed to remove the graffiti on or after the date specified in the notice. If the chief of police or his or her designee determines that there is not graffiti upon the owner's property as defined in this section, said notice shall be withdrawn and no further action shall be taken on the notice.

(e) If the owner does not remove the graffiti within the time stated in the notice, or if the owner elects to have the graffiti removed by the city, the city may proceed to enter the property and remove the graffiti. The entire cost of such removal, including but not limited to the cost of administration, notification, recording, equipment, labor and attorney fees, together with five percent (5%) of such cost for inspection and other incidental costs in connection with such removal, shall be assessed against the property. The assessment shall be a lien against the property until paid and shall have priority over all other liens except general taxes and assessments.

(f) The failure of an owner either to remove the graffiti within the time stated in the notice or to request a hearing pursuant to subsection (d) above shall conclusively be deemed an election by the owner to have the city enter the property and remove the graffiti.

(g) It is unlawful for any person to interfere with or to obstruct any employee or agent of the city who enters a property to remove graffiti in accordance with this section.

(h) It is unlawful for any person to prevent any employee or agent of the city from entering property in accordance with this section to remove graffiti from the property.

(i) The fact that assessments for removing graffiti have or have not been made against the property as provided in this section shall not affect or prevent any punishment as provided by this code.

(j) Nothing in this section shall create any duty to any person with regard to the enforcement thereof. No person shall have any civil liability remedy against the city, its officers, employees or agents for any damages arising from or in any way connected with the enforcement or nonenforcement of this section, including but not limited to any acts or omissions of any city officer, employee or agent who undertakes any action to enter property and remove graffiti therefrom. (Ord. 679 §1, 2006)

**Sec. 10-152. Revenues, graffiti offenses; disposition.**

(a) All revenues collected as a result of any fine imposed for a violation of section 10-150 or for abatement of graffiti nuisances pursuant to section 10-151 shall be deposited in the graffiti cleanup fund as established by this section.

(b) There is hereby established a special fund of the city, to be known as the "Graffiti Cleanup Fund." The fund shall be a special fund consisting of no revenue other than the revenues collected pursuant to this section. The revenues in said fund shall be expended only for the purposes of graffiti removal activities of the city. (Ord. 679 §1, 2006)

**Sec. 10-153. Possession of graffiti materials prohibited.**

(a) As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

*Broad-tipped marker pen* means a felt-tip marker or similar implement containing a fluid that is not water soluble, with a tip that exceeds one-quarter (¼) inch in width.

*Paint pen* means a tube, marker or other pen-like instrument with a tip of one-quarter (¼) inch or less that contains paint or a similar fluid and an internal paint agitator.

*Prohibited graffiti material* means any can of spray paint, spray paint nozzle, broad-tipped marker pen, paint pen, glass-cutting tool, glass-etching tool or instrument or any other article adapted, designed or commonly used for committing or facilitating the commission of graffiti as prohibited by section 10-150.

*Spray paint* means any aerosol container that is made or adapted for the purpose of applying paint or other substance capable of defacing property.

*Spray paint nozzle* means a nozzle designed to deliver a spray of paint of a particular width or flow from a can of spray paint.

(b) It is unlawful for any person under eighteen (18) years of age, except while under the direct supervision of the person's parent, legal guardian, school teacher or a law enforcement officer, in the performance of duty, to purchase, procure, possess or attempt to purchase, procure or possess any

prohibited graffiti material. It shall be an affirmative defense to charges under this section that the person under eighteen (18) years of age possessing the material was:

(1) Within the person's home.

(2) At the person's place of employment.

(3) Upon real property with permission from the owner, occupant or other person having lawful control of such property, to possess such materials.

(c) It is unlawful for any person to possess graffiti materials when such person intends to use any such materials in the commission of a graffiti offense prohibited by section 10-150, or who knows that some other person intends to use such materials in the commission of such an offense. (Ord. 679 §1, 2006)

**Sec. 10-154. Sale and display of prohibited graffiti materials.**

(a) As used in this section, the term *prohibited graffiti material* means those objects that a person under the age of eighteen (18) years is forbidden to purchase, procure or possess pursuant to section 10-153.

(b) It is unlawful for any person, other than a parent, legal guardian, school teacher or law enforcement officer, in the performance of duty, to sell, exchange, give, deliver, loan or otherwise furnish, cause or permit to be sold, exchanged, given, delivered, loaned or otherwise furnished, any prohibited graffiti material to any person under eighteen (18) years of age unless such person under eighteen (18) years of age is accompanied by such person's parent or legal guardian. It shall be an affirmative defense to prosecution under this subsection that the employer has adopted and enforces a written policy against selling prohibited graffiti materials to persons under eighteen (18) years of age, has informed its employees of the applicable laws regarding the sale of prohibited graffiti materials, requires employees to verify the age of customers purchasing prohibited graffiti materials by way of a photo identification document and has established and imposes sanctions for noncompliance.

(c) Any person who sells or offers to sell any prohibited graffiti materials shall display a sign in a prominent place of the building at all times. Such sign shall have a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches, with lettering of at least one-half (1/2) inches in height. It is unlawful for any person who sells or offers to sell any prohibited graffiti materials to fail to display such warning sign, which shall read as follows:

WARNING:

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO PURCHASE  
OR POSSESS SPRAY PAINT, SPRAY PAINT NOZZLE, BROAD-TIPPED MARKER PEN,  
PAINT PEN, GLASS CUTTING TOOL, GLASS ETCHING TOOL OR INSTRUMENT UNLESS  
ACCOMPANIED BY THEIR PARENT OR LEGAL GUARDIAN AND, UPON CONVICTION,  
A \$999.00 FINE MAY BE IMPOSED.

(d) It is unlawful for any person who owns, conducts, operates or manages a business where prohibited graffiti materials are sold, or who sells or offers for sale any prohibited graffiti material, to store or display, or cause or allow to be stored or displayed, prohibited graffiti material in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale

or other disposition. This subsection shall not be construed to preclude or prohibit the storage or display of prohibited graffiti material in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

(e) It is unlawful for any person except a law enforcement officer, in the performance of duty, to knowingly allow a person under eighteen (18) years of age to possess prohibited graffiti materials upon any public or private real property. It shall be an affirmative defense to charges under this subsection that the person under eighteen (18) years of age possessing the material was:

(1) Within such person's home.

(2) At such person's place of employment.

(3) Upon real property with permission from the owner, occupant or person having lawful control of such property, to possess such materials.

(f) Persons convicted of violating subsection (e) above shall, in addition to any penalty imposed by the court, pay restitution for abatement or repair of any defacement or damage caused by the use of prohibited graffiti material by the person under eighteen (18) years of age. (Ord. 679 §1, 2007)

**Secs. 10-155—10-170. Reserved.**