

## CHAPTER 10

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## ARTICLE 1

### General Provisions

#### Sec. 10-1-10. Definitions and rules of construction.

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

*Alcoholic beverages* includes fermented malt beverages (three and two-tenths percent [3.2%] alcohol by weight or less), and malt, vinous or spirituous liquors (more than three and two-tenths percent [3.2%] alcohol by weight).

*Bodily injury* means physical pain, illness or any impairment of physical or mental condition.

*Conceal* means to place or attempt to place out of view in such manner and circumstances as to indicate an intent to prevent others from seeing or discovering the presence of the thing concealed.

*Controlled substance* means any substance the manufacture, possession or use of which violates the laws of the State, including but not limited to marihuana, marihuana concentrate, cocaine, methamphetamine and opium derivatives as those terms are defined in Section 18-18-102, C.R.S.

*Criminal negligence.* A person acts with *criminal negligence* when, through a gross deviation from the standard of care that a reasonable person would exercise, the person fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

*Deadly weapon* means any of the following which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury:

- a. A firearm, whether loaded or unloaded;
- b. A knife;
- c. A bludgeon; or
- d. Any other weapon, device, instrument, material or substance, whether animate or inanimate.

*Fermented malt beverage* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof, in water containing not less than one-half of one percent (0.5%) and not more than three and two-tenths percent (3.2%) alcohol by weight.

*Fight* means to voluntarily assault or batter or attempt to assault or batter another under circumstances where the actor reasonably could avoid the opportunity or necessity to assault or batter the other person.

*Firefighter* means a member in good standing of the City's Volunteer Fire Department or member of any other firefighting entity within the City and engaged in firefighting or emergency activities.

*Gain* means the direct realization of winnings.

*Gambling* means risking any money, credit, deposit or other thing of value for a gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event over which the person taking a risk has no control, but does not include:

- a. Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries;
- b. Bona fide business transactions which are valid under the law of contracts;
- c. Other acts or transactions now or hereafter expressly authorized by law; or
- d. Any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only and in which no person is participating, directly or indirectly, in professional gambling.

*Gambling device* means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine.

*Gambling premises* means any building, house, room, enclosure, vehicle, vessel or other place, whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling.

*Gambling proceeds* means all money or other things of value at stake or displayed in or in connection with professional gambling.

*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.

*Illegal weapon* means a blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.

*Intentionally* or *with intent*. All offenses defined in this Code in which the mental culpability requirement is expressed as *intentionally* or *with intent* are declared to be specific intent offenses. A person acts *intentionally* or *with intent* when the person's conscious objective is to cause the specific result proscribed by the ordinance defining the offense. It is immaterial to the issue of specific intent whether or not the result actually occurred.

*Knowingly or willfully.* All offenses defined in this Chapter in which the mental culpability requirement is expressed as *knowingly* or *willfully* are declared to be general intent crimes. A person acts *knowingly* or *willfully* with respect to conduct or to a circumstance described by an ordinance defining an offense when the person is aware that such person's conduct is of such nature or that such circumstance exists. A person acts *knowingly* or *willfully*, with respect to a result of such person's conduct when the person is aware that the person's conduct is practically certain to cause the result.

*Lewd and indecent display* means performing an act which simulates:

- a. Sexual intercourse, flagellation or any sexual acts which are prohibited by law;
- b. The touching, caressing or fondling of the breast, buttocks, anus or genitals;
- c. The displaying of the pubic hair, anus, vulva or genitals, including drawings, sketchings or photographs of the same;
- d. The displaying of the post-pubertal human female breast below a point immediately above the top of the areola, or the displaying of the post-pubertal human female breast where the nipple only or the nipple and areola only are covered, except for the purpose of breast feeding children; or
- e. The open display of urination or excretory functions in any public or private place other than in or upon a toilet facility provided for such purpose.

*Licensee* means any person, duly licensed by the State and/or Local Licensing Authority to sell malt, vinous or spirituous liquors or fermented malt beverages or to operate a place of amusement or recreation within the City, or any agent, servant or employee of such licensee.

*Loiter* means to be dilatory, to stand idly around, to linger, delay, wander about, to remain, abide or tarry in public places.

*Malt liquors* includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent (3.2%) of alcohol by weight.

*Marihuana* or *marijuana* means all parts of the plant *cannabis sativa L.*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as *marihuana*. *Marihuana* does not include marihuana concentrate as defined in the following paragraph of this Section.

*Marihuana concentrate* means hashish, tetra-hydrocannabinols or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols.

*Nudity* means uncovered, or less than translucently covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered; provided, however, that the exposure of the female breast for the purpose of breastfeeding children shall not be included in this definition.

*Police officer* means:

- a. Any member of the Police Department or Police Reserve Force as provided for by the Charter and ordinances of the City;
- b. Any peace officer of another jurisdiction who is in the City for the purpose of enforcing state law; and
- c. Any other City officer, person, employee or agent designated by ordinance, City Council or the Chief of Police to exercise police powers, including the power of arrest.

*Premises* means all or any part of the physical boundaries of any establishment duly licensed for the sale of malt, vinous or spirituous liquors or fermented malt beverages or any place of amusement or recreation in the City. The term *premises* includes not only the building wherein the business is conducted, but also the outdoor areas within the property boundaries of the real property upon which the building sits.

*Professional gambling* means:

- a. Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or
- b. Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one (1) or more of the other participants.

*Profit* means any realized or unrealized benefit, direct or indirect, including benefits from proprietorship, management or unequal advantage in a series of transactions.

*Public or private property* includes 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, open space, playground or building, any refuges, conservations or recreation area, and any residential, farm or ranch properties or timberland.

*Public place* means any place commonly or usually open to the general public or to which members of the general public may resort or have access. By way of illustration, such public places include but are not limited to public ways, streets, buildings, sidewalks, alleys, parking lots, shopping centers, shopping center malls, places of business usually open to the general public, automobiles or other vehicles in or upon any such place or places, highways, transportation facilities, schools, places of amusement, parks, playgrounds and the common areas of public and private buildings and facilities, but shall not include the interior or enclosed yard area of private homes, residences, condominiums or apartments.

*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.

*Public view* means a place which can be seen by ordinary unaided human vision from a public place, regardless of whether actual vision occurs.

*Recklessly.* A person acts *recklessly* when he or she consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

*Serious bodily injury* means bodily injury which involves a substantial risk of death, serious permanent disfigurement or protracted loss or impairment of the function of any part of the body.

*Sexual intercourse* means contact between the genitalia, anus or female breast of one (1) person and any part of another person for purposes of immediate sexual gratification of any person; and contact between the genitalia, anus or female breast of one (1) person and any part of any animal for purposes of sexual gratification of any person.

*Special officer* means any person carrying on the business or occupation of security patrol service, night watchman, night watch service, private policeman, burglar alarm service operators or any other occupation the purpose of which is to afford additional police protection or public safety for hire or reward.

*Spirituous liquors* means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes, among other things, brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and which is fit for use for beverage purposes.

*Tamper* means to change the condition of anything so that its operation or tendency to perform its intended function will be altered.

*Vehicle* means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or the like to transport persons or property or pull machinery, and shall include, without limitation, automobile, airplane, truck, trailer, motorcycle, motorscooter, tractor, buggy and wagon.

*Vinous liquors* means wine and fortified wines not exceeding twenty-one percent (21%) of alcohol by volume and shall be construed to mean alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar. (Prior code 15-1, 15-236; Ord. 05-05 §§1, 2, 2005; Ord. 12-08 §1, 2008)

#### **Sec. 10-1-20. Intent.**

It is the intent and purpose of this Chapter not to define as unlawful any conduct which is designated as felonious under state law, and this Chapter shall be so construed, notwithstanding any language contained herein which might otherwise be construed to the contrary. (Prior code 15-2)

**Sec. 10-1-30. Charging inchoate offenses.**

It shall be sufficient notice of the charging of an inchoate offense where the complaint states the name and section number of the underlying offense. A defendant shall not be acquitted or a complaint dismissed solely on the ground that the prosecution's theory of the defendant's guilt relies upon an inchoate offense which has not been expressly charged. A defendant's remedy for ascertaining the prosecution's theory shall be limited to the procedures outlined in the Colorado Municipal Court Rules. (Prior code 15-26)

**Sec. 10-1-40. Attempts.**

(a) A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, the person engages in conduct constituting a substantial step toward the commission of the offense. A *substantial step* is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.

(b) A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish the person's complicity under Section 10-1-60 below were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.

(c) It is an affirmative defense to a charge under this Section that the defendant abandoned the effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of criminal intent. The renunciation shall not be deemed voluntary where motivated by fear of imminent discovery of or apprehension for the defendant's criminal conduct.

(d) Criminal attempt to commit a misdemeanor is a misdemeanor.

(e) Criminal attempt to commit a petty offense is a crime of the same class as the offense itself. (Prior code 15-27; Ord. 12-08 §1, 2008)

**Sec. 10-1-50. Conspiracy.**

(a) A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he or she agrees with another person that they, or one (1) or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he or she agrees to aid the other person in the planning or commission of a crime or of an attempt to commit such crime.

(b) No person may be convicted of conspiracy to commit a crime, unless an overt act in pursuance of that conspiracy is proved to have been done by him or her or by a person with whom he or she conspired.

(c) If a person knows that one with whom he or she conspires to commit a crime has conspired with another person to commit the same crime, he or she is guilty of conspiring to commit a crime with the other person, whether or not he or she knows the other person's identity.

(d) If a person conspires to commit a number of crimes, he or she is guilty of only one (1) conspiracy so long as such multiple crimes are part of a single criminal episode.

(e) Conspiracy to commit a misdemeanor is a misdemeanor.

(f) Conspiracy to commit a petty offense is a crime of the same class as the offense itself. (Ord. 12-08 §1, 2008)

**Sec. 10-1-60. Complicity.**

(a) A person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, the person aids, abets or advises the other person in planning or committing the offense.

(b) It is no defense to a charge under this Section that the other person whose behavior constitutes a criminal offense was not or could not be prosecuted for the offense.

(c) It is an affirmative defense to a charge under this Section that the defendant prevented or attempted to prevent the commission of the underlying offense, under circumstances manifesting the complete and voluntary renunciation of his or her criminal intent. The renunciation shall not be deemed voluntary where motivated by fear of imminent discovery of or apprehension for the defendant's criminal conduct. (Prior code 15-28; Ord. 12-08 §1, 2008)

**Sec. 10-1-70. Accessory.**

(a) A person is an accessory to a crime if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he or she renders assistance to such person.

(b) *Render assistance* means to:

(1) Harbor or conceal the other;

(2) Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law;

(3) Provide such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;

(4) By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution or punishment of such person; or

(5) Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.

(c) Being an accessory to crime is a Class 1 petty offense if the offender knows that the person being assisted has committed, has been convicted of or is charged by pending information, indictment or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this Code as a misdemeanor of any class. (Ord. 12-08 §1, 2008)

**Sec. 10-1-80. Aiding and abetting.**

Every person who commits, attempts to commit, conspires to commit, aids or abets in the commission of any act declared herein to be in violation of the ordinances of the City, whether individually or in connection with one (1) or more persons, as a principal, agent or accessory, shall be guilty of such offense, and every person who fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any ordinance of the City is likewise guilty of such offense. (Ord. 12-08 §1, 2008)

**ARTICLE 2**

**Government and Public Officers**

**Sec. 10-2-10. 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 was by lawful activities in connection with a labor dispute with the government. (Ord. 12-08 §1, 2008)

**Sec. 10-2-20. Obstructing a police officer or firefighter.**

(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, by using or threatening to use violence, force, or physical interference or obstacle, knowingly obstruct, impair, or hinder the enforcement of the law or the preservation of the peace by a police officer acting under color of official authority, or knowingly obstruct, impair, or hinder the prevention, control, or abatement of fire or other emergency action by a firefighter acting under color of his or her official authority.

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

(d) It is no defense to a charge under this Section that the peace officer or firefighter was acting in an illegal manner, if the peace officer or firefighter was acting under color of his or her official authority as defined in Section 10-2-120(b).

(e) This Section does not apply to obstruction, impairment or hindrance of the making of an arrest. (Prior code 15-123; Ord. 12-08 §1, 2008)

**Sec. 10-2-30. Interference with police officer or firefighter.**

(a) It is unlawful for any person to interfere with or hinder any police officer, member of the Police Department, a person duly empowered with police authority, or a firefighter, while in the discharge or apparent discharge of his or her duty.

(b) It is unlawful for any person to rescue or attempt to rescue any other person who, because of a misdemeanor or civil matter, is in the custody of a police officer, member of the Police Department or a person duly empowered with police authority. (Prior code 15-122)

**Sec. 10-2-40. Disobeying order of police officer or firefighter.**

It is unlawful for any person to willfully disobey the lawful or reasonable order or direction of any police officer, firefighter, emergency personnel or military personnel given incident to the discharge of the official duties of such police officer or firefighter, or incident to the duties of emergency personnel or military personnel when engaged in activities related to an emergency, explosion or other disaster within their official concern. (Prior code 15-124)

**Sec. 10-2-50. Abusing a police officer.**

It is unlawful for any person, verbally or by action or gesture, to make, attempt or threaten forceful contact or bodily harm to or against any police officer in the discharge of his or her official duties. Profane, abusive, insulting, taunting or provoking language directed to a police officer in a manner likely to provoke a violent response from a reasonably prudent person shall be deemed a violation of this Section, whether accompanying the aforesaid actions or not. (Prior code 15-125)

**Sec. 10-2-60. Duty to aid.**

(a) Refusal. It is unlawful for any person eighteen (18) years of age or older, upon command by an individual known to him or her to be a police officer, to unreasonably refuse to aid the police officer in effecting an arrest, securing the custody of an arrestee or preventing the commission by another of any offense.

(b) Duty to aid fire officials. It shall be the duty of every person who is present at the scene to obey all lawful orders of the incident commander or firefighter; however, no person is bound to obey such firefighter unless the firefighter's official character is known or made known to such person. (Prior codes 7-20, 15-126; Ord. 02-05 §4, 2005; Ord. 12-08 §1, 2008)

**Sec. 10-2-70. Cruelty to police dogs.**

It is unlawful for any person to knowingly torture, torment, beat, kick, strike, mutilate, injure, disable, kill, interfere with the control or handling of or distract from its handler or controller any dog

used by the Police Department when such dog is being used in the performance of any functions or duties of the Police Department. (Prior code 15-130)

**Sec. 10-2-80. False reporting to authorities.**

(a) It is unlawful for any person to report the existence of a fire or other emergency to the police, fire department or any other agency empowered to deal with an emergency involving risk or injury to persons or property, when such person knows the report to be false. For purposes of this Subsection, *fire department* means any fire protection district or firefighting agency of the State, County or City, whether the employees or officers of such agency are volunteers, or receive compensation for their services as firefighters, or both.

(b) It is unlawful for a person to falsely report to authorities. A person commits false reporting to authorities if he or she:

(1) 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) 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;

(3) 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;

(4) Knowingly gives false information to any law enforcement officer with the purpose of implicating another; or

(5) Provides false identifying information to law enforcement authorities.

(c) For purposes of this Section, *false identifying information* means a person's name, address, birth date, social security number, driver's license or state identification number. (Prior code 15-127; Ord. 12-08 §1, 2008)

**Sec. 10-2-90. Impersonating City officials and employees.**

(a) It is unlawful for any person other than a City official or City employee to willfully or fraudulently represent himself to be a City official or an employee of the City.

(b) A person commits impersonating a public servant if he or she falsely pretends to be a public servant other than a peace officer and performs any act in that pretended capacity.

(c) It is unlawful for any person to purport to perform the duties of any City official or employee when the person is not an authorized officer or employee of the City.

(d) It is no defense to a prosecution under this Section that the office the actor pretended to hold did not in fact exist. (Prior code 15-132; Ord. 12-08 §1, 2008)

**Sec. 10-2-100. Interference with public officials.**

(a) No person shall knowingly and unlawfully resist, interfere with, impede or obstruct any City employee or other public official who is in the course of discharging an official duty.

(b) No person shall unlawfully threaten violence, reprisal or any other injurious act to any City employee or other public official who is engaged in the performance or attempted performance of official duties. (Prior code 15-134)

**Sec. 10-2-110. Limitations on the use of emergency equipment.**

It is unlawful for any person to drive, install, cause the installation to be made or use upon any motor vehicle any siren, exhaust whistle, or bell or any red lights visible from the front of a motor vehicle, or any red spot light; except nothing in this Section shall prevent the possession, use or installation of such equipment on any government-owned vehicle, or any vehicle authorized or permitted to have or use any such equipment by the laws of this State or the City, if there shall be compliance with all requirements of any such state and City laws, including obtaining necessary permits or licenses or approval, as required by any such state laws or by any applicable municipal ordinance, rule or regulation. (Prior code 15-135)

**Sec. 10-2-120. Resisting arrest.**

(a) It is unlawful for any person to knowingly prevent or attempt to prevent any police officer acting under color of his or her official authority from effecting an arrest of the actor or another by:

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

(2) Using or attempting to use any other means which creates a substantial risk of causing physical injury to the police officer or another; or

(3) Running from, eluding or concealing oneself or another from, or attempting to run from, elude or conceal oneself or another from, a police officer or officers attempting to effect an arrest.

(b) It is no defense to a charge under this Section that the police officer was attempting to make an arrest which in fact was unlawful, if the police officer was acting under color of his or her official authority, and, was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A police officer acts *under color of his or her official authority* when, in the regular course of assigned duties, the police 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.

(c) The term *police officer*, as used in this Section, means a police officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such police officer to the person whose arrest is attempted. (Prior code 15-121; Ord. 12-08 §1, 2008)

**Sec. 10-2-130. Escape.**

It is unlawful for a person in detention, custody or confinement who is held for or charged with, or who has been convicted of a misdemeanor or petty offense, to knowingly escape from detention custody or confinement. (Prior code 15-129)

**Sec. 10-2-140. Aiding escape.**

(a) It is unlawful for any person to knowingly aid, abet, or assist another person to escape or attempt to escape from detention, custody or confinement when the person aided is charged with, held for, or convicted of a misdemeanor or petty offense.

(b) A person who knowingly aids, abets or assists any other person to escape or attempt to escape from detention, custody or confinement if such other person, because of a misdemeanor or civil matter, is in the custody of a police officer, member of the Police Department or a person duly empowered with police authority, commits the offense of aiding escape. (Prior code 15-122, 15-128; Ord. 12-08 §1, 2008)

**ARTICLE 3**

**Public Peace, Order and Safety**

**Sec. 10-3-10. Assault.**

It is unlawful for any person to knowingly or recklessly cause bodily injury to another person or with criminal negligence cause bodily injury to another. (Prior code 15-41)

**Sec. 10-3-20. Reckless endangerment.**

It is unlawful for any person to recklessly engage in conduct which creates substantial risk of serious bodily injury to another person. (Prior code 15-45)

**Sec. 10-3-30. Menacing without deadly weapon.**

It is unlawful for any person to knowingly place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided, however, that if such is with the use of a deadly weapon, then this Section shall not apply. (Prior code 15-44)

**Sec. 10-3-40. Disorderly conduct.**

- (a) It is unlawful for any person to commit disorderly conduct.
- (b) A person commits disorderly conduct if the person intentionally, knowingly or recklessly:
  - (1) Abuses or threatens physical harm to any person in a public place;
  - (2) Fights with another in a public place, except as a participant in a lawful sporting event;

(3) Urinates or defecates upon any public or private place other than in a toilet facility provided for such purpose;

(4) Makes a coarse and obviously offensive utterance, gesture or display in a public place and the utterance, gesture or display tends to invite an immediate breach of peace;

(5) Makes unreasonable noise in a public place or near a private residence that he or she has no right to occupy;

(6) Not being a peace officer, discharges a deadly weapon in a public place except when engaged in lawful target practice or hunting; or

(7) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

(c) It is an affirmative defense under Subsection (b)(1) hereof that the actor had significant provocation for the threatening conduct. (Prior code 15-91; Ord. 12-08 §1, 2008)

**Sec. 10-3-50. Disrupting 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. 12-08 §1, 2008)

**Sec. 10-3-60. Harassment.**

(a) It is 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;

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

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

(4) 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, computer, computer network or computer system which is obscene;

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

(6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(7) Repeatedly insults, taunts, challenges or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.

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

(c) Any act prohibited by Paragraph (a)(4) or (a)(5) hereof may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail or other electronic communication was either made or received. (Prior code 15-46; Ord. 12-08 §1, 2008)

**Sec. 10-3-70. Aggressive begging or solicitation.**

(a) No person shall engage in aggressive begging on any public street, sidewalk, way, mall, park, building or other public property, or on any private property open to the public.

(b) *Aggressive begging* means begging or soliciting of the individual addressed for employment, business, contributions, gifts or sales of any kind, while in close proximity to such individual, accompanied by or followed immediately by one (1) or more of the following actions by the actor:

- (1) A repeated request after a refusal by the individual addressed.
- (2) A blocking of the passage of the individual addressed.
- (3) The use of fighting words directed at the individual addressed.
- (4) Touching of the individual addressed. (Prior code 15-42)

**Sec. 10-3-80. Hindering transportation.**

It is unlawful for any person to knowingly and without lawful authority forcibly stop and hinder the operation of any vehicle used in providing transportation services of any kind to the public or to any person. (Prior code 15-97)

**Sec. 10-3-90. Loitering.**

(a) It is unlawful for any person to:

- (1) Loiter with the intent to violate any provision of this Chapter or any criminal provisions of state or federal law.
- (2) Loiter for the purpose of begging.

(3) Loiter for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia.

(4) Loiter for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse.

(5) Loiter with intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren in a school building, on school grounds or within one hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in the building or on the grounds, for one not having any reason or relationship involving custody for, or responsibility for, a pupil or any other specific, legitimate reason for being there, and having been asked to leave by a school administrator, the administrator's representative or a peace officer.

(6) Loiter with one (1) or more persons for the purpose of unlawfully using or possessing a controlled substance.

(b) Among the circumstances which may be considered in determining whether reasonable grounds for belief have arisen that such person is loitering is the fact that such person:

(1) Takes flight upon appearance of peace officer.

(2) Refuses to identify himself or herself.

(3) Manifestly endeavors to conceal himself, herself or any object.

(4) Not being a duly licensed special officer or peace officer, systematically checks the means to access to buildings or vehicles.

(5) Maintains a continuous presence in close proximity to a place where a reasonable peace or police officer would conclude that his or her activity manifests a high probability of activity or intention to engage in activity in violation of this Chapter, or any criminal provision of state or federal law.

(c) Unless flight by the person or other circumstances make it impractical, a peace officer shall, prior to any arrest for an offense under this Section, afford the person an opportunity to dispel any alarm otherwise warranted, or explain any circumstances giving rise to reasonable grounds for belief that such person is loitering by requesting the person to:

(1) Identify himself or herself; and

(2) Explain his or her presence and conduct.

(d) No person shall be convicted of an offense under this Section if the peace officer did not comply with Subsections (c) and (d) hereof or, if at trial, the Municipal Court finds that the explanation of presence and conduct given by the defendant was true and, if believed by the peace officer at the time, would have dispelled the reasonableness of the officer's belief that the defendant was engaging in unlawful activity or would have disclosed a lawful purpose.

(e) It is an affirmative defense that the defendant's acts were lawful and he or she was exercising his or her rights of lawful assembly. (Prior code 15-92; Ord. 12-08 §1, 2008)

**Sec. 10-3-100. Throwing dangerous missiles.**

It is unlawful for any person to willfully, maliciously or recklessly throw, shoot or project any stone, arrow, pellet, dart, ball bearing or other dangerous missile at or against, or in a manner which could endanger, a person, animal, public or private property, building, tree, shrub, structure, personal property, fixture or vehicle or equipment designed for the transportation of persons or property. The provisions of this Section shall not apply to throwing, projecting or shooting any such dangerous missile at any animal in order to protect persons or property from physical injury, or for recreational purposes in such a manner that no unreasonable risk of harm is presented to any person, or to the real or personal property of any person. (Prior code 15-98; Ord. 12-08 §1, 2008)

**Sec. 10-3-110. Fraud by check.**

(a) The following definitions apply to this Section:

*Check* means a written, unconditional order to pay a certain sum in money, drawn on a bank, payable on demand, and signed by the drawer. *Check* 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 is 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. A check dishonored for "no account" shall also be deemed to be dishonored for insufficient funds.

*Issue* means making drawing, delivering or passing a check or causing it to be made, drawn, delivered, or passed.

*Negotiable order of withdrawal or share draft* means 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.

*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, although 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 the person 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. This Subsection shall only apply where the fraudulent check was for the sum of less than one thousand dollars (\$1,000.00).

(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 the person is the payee, holder or bearer of the check.

(d) A bank, savings and loan association, industrial bank or credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a police officer, city attorney or authorized investigator for a city attorney investigating or prosecuting a charge under this Section.

(e) 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 post-dated check or order, if:

(1) The issuer 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) The issuer 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. (Prior code 15-62; Ord. 20-07 §2, 2007; Ord. 12-08 §1, 2008)

### **Sec. 10-3-120. Abandoned containers and appliances.**

(a) It is unlawful for any person to store, maintain, abandon, discard or place any icebox, refrigerator or freezer which is not being used for refrigeration purposes in any public or private place foreseeably accessible to children without first doing one (1) or more of the following to any such icebox, refrigerator or freezer:

(1) Removing the doors.

(2) Removing the latches and affixing a block or wedge or other device to the inner door surface in a manner such that the doors cannot shut to form a tight seal.

(3) Padlocking the doors shut.

(4) Securing the doors shut with permanent metal strapping.

(b) It is unlawful for any person to abandon or discard in any public or private place foreseeably accessible to children, or for the owner, lessee or manager of any property to knowingly permit to remain abandoned or discarded in any place under the person's control which is foreseeably accessible to children, any chest, closet, piece of furniture or other article having a compartment of a

capacity of one and one-half (1½) cubic feet or more and having a door or lid which, when closed, cannot be opened easily from the inside by a means that is reasonably obvious and can be performed by reasonable effort; or who, being the owner, lessee or manager of such place, to knowingly permit such abandoned or discharged article to remain in such condition. (Prior code 15-102; Ord. 12-08 §1, 2008)

**Sec. 10-3-130. Leaving openings uncovered or unsafe.**

It is unlawful for any person to leave open, uncovered, unguarded or in unsafe condition any cellar door, mobile home skirting, hatchway, pit, vault or excavation upon any sidewalk, street, alley or public place or so near thereto as to constitute a hazard to any passerby or person. (Prior code 15-101)

**ARTICLE 4**

**Streets and Public Places**

**Sec. 10-4-10. Disturbing lawful assemblies or activities.**

(a) It is unlawful for any person, by conduct in, on or near the premises, property or facilities of the City or any public place, institution, office or buildings, any school, congregation or assembly meeting for religious worship or any other lawful meeting or assembly intentionally, knowingly or recklessly:

(1) Without reasonable necessity, to obstruct a street, highway, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway or hallway to which the public or a substantial segment of the public has access; or any other place used for the passage of persons, vehicles or conveyances, whether the obstruction arises from such person's acts alone or from such person's acts and the acts of others;

(2) To disobey a reasonable request or order to move issued by a person he or she knows or should reasonably know to be a police officer, firefighter or person with authority to control the use of the premises, to prevent obstruction of a highway, passageway or the premises or facilities, or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard;

(3) To disrupt, obstruct or interfere substantially with any lawful meeting, procession or gathering in or on such premises by intentional physical action, verbal utterance or any other means;

(4) To deny any public servant, official, employee, invitee or student:

- a. Lawful freedom of movement on the premises;
- b. Lawful use of the property, premises or facilities;
- c. The right of lawful ingress and egress to such property;

(5) To impede any public servant, official, employee, invitee or student in the lawful performance of such person's duties or activities through the use of restraint, coercion or intimidation or when force and violence are present or threatened; or

(6) To refuse or fail to leave such premises, property or facilities upon being reasonably requested to do so by a police officer, chief administrative officer, or such person's designee, dean or principal of an educational institution, or other individual or public servant with authority to control the use of the premises if such person is committing, threatens to commit or incites others to commit any act which would obstruct, disrupt, restrict or impede the lawful missions, processes, procedures or functions in or on such premises, property or facilities.

(b) Nothing in this Section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances. (Prior code 15-107)

**Sec. 10-4-20. Disturbing the peace.**

It is unlawful for any person to disturb or tend to disturb the peace of others by violent, tumultuous, offensive or obstreperous conduct, by loud or unusual noises, or by unseemly, profane, obscene or offensive language calculated to provoke a breach of the peace; or for any person to permit any such conduct in any house or upon any premises owned or possessed by him or her or under his or her management or control, when within his or her power to prevent, so that others in the vicinity are or may be disturbed thereby. (Prior code 15-108)

**Sec. 10-4-30. 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; and

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

(b) No conviction may be obtained under this Section unless notice of such limitation or prohibition 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. 12-08 §1, 2008)

**Sec. 10-4-40. Interfering with use of streets or sidewalks.**

It is unlawful for any person to obstruct, interfere with or prevent the free, unobstructed and reasonable use of a public highway, street, alley or sidewalk by any other person, to fail or refuse to yield to the reasonable use or passage of any other person on that public highway, street, alley or sidewalk or to fail or refuse to move on, disperse or cease such obstruction or interference immediately upon being so ordered by any peace officer. (Ord. 12-08 §1, 2008)

**Sec. 10-4-50. Damage or removal of street signs.**

It is unlawful for any person without proper authorization to remove, deface, damage or destroy any street sign or sign erected or placed in or adjacent to any street indicating the name of such street. (Ord. 12-08 §1, 2008)

**ARTICLE 5**

**Public, Private and Personal Property**

**Sec. 10-5-10. 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 one thousand dollars (\$1,000.00). (Ord. 12-08 §1, 2008)

**Sec. 10-5-20. Destruction of property.**

It is unlawful for any person to either maliciously, wantonly, intentionally or through criminal negligence, injure, damage or destroy the real or personal property of another or of the City; provided, however, that this Section shall not apply to any person showing a legal right or authority to injure, damage or destroy such property. This Section shall apply only where the aggregate damage to such real or personal property is less than one thousand dollars (\$1,000.00), or where the damage is effected by means of fire or explosives with the intent to defraud. (Prior code 15-67; Ord. 20-07 §6, 2007)

**Sec. 10-5-30. Trespassing.**

It is unlawful for any person without permission or legal privilege to enter, occupy, use or remain upon or in any privately owned property, real or personal, of another, or fail or refuse to remove

himself or herself from such property when requested to leave by the owner, occupant or person having lawful control thereof. (Prior code 15-69; Ord. 12-08 §1, 2008)

**Sec. 10-5-40. Littering.**

(a) It is unlawful to throw or deposit in any street, alley, sidewalk or public grounds in the City any paper, old clothes cloth of any kind, boots, shoes, hats, leather, hair, grass, junk cars, straw, hay, trash or any other thing, except in public receptacles and authorized private receptacles.

(b) It is unlawful for any person, while a driver or passenger in a vehicle, to throw or deposit litter upon any street or other public place within the City or upon private property. (Ord. 12-08 §1, 2008)

**Sec. 10-5-50. Theft.**

(a) It is unlawful for any person to commit theft.

(b) A person commits theft when the person knowingly obtains or exercises control over anything of value of another without authorization or by threat or deception, 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 a manner as to deprive the other person permanently of its use or benefits;

(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 benefits; or

(4) Demands any consideration to which the person is not legally entitled as a condition of restoring the thing of value to the other person; and

(5) The value of the thing involved is less than one thousand dollars (\$1,000.00). (Prior code 15-61; Ord. 20-07 §1, 2007; Ord. 12-08 §1, 2008)

**Sec. 10-5-60. Shoplifting.**

(a) It is unlawful for a person to commit the crime of shoplifting.

(b) A person commits the crime of shoplifting when the person knowingly takes possession of unpurchased goods, wares or merchandise of a value of less than one thousand dollars (\$1,000.00), owned or held by and offered or displayed for sale by any store or mercantile establishment, with the intention of converting such goods, wares or merchandise to the person's own use, without paying the purchase price thereof.

(c) If any person willfully conceals unpurchased goods, wares or merchandise of a value of less than one thousand dollars (\$1,000.00) owned or held by and offered or displayed for sale by any store or other mercantile establishment, such concealment constitutes prima facie evidence that the person intended to convert the same to his or her own use without paying the purchase price therefor within the meaning of this Section.

(d) If any person is suspected of concealing upon his or her person or otherwise carrying away any unpurchased goods, wares or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any police officer, acting in good faith, may detain and question such suspected person upon probable cause based upon reasonable grounds for the purpose of ascertaining whether the person has committed the crime of shoplifting. Such questioning of a person by a merchant, merchant's agent or employee or police officer does not render the merchant, merchant's agent or employee or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution or unlawful detention.

(e) In any prosecution for a violation of this Section, evidence of the price for which the item was being offered for sale at the time of the commission of the alleged offense, offered by any person having any knowledge of the same, including the price as marked on the goods or determined by any other normal procedure of the owner, shall be prima facie evidence of the value of the item. (Prior code 15-63; Ord. 20-07 §3, 2007)

**Sec. 10-5-70. Price switching.**

It is unlawful for any person to knowingly alter, remove or switch the indicated price of any unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment with the intent to deprive the owner, seller or mercantile establishment of a portion of the indicated price of such goods, wares or merchandise; provided, however, that this Section shall only apply to goods, wares or merchandise valuing less than one thousand dollars (\$1,000.00). The value may be established by the method set forth in Subsection 10-5-60(e). (Prior code 15-64; Ord. 20-07 §4, 2007)

**Sec. 10-5-80. Theft of rental property.**

(a) A person commits theft of rental property if he or she:

(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; or

(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 said 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.

(b) This section shall apply where the value of the property involved is less than one thousand dollars (\$1,000.00). Proof of value may be established as provided in Section 10-5-60(e). (Prior code 15-74; Ord. 20-07 §7, 2007 Ord. 12-08 §1, 2008)

**Sec. 10-5-90. 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 such thing is less than one thousand dollars (\$1,000.00). (Ord. 12-08 §1, 2008)

**Sec. 10-5-100. False pretenses.**

It is unlawful for any person to obtain any food, drink, goods, wares or merchandise under false pretenses, or to enter any public place and call for refreshments or other articles and receive and refuse to pay for the same or depart without paying for or satisfying the person from whom the person received the food, goods, wares and merchandise. This Section shall only apply if the value of such food, goods, wares or merchandise is less than one thousand dollars (\$1,000.00). The value may be established by the method set forth in Subsection 10-5-60(e) of this Article. (Prior code 15-65; Ord. 20-07 §5, 2007)

**Sec. 10-5-110. Fraudulently avoiding payment of admission fees.**

It is unlawful for any person fraudulently or without lawful authorization to enter, without payment of the proper admission fee, any place where admission fees are charged; provided, however, that nothing herein contained shall be deemed to prohibit or restrict the admission of police officers or any public officials engaged in the performance of official duties to any place of public entertainment or amusement. (Prior code 15-66)

**Sec. 10-5-120. Joyriding.**

(a) It is unlawful for any person to drive or take any motor vehicle without the consent of the owner or lawful possessor thereof, with the intent of temporarily depriving the owner or possessor of the use of the same, or temporarily make use thereof of such motor vehicle.

(b) If the person who in the course of so driving or taking the motor vehicle does one (1) or more of the following, joyriding has not occurred:

- (1) Retains possession or control of the motor vehicle for more than twenty-four (24) hours.
- (2) Attempts to alter or disguise or alters or disguises the appearance of the motor vehicle.
- (3) Attempts to alter or remove or alters or removes the vehicle identification number.
- (4) Uses the motor vehicle in the commission of a crime other than a traffic offense.
- (5) Causes five hundred dollars (\$500.00) or more property damage in the exercise of control of the motor vehicle.
- (6) Causes bodily injury to another person while he or she is in the exercise of control of the motor vehicle.
- (7) Removes the motor vehicle from the State for a period of time in excess of twelve (12) hours.
- (8) Unlawfully attaches or otherwise displays in or upon the motor vehicle license plates other than those officially issued for the motor vehicle. (Prior code 15-68)

**Sec. 10-5-130. Unlawful use of property of another.**

It is unlawful for any person intentionally to use or cause to be used, in any manner, the real or personal property of another, or in lawful possession of another, for any purpose, including advertising, storage, grazing or recreation, without the permission of the owner or person in possession thereof. (Prior code 15-70)

**Sec. 10-5-140. Altering distinguishing mark.**

(a) It is unlawful for any person other than the manufacturer, or a person acting pursuant to authority from the manufacturer, to remove, alter, deface or substitute a manufacturer's serial number, distinguishing number or distinguishing mark on or attached to any machine, apparatus, equipment, device or other thing, other than a motor vehicle, or to any part thereof.

(b) It is unlawful for any person to sell or offer for sale any such item other than a motor vehicle from which the manufacturer's serial number, distinguishing number or distinguishing mark has been removed, altered, defaced or substituted, unless, before selling or offering the same for sale, the person files with the Police Department a verified statement showing the source of the person's title, the proper manufacturer's serial number, distinguishing number or distinguishing mark if known, the manner of and reason for such mutilation, change, alteration, concealment or defacement, if known, and the date of acquisition, person from whom acquired and the price paid therefor.

(c) In all actions for the violation of this Section, the fact that a manufacturer's serial number, distinguishing number or distinguishing mark on or attached to any machine, apparatus, equipment, device or thing, or any part thereof, has been removed, altered, defaced or substituted shall be prima facie evidence that the same was removed, altered, defaced or substituted intentionally and by a person other than the manufacturer and other than a person acting pursuant to authority from the manufacturer.

(d) This Section shall not be applicable to any person offering for sale or selling any device, machine, apparatus, equipment, thing or any part therein mentioned pursuant to statute or ordinance or pursuant to any judgment, order, decree, writ or other direction or process of court. (Prior code 15-71)

**Sec. 10-5-150. Cable television; permit required.**

It is unlawful for any person to construct, install or maintain within or upon any public property of the City any equipment or facilities for distributing any television signals or radio signals through a cable television system unless a permit authorizing use of such property or area has first been obtained and unless such permit is in full force and effect. (Prior code 15-72)

**Sec. 10-5-160. Unauthorized connection or tampering.**

(a) It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, in any other manner, with any part of the cable television system under any permit within this City for the purpose of enabling any person to receive any television signal, radio signal, picture, program or sound without payment to the operator of the system.

(b) It is unlawful for any person, without consent of the owner, to willfully tamper with, remove or damage any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(c) 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.

(d) 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.

(e) 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.

(f) 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. (Prior code 15-73; Ord. 12-08 §1, 2008)

## **ARTICLE 6**

### **Public Decency**

#### *Division 1 General Provisions*

#### **Sec. 10-6-10. Public indecency.**

It is unlawful to commit public indecency. Any person who knowingly performs any of the following acts 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 or deviate 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. (Prior code 15-176; Ord. 12-08 §1, 2008)

#### **Sec. 10-6-20. 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. 12-08 §1, 2008)

**Sec. 10-6-30. Invasion of privacy.**

It is unlawful for any person to look into the windows, doors, skylights or other openings of any person's domicile in an attempt to defeat the privacy-preserving purpose of any device or structure, without the permission of the person being observed, the owner or possessor of the domicile or his or her agent. (Prior code 15-177)

**Sec. 10-6-40. Gambling.**

(a) It is unlawful for any person to engage in gambling or professional gambling.

(b) All gambling devices, instruments and things used for the purpose of gambling, as well as gambling proceeds, are contraband and shall be subject to seizure by any peace or police officer, and may be confiscated and destroyed by order of the Municipal Court. All gambling proceeds shall be forfeited to the City and transferred by court order to the General Fund of the City.

(c) It is unlawful for any person to own, manufacture, sell, transport, possess or engage in any transaction designed to affect the ownership, custody or use of a gambling device, knowing that it is to be used in professional gambling.

(d) It is unlawful for the person as owner, lessee, agent, employee, operator or occupant knowingly to maintain or aid or permit the maintaining of a gambling premises. (Prior code 15-178)

*Division 2  
Prostitution*

**Sec. 10-6-110. Definition.**

In this Division, *prostitute* means any person who engages in prostitution. (Prior code 15-191)

**Sec. 10-6-120. Prostitution prohibited.**

It is unlawful for any person to engage in prostitution. A person engages in prostitution when the person performs, offers or agrees to perform with any person not the person's spouse, in exchange for money or other thing of value, any act of sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse, as those terms are defined in Section 10-6-160(b). (Prior code 15-192; Ord. 04-06 §1, 2006)

**Sec. 10-6-130. Soliciting for prostitution.**

It is unlawful for any person to solicit for prostitution. A person solicits for prostitution if the person:

- (1) Solicits another for the purpose of prostitution;
- (2) Arranges or offers to arrange a meeting of persons for the purpose of prostitution; or

(3) Directs another to a place, knowing that such direction is for the purpose of prostitution. (Prior code 15-193)

**Sec. 10-6-140. Pandering.**

It is unlawful for any person to pander. A person panders when, for money or other thing of value, the person knowingly arranges or knowingly offers to aid, abet or advise another so that any person may engage in prostitution. (Prior code 15-194)

**Sec. 10-6-150. Keeping a place of prostitution.**

It is unlawful for any person to keep a place of prostitution. Any person who has or exercises control over the use of any premises which offers seclusion or shelter for the practice of prostitution keeps a place for prostitution if the person:

- (1) Knowingly grants or permits the use of such place for the purpose of prostitution; or
- (2) Permits the continued use of such place for the purpose of prostitution after becoming aware of facts or circumstances from which the person should reasonably know that the place is being used for purposes of prostitution. (Prior code 15-195)

**Sec. 10-6-160. Patronizing a prostitute.**

(a) It is unlawful for any person to patronize a prostitute. Any person who performs any of the following patronizes a prostitute:

- (1) Knowingly performs or offers or agrees to perform any act of sexual intercourse with a prostitute.
- (2) Knowingly performs or offers or agrees to perform any act of fellatio with a prostitute.
- (3) Knowingly performs or offers or agrees to perform any act of cunnilingus with a prostitute.
- (4) Knowingly performs or offers or agrees to perform any act of masturbation with a prostitute.
- (5) Knowingly performs or offers or agrees to perform any act of anal intercourse with a prostitute.
- (6) Enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse with a prostitute.

(b) Definitions. For purposes of this Section, the following terms shall have the following meanings:

*Anal intercourse* means contact between human beings of the genital organs of one and the anus of another.

*Cunnilingus* means any act of oral stimulation of the vulva or clitoris.

*Fellatio* means any act of oral stimulation of the penis.

*Masturbation* means stimulation of the genital organs by manual or other bodily contact exclusive of sexual intercourse. (Prior code 15-196; Ord. 04-06 §2, 2006)

## ARTICLE 7

### Minors

#### Sec. 10-7-10. Curfew for minors.

(a) It is unlawful for any parent, guardian or other person having legal care or custody of any minor who has not reached his or her sixteenth birthday to allow or permit any such minor to be or remain upon any streets or alleys, or to be or remain in any establishment open to the public generally, after 10:30 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday or after 11:30 p.m. on any Friday or Saturday, or before 5:00 a.m. on any day except:

(1) When accompanied by a parent, guardian or other person having legal care or custody of such minor;

(2) For lawful employment; or

(3) When such minor is in the custody of and accompanied by a person who has reached his or her eighteenth birthday and who has in his or her possession the written consent of such parent, guardian or other person having legal care or custody of such minor.

(b) It is unlawful for any parent, guardian or other person having legal care or custody of any minor who has reached his or her sixteenth birthday, but not his or her eighteenth birthday, to allow or permit such minor to be or remain upon any streets or alleys or to be or remain in any establishment open to the public generally, after 10:30 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, after 11:30 p.m. on any Friday or Saturday, or before 5:00 a.m. on any day, except as provided in Paragraphs (a)(1), (a)(2) or (a)(3) hereof.

(c) It is unlawful for any minor who has not reached his or her sixteenth birthday to be or remain upon any street or alley, or to be or remain in any establishment open to the public generally, after 10:30 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, after 11:30 p.m. on any Friday or Saturday, or before 5:00 a.m. on any day, except as provided in Paragraphs (a)(1), (a)(2) or (a)(3) hereof.

(d) It is unlawful for any minor who has reached his or her sixteenth birthday, but not his or her eighteenth birthday to be or remain upon any street or alley or to be or remain in any establishment open to the public generally, after 10:30 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, after 11:30 p.m. on any Friday or Saturday, or before 5:00 a.m. on any day, except as provided in Paragraphs (a)(1), (a)(2) or (a)(3) hereof. (Prior code 15-93)

**Sec. 10-7-20. Parent or guardian aiding, abetting.**

It is unlawful for any person to knowingly permit any minor child to violate, or to aid, abet, approve, encourage, allow, permit, tolerate or consent to the violation by any minor child of, any provision of this Article or any ordinances of the City. (Ord. 12-08 §1, 2008)

**Sec. 10-7-30. Encouraging delinquency.**

It is unlawful for any person, by any act or neglect, to encourage, aid or cause a child to come within the purview of the juvenile authorities, and it shall likewise be unlawful for any person, after notice that a driver's license of any child has been suspended or revoked, to permit such child to operate a motor vehicle during the period that such driver's license is suspended. (Ord. 12-08 §1, 2008)

**Sec. 10-7-40. False statement; false credentials.**

It is unlawful for any person under twenty-one (21) years of age to make false statements, to furnish, present or exhibit any fictitious or false registration card, identification card, note or other document for any unlawful purpose, or to furnish, present or exhibit such document issued to a person other than the one presenting the same for the purpose of gaining admission to prohibited places for the purpose of procuring the sale, gift or delivery of prohibited articles, including beer, liquor, wine or fermented malt beverages as defined in this Chapter. (Ord. 12-08 §1, 2008)

**Sec. 10-7-50. Harboring minors.**

(a) It is unlawful for any person knowingly to harbor, keep secreted, cohabit with or provide shelter for any unmarried minor under the age of eighteen (18) years without the consent of the parent, legal guardian or other person having legal custody of such minor.

(b) It is unlawful for any person to harbor, keep secreted, cohabit with or provide shelter for any unmarried minor under the age of eighteen (18) years when such person knows such minor to be a parole violator or a fugitive from legal process.

(c) The provisions of this Section shall not apply to persons working in their official capacities as employees or members of the staffs of agencies licensed by the State and financed by the United States of America to harbor minors, nor shall such provisions apply to such agencies; provided that such agencies shall at all times provide specific information concerning minors so harbored and shall release such minors to their parents, legal guardians or other persons having legal custody of such minors, or to any law enforcement agency, upon request; and provided further that such agencies harboring minors shall, within twenty-four (24) hours after the arrival of a minor, notify the Police Department and, within seventy-two (72) hours, if possible, shall notify the parents, legal guardians or other persons having legal custody of such minors. (Prior code 15-94)

**Sec. 10-7-60. Selling tobacco to minors.**

(a) For purposes of this Code, the following words shall have the meanings ascribed hereafter:

*Cigarettes* means premanufactured cigarettes and/or hand-rolled cigarettes.

*Minor* means a person under the age of eighteen (18) years.

*Tobacco products* means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(b) It is unlawful for any person to furnish to any person who is under eighteen (18) years of age by gift, sale or any other means any cigarettes or tobacco products. Any person who knowingly furnishes to a minor, by gift, sale or any other means, any cigarettes or tobacco products commits an offense and, upon conviction thereof, shall be punished by a fine of two hundred dollars (\$200.00). It shall be an affirmative defense to a prosecution under this Subsection that the person furnishing the cigarettes or tobacco products was presented with and reasonably relied upon a valid state driver's license or other government-issued form of identification which identified the person receiving the cigarettes or tobacco products as being eighteen (18) years of age or older.

(c) It is unlawful for any person under the age of eighteen (18) to purchase any cigarettes or tobacco products as defined in Subsection (a) of this Section. Any minor who purchases or attempts to purchase any cigarettes or tobacco products, and/or is found to be in possession of any cigarettes or tobacco products commits an offense and, upon conviction thereof, shall be punished by a fine of one hundred dollars (\$100.00); except that, following a conviction or adjudication for a first offense under this Subsection, the Municipal Court in lieu of the fine may sentence the person to participate in a tobacco education program. The Municipal Court may allow such person to perform community service and be granted credit against the fine and court costs at the rate of five dollars (\$5.00) for each hour of work performed, for up to fifty percent (50%) of the fine and court costs.

(d) No retailer shall sell or permit the sale of cigarettes or tobacco products by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:

- (1) Factories, businesses, offices or other places not open to the general public;
- (2) Places to which minors are not permitted access at any time during the day or night; or
- (3) Places where the vending machine is under the direct supervision of the owner of the establishment or an adult employee of the owner, including but not limited to establishments holding a valid liquor license issued pursuant to Article 47 of Title 12, C.R.S.

(e) Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign as specified in this Subsection. Said warning sign shall be displayed in a prominent place in the building and on such machine at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING: IT IS ILLEGAL FOR ANY PERSON UNDER 18 YEARS OF AGE TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A \$100.00 FINE MAY BE IMPOSED

(f) Any violation of Subsection (e) hereof shall not constitute a violation of any other provision of this Section. (Prior code 15-95; Ord. 12-08 §1, 2008)

## ARTICLE 8

### Street Gangs

#### **Sec. 10-8-10. Legislative declaration.**

(a) This Article shall be known and may be cited as the "Edgewater Street Gang Enforcement and Prevention Ordinance."

(b) The City Council finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age or handicap, to be secure and protected from intimidation and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The City Council hereby recognizes the constitutional right of every citizen to harbor and express beliefs, to lawfully associate with others, to petition lawfully constituted authority for a redress of perceived grievances and to participate in the electoral process.

(c) The City Council, however, further finds that the citizens of the City are concerned as a result of violent street gangs whose members threaten, terrorize and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The City Council finds that there are several criminal street gangs operating in the City and that the number of gang-related crimes is increasing. It is the intent of the City Council in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which, together, are the chief source of terror created by street gangs. (Prior code 15-251)

#### **Sec. 10-8-20. Gang activity.**

(a) It is 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, or to willfully promote, further or assist in any criminal conduct by members of that gang as defined by either this Code 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 in accordance with Section 1-4-20.

(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 of the offenses listed in any provision found in this Chapter or in Title 18, C.R.S., provided that at least one (1) of those offenses occurred after May 20, 1993, 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 this Chapter or in Title 18, 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.

(e) Any person who is convicted of or pleads guilty or no contest to a violation of this Section shall, for each offense, be punished in accordance with Section 1-4-20. (Prior code 15-252)

**Sec. 10-8-30. Gang-related nuisances.**

It is unlawful for any building or place to be used by members of a criminal street gang for the purpose of the commission of any of the offenses listed in this Chapter or Title 18, C.R.S., and every building or place, wherein or upon which criminal conduct by gang members takes place is declared a nuisance and shall be enjoined, abated and prevented, and for which damages may be recovered, whether it is a public or private nuisance. (Prior code 15-253)

**Sec. 10-8-40. Unlawful encouragement of gang activity.**

It is unlawful for any 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 for any person who, by any act, omission or threats, commands, 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. (Prior code 15-254)

**Sec. 10-8-50. Parental responsibility.**

(a) For purposes of this Section, a parent or legal guardian of 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 his or her minor child in the context of criminal street gang activity.

(b) For 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 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 the 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 prosecution of a parent or legal guardian under the provisions of this Section is appropriate, the prosecutor may consider the following criteria:

(1) 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.
- (5) The parent's or legal guardian's present actual ability or inability to supervise and control the offending minor child.
- (6) The experience and training of officers involved in the investigation.
- (7) Neighborhood complaints or other corroboration of the problem with the minor child and/or parent or legal guardian.

(d) The prosecutor shall be empowered to utilize, during the plea bargain process in the Municipal Court or 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 County Department of Social Services. If mandatory attendance of a parent or legal guardian is provided as a component of either a plea bargain or a sentence upon conviction of this Section and the 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. (Prior code 15-255; Ord. 12-08 §1, 2008)

**Sec. 10-8-60. Gang-related threats.**

It is 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 not 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 of the person threatened a gravity of purpose and an immediate prospect of execution. (Prior code 15-256)

**ARTICLE 9**

**Graffiti**

**Sec. 10-9-10. 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 Municipal Court may order any person convicted under this Section to repair personally any property within the City that was defaced, with the permission of the property owner.

(c) In addition to any other penalty, the Municipal Court shall order any person convicted of violating this Section or pleading guilty or no contest to a violation of this Section to pay a minimum fine of:

(1) Two hundred dollars (\$200.00) for the first offense within any consecutive twelve-month period;

(2) Four hundred dollars (\$400.00) for the second offense within any consecutive twelve-month period;

(3) Six hundred fifty dollars (\$650.00) for the third and subsequent offenses within any consecutive twelve-month period.

The Municipal Court shall have the authority to suspend these fines, in whole or in part, only when it orders such defendant to perform, and the defendant does perform, useful community service within the City. The Municipal Court shall establish a dollar amount for each hour of community service to be performed and shall credit the amount earned toward payment of the fine imposed when the community service is completed. (Prior code 15-76; Ord. 02-06 §1, 2006)

**Sec. 10-9-20. Revenues, graffiti offenses; disposition.**

(a) All revenues collected as a result of any fine imposed for a violation of Section 10-9-10 shall be deposited in the graffiti cleanup fund established by this Section.

(b) Any owner who elects to have the City enter the owner's property for the purpose of removing graffiti pursuant to Section 7-2-110 may voluntarily contribute to the City amounts to defray the costs of such removal. Any such voluntary contribution shall also be deposited in the graffiti cleanup fund established by this Section.

(c) There is hereby established a special fund of the City, to be known as the graffiti cleanup fund. The fund shall be separately accounted for within the City's general fund as an individual line item. The revenues in said fund shall be expended only for the purposes of graffiti removal activities in the City. (Prior code 15-77; Ord. 17-05 §1, 2005)

**Sec. 10-9-30. Possession of graffiti materials by minors.**

(a) It is unlawful for any person under the age of eighteen (18) years, 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.

(b) Definitions. Words and phrases used in this Section shall have the following meaning respectively ascribed to them:

*Broad-tipped marker pen* means a felt-tip marker, or similar implement containing a fluid which is not water soluble, with a tip that exceeds one-quarter (1/4) inch in width.

*Paint pen* means a tube, marker, or other pen-like instrument with a tip of one-quarter (1/4) 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 or glass-etching tool or instrument.

*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.

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

(1) Within the person's home;

(2) At the person's place of employment; or

(3) Upon real property with permission from the owner, occupant or person having lawful control of such property, to possess such materials. (Prior code 15-78)

**Sec. 10-9-40. Sale and display of prohibited graffiti materials.**

(a) Definitions. *Prohibited graffiti material* means those objects which a person under the age of eighteen (18) years is forbidden to purchase, procure, or possess pursuant to Section 10-9-30.

(b) Sale. 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, or cause or permit to be sold, exchanged, given, delivered, loaned or otherwise furnished any prohibited graffiti material to any person under the age of eighteen (18) years unless such person under the age of eighteen (18) years 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 the age of eighteen (18) years, has informed its employees of the applicable laws regarding sales of prohibited graffiti materials, requires employees to verify the age of prohibited graffiti materials customers by way of a photo identification document, and has established and imposes sanctions for noncompliance.

(c) Signs required. It is unlawful for any person who sells or offers to sell any prohibited graffiti material to fail to display a warning sign. Such warning sign shall be displayed in a prominent place in the building at all times, shall have a minimum height of fourteen (14) inches and a width of eleven (11) inches, with lettering of at least one-half (½) inch in height and 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, OR GLASS-ETCHING TOOL OR INSTRUMENT UNLESS ACCOMPANIED BY THEIR PARENT OR LEGAL GUARDIAN AND, UPON CONVICTION, A \$999.00 FINE MAY BE IMPOSED.

(d) Display and storage. 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 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) Contributing to unlawful possession. It is unlawful for any person, except a law enforcement officer in the performance of duty, to knowingly allow a person under the age of eighteen (18) years 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 the age of eighteen (18) years possessing the material was:

- (1) Within the person's home;
- (2) At the person's place of employment; or
- (3) Upon real property with permission from the owner, occupant or person having lawful control of such property, to possess such materials.

Persons convicted of violating this Subsection shall, in addition to any penalty imposed by the Municipal Court, pay restitution for abatement or repair of any defacement or damage caused by the use of prohibited graffiti material by the person under the age of eighteen (18) years. (Prior code 78.1)

**Sec. 10-9-50. Possession of graffiti materials.**

- (a) It is unlawful for any person to possess graffiti materials.
- (b) A person possesses graffiti materials when the person possesses any paint, marking pen, materials, instrument or other article adapted, designed or commonly used for committing or facilitating the commission of the offense specified in Section 10-9-10, and the person intends to use any such materials in the commission of such offense or knows that some other person intends to use any such materials in the commission of such an offense. (Prior code 15-79)

**ARTICLE 10**

**Alcoholic Beverages and Drugs**

*Division 1  
Alcoholic Beverages*

**Sec. 10-10-10. Illegal possession or consumption of alcoholic beverages by an underaged person.**

(a) Any person under twenty-one (21) years of age who possesses or consumes alcoholic beverages anywhere in the City commits illegal possession or consumption of alcoholic beverages by an underage person. Illegal possession or consumption of alcoholic beverages by an underage person is a strict liability offense.

(b) It is an affirmative defense to the offense described in Subsection (a) hereof that the alcoholic beverages were possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

(1) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the alcoholic beverages were possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption; or

(2) When the existence of alcoholic beverages in a person's body was due solely to the ingestion of a confectionery which contained alcoholic beverages within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion, or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes or solely from the ingestion of a beverage which contained less than one-half of one percent (0.5%) of alcoholic beverages by weight.

(c) The possession or consumption of alcoholic beverages shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.

(d) It is unlawful for any person to sell, serve, give away, dispose of, exchange, deliver or permit the sale, serving, giving or procuring of any malt, vinous or spirituous liquor or fermented malt beverage to or for any person under the age of twenty-one (21) years.

(e) It is unlawful for any person under twenty-one (21) years of age to obtain or attempt to obtain malt, vinous or spirituous liquor or fermented malt beverage by misrepresentation of age or by any other method in any place where malt, vinous or spirituous liquor or fermented malt beverages are sold.

(f) It is unlawful for any person under twenty-one (21) years of age to possess malt, vinous or spirituous liquor or fermented malt beverage in any store or in any public place, or inside of vehicles in any public place.

(g) It is unlawful for any parent or guardian knowingly or under conditions a reasonable parent or guardian should have knowledge of to suffer or permit any minor of whom the person is a parent or guardian to violate provisions of this Section.

(h) It is unlawful for any person under twenty-one (21) years of age to make false statements; to furnish, present or exhibit any fictitious or false statements; to furnish, present or exhibit any fictitious or false registration card, identification card or note or other document; or to furnish, present or exhibit such document or documents issued to a person other than the one presenting the same for the purpose of gaining admission to prohibited places or for the purpose of procuring the sale, gift or delivery of prohibited articles, including malt, vinous, spirituous liquor or fermented malt beverage.

(i) It is unlawful for any person under the age of twenty-one (21) years to engage or utilize the services of any other person, whether for remuneration or not, to procure any article which such person under the age of twenty-one (21) is forbidden by law to purchase.

(j) It is unlawful for any person, whether for remuneration or not, to procure for any person under twenty-one (21) years of age any article which such person is forbidden by law to purchase.

(k) Prima facie evidence of a violation of Subsection (a) hereof shall consist of:

(1) Evidence that the defendant was under the age of twenty-one (21) years and possessed or consumed alcoholic beverages anywhere in this State; or

(2) Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with alcoholic beverage intoxication or impairment while present anywhere in this State.

(l) During any trial for a violation of Subsection (a) hereof, any bottle, can or other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages.

(m) A parent or legal guardian of a person under twenty-one (21) years of age, or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of, alcoholic beverages to or by a person under the age of twenty-one (21) years under the conditions described in Subsection (b)(1) hereof. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to Article 46, 47 or 48 of Title 12, C.R.S., or any members, employees or occupants of any such establishment to give, provide, make available or sell alcoholic beverages to a person under twenty-one (21) years of age. (Prior code 15-229; Ord. 12-08 §1, 2008)

**Sec. 10-10-20. Duties of business licensees; generally.**

(a) It is unlawful for any licensee to permit any assault, battery, menacing, harassment or disorderly conduct as those offenses are defined in this Chapter, to be committed by any person or group of persons upon any premises licensed for the sale of malt, vinous, spirituous liquors or fermented malt beverages, or any premises licensed as a place of amusement or recreation.

(b) It is unlawful for a licensee, in any manner, to encourage or participate in any assault, battery, menacing, harassment or disorderly conduct as those offenses are defined in this title upon premises selling malt, vinous or spirituous liquors or fermented malt beverages, or any premises licensed as a place of amusement or recreation; provided, however, that such licensee may use such reasonably necessary and lawful means as may be proper to protect his or her person, the person of another or property from damage or injury.

(c) No licensee for the sale of malt, vinous or spirituous liquors or fermented malt beverages for consumption on the premises shall install, maintain or operate, or permit the installation, maintenance

or operation of, within or upon the licensed premises, any gambling table, establishment, device, machine or apparatus which is kept or used for the purpose of gambling either directly or indirectly. This Section shall not be construed to prohibit the use of bona fide amusement devices which do not and cannot be adjusted to pay anything of value, and which may not be used for gambling, directly or indirectly, and for the scoring, achievement, use or operation of which no prize, reward or thing of value is offered or paid by any person.

(d) Each licensee shall conduct his or her establishment in a manner such that no provision of this Chapter is violated. No such licensee shall knowingly permit within or upon the licensed premises any of the following:

(1) The loitering of habitual drunkards or obviously intoxicated persons;

(2) Lewd or indecent displays; or

(3) Any disturbance or activity constituting conduct in violation of this Chapter or any criminal provisions of state law.

(e) No licensee shall knowingly permit the consumption of malt, vinous or spirituous liquors or fermented malt beverages on the licensed premises at any time when the sale of such beverages is prohibited by municipal, state or federal law.

(f) No licensee, manager or agent shall permit the removal of any malt, vinous or spirituous liquors or fermented malt beverages from the licensed premises. It is unlawful for any person to remove any malt, vinous or spirituous liquors or fermented malt beverages from a licensed premises. This Subsection shall not apply to a duly licensed retail liquor store.

(g) No licensee, manager or agent shall employ or permit upon any premises licensed for the sale of malt, vinous or spirituous liquors or fermented malt beverages for consumption on the premises, any employee, waiter, waitress, entertainer, host or hostess to mingle with patrons and personally beg, procure or solicit the purchase or sale of drinks or beverages for the use or consumption by the person begging, procuring or soliciting or for the use or consumption by any other employee, waiter, waitress, entertainer, host or hostess.

(h) No licensee, manager or agent shall permit, upon any premises licensed for the sale of malt, vinous or spirituous liquors or fermented malt beverages for consumption on the premises, anyone to loiter in or about the premises for the purpose of begging or soliciting any patron, customer or visitor in such premises to purchase any drinks or beverages of any nature whatsoever for the person soliciting or begging.

(i) No licensee for the sale of malt, vinous or spirituous liquors or fermented malt beverages for consumption on the premises shall knowingly permit any person to appear in the state of nudity within or upon the premises.

(j) No licensee for the sale of malt, vinous or spirituous liquors or fermented malt beverages for consumption on the premises shall permit the showing of film still pictures, electronic reproductions or other visual reproductions depicting any lewd or indecent display or persons in any state of nudity. (Prior code 15-226)

**Sec. 10-10-30. Reports; warning signs.**

(a) Any licensee shall immediately report to the Police Department any unlawful act, conduct or disturbance committed on the premises. Any failure to comply with the requirements of this Section may be considered by the Local Licensing Authority in any action relating to revocation, suspension or removal of a license. Proof of repeated failure on at least three (3) occasions to comply with the requirements of this Section shall constitute prima facie grounds for the suspension, revocation or denial of renewal of a license.

(b) Each licensee shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign to be provided by the City Clerk's office, which shall be in the following form:

WARNING:  
CITY OF EDGEWATER POLICE MUST BE NOTIFIED OF ALL DISTURBANCES IN THIS  
ESTABLISHMENT AND ON GROUNDS AND PARKING LOTS WHICH ARE A PART OF  
THIS ESTABLISHMENT.

(Prior code 15-227)

**Sec. 10-10-40. Absence of licensee not a defense.**

It is not a defense to a prosecution under Section 10-10-20 or 10-10-30 that the licensee was not personally present on the premises at the time such unlawful or disorderly act, conduct or disturbance was permitted, encouraged or participated in; provided, however, that an agent, servant or employee of the licensee shall not be responsible hereunder when absent from the premises and not on duty. (Prior code 15-228)

**Sec. 10-10-50. Alcoholic beverages in certain places.**

(a) No person shall carry or have any open containers of alcoholic beverages on any street, sidewalk, alley or other public place, in any automobile or on the grounds or in the facilities of any public or private school, college or university except where authorized by the governing authority of such institution.

(b) No person shall drink any alcoholic beverages in or on any of the above-enumerated places.

(c) The foregoing prohibitions shall not apply to any place duly licensed for the sale of alcoholic beverages. (Ord. 12-08 §1, 2008)

**Sec. 10-10-60. Sales near schools.**

It is unlawful for any person to sell, offer or expose for sale or gift any fermented malt beverage or any vinous, spirituous or malt liquors within a distance of five hundred (500) feet from any public or parochial school or the principal campus of any college, university or seminary, said distance to be computed by direct measurement from the nearest property lines. However, this prohibition shall not affect the rights of any person holding a lawful permit or license to conduct such business within the restricted area hereby established; nor shall this prohibition prevent the renewal or reissuance, upon the expiration thereof, of any license in effect, or affect any such business as set forth in Section 12-47-302, C.R.S. (Ord. 12-08 §1, 2008)

**Sec. 10-10-70. Soliciting drinks in taverns.**

It is unlawful for any person to frequent or loiter in any tavern, cabaret, nightclub or other establishment where malt, vinous or spirituous liquors or fermented malt beverages are sold for the purpose of engaging in the practice of or with the purpose of soliciting another person to purchase drinks. (Prior code 15-231)

**Sec. 10-10-80. Open containers of alcoholic beverages.**

(a) It is unlawful for any person to possess, consume or have under his or her control any alcoholic beverage in an open container or in a container, the seal of which is broken, whether such possession is actual or constructive, in any public place within the City, upon property owned, operated, leased or maintained by the State or any political subdivision or agency thereof, or upon property owned, operated, leased or maintained by the City; provided, however, that it shall not be a violation of this provision to store or consume any alcoholic beverage in conformance with, and pursuant to the terms of, any validly issued permit or license.

(b) Nothing in this Section shall prohibit having open containers:

(1) Of alcoholic beverages:

a. In any premises of a duly licensed vendor of alcoholic beverages whose license allows consumption on the premises.

b. In public areas where authorized by a special events permit properly issued pursuant to state law.

c. By owners or agents of owners of real property or their invitees within the confines of the property.

(2) Of malt liquors or fermented malt beverages in City parks under the following conditions:

a. Only those persons twenty-one (21) years of age or older may consume fermented malt beverages or malt liquors.

b. Malt liquors or fermented malt beverages shall not be consumed in any recreational or play areas as designated by signs posted in the parks.

c. Malt liquors or fermented malt beverages shall not be consumed from any glass containers.

d. Malt liquors or fermented malt beverages shall not be consumed between the hours of 8:30 p.m. and 9:00 a.m. from September 1 through May 31, or between 10:00 p.m. and 9:00 a.m. from June 1 through August 31, with the exceptions of holidays or special occasions designated by the City Council and proclaimed by the Mayor.

(c) Notwithstanding the foregoing provisions, drinking alcoholic beverages in any vehicle on public streets or property is prohibited. (Prior code 15-230; Ord. 12-08 §1, 2008)

*Division 2*

*Drugs*

**Sec. 10-10-210. Drug paraphernalia generally.**

(a) *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. *Drug paraphernalia* includes, but is not limited to:

(1) Objects used, intended for use or designed for use in ingesting, injecting, inhaling or otherwise introducing a controlled substance into the human body, such as:

- a. Water pipes;
- b. Carburetion tubes and devices;
- c. Smoking and carburetion masks;
- d. 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;
- e. Miniature cocaine spoons and cocaine vials;
- f. Chamber pipes;
- g. Carburetor pipes;
- h. Electric pipes;
- i. Air-driven pipes;
- j. Chillums;
- k. Bongs;
- l. Ice pipes or chillers; or
- m. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

(2) 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 Article;

(3) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.

(4) Separation gins and other sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

(5) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.

(6) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.

(7) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.

(b) In determining whether an object is drug paraphernalia, the Municipal 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 Section.

(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.

(11) Expert testimony concerning its use.

(c) In the event a case brought pursuant to this Section is tried before a jury, the Municipal Court shall hold an evidentiary hearing on issues raised pursuant to Subsection (b) hereof. Such hearing shall be conducted in camera. (Prior code 15-236; Ord. 05-05 §3, 2005)

**Sec. 10-10-220. Possession of drug paraphernalia; penalty.**

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. A violation of this Section shall be subject to the penalty provided in Section 1-4-20. (Prior code 15-236)

**Sec. 10-10-230. Manufacture, sale or delivery of drug paraphernalia; penalty.**

It is unlawful for any person to sell or deliver, possess with intent to sell or deliver, or manufacture 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. A violation of this Section shall be subject to the penalty provided in Section 1-4-20. (Prior code 15-236)

**Sec. 10-10-240. Advertisement of drug paraphernalia; penalty.**

(a) It is unlawful for any person to place 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. A violation of this Subsection shall be subject to the penalty provided in Section 1-4-20.

(b) The common law defense known as the "procuring agent defense" is not a defense to any crime in this Section. (Prior code 15-236)

**Sec. 10-10-250. Possession of injection devices.**

It is unlawful for any person to possess any hypodermic needle, syringe or similar device which may be adapted or used for injecting drugs or other substances by subcutaneous or intracutaneous injection into the body, unless such possession has been authorized for medical or physical treatment by a licensed medical doctor or osteopathic physician; provided, however, that the prohibitions contained in this Section shall not apply to manufacturers, jobbers, licensed medical technicians, hospitals, nursing homes, technologists, nurses, laboratories, research teaching institutes, medical doctors, osteopathic physicians, dentists, veterinarians, pharmacists and embalmers selling or using such devices in the legal course of their respective businesses or professions. A violation of this Section shall be subject to the penalty provided in Section 1-4-20. (Prior code 15-235)

**Sec. 10-10-260. Possession of marijuana.**

(a) Any person who knowingly possesses or openly and publicly displays or consumes, transfers or dispenses to another person without consideration not more than one (1) ounce of marijuana commits a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).

(b) Whenever a person is arrested or detained for a violation of Subsection (a) hereof, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in Municipal 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 Municipal Court and such other copies as may be required by the Police Department shall be sent to the places designated by the Police Department. 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 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.

(c) Any person who openly and publicly displays, consumes or uses not more than one (1) ounce of marijuana commits an offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars (\$100.00) or, at a maximum, by a fine of not more than one hundred dollars (\$100.00) and, notwithstanding the provisions of Section 18-1.3-503, C.R.S., by fifteen (15) days in jail.

(d) The provisions of this Section shall not apply to any person who possesses or uses marijuana pursuant to the Dangerous Drugs Therapeutic Research Act. (Prior code 15-232; Ord. 12-08 §1, 2008)

**Sec. 10-10-270. Toxic vapors.**

(a) Generally.

(1) Definition. As used in this Section, the term *toxic vapors* shall mean the vapors of the following compounds or the vapors of products containing such compounds:

a. Paints and surface coatings. Acrylonitrile; butyl alcohol; camphor; cyclohexanone; ethyl acetate; ethyl benzene; glycidol; hexone; sec-hexyl acetate; lead; manganese; mercury; mesityl oxide; methyl alcohol; methyl (namyl) ketone; 5-methyl-3-heptone; naphtha; 2-pentanone (MPK); I-propyl acetate; 1, 1, 2, 2-tetrachloroethane.

b. Solvents. Acetone; acetonitrile; benzene; butyl alcohol; butyl mercaptan; carbon disulfide; carbon tetrachloride; cresol; cumene; cyclohexane; cyclohexanone; 1, 2-dichloroethylene; dimethyl sulfate; ethyl bromine; ethylene dichloride; hexane; isopropyl alcohol; mesityl oxide; methylal; methyl acetate; methyl alcohol; methyl chloroform; methyl ethyl ketone; methyl isobutyl ketone; methylcyclohexanol; methylene chloride; naphtha; naphthalene; I-nitropropane; n-propyl acetate; pyridine; stoddard solvent; 1, 1, 2, 2-tetrachloroethylene; tetrahydrofuran; toluene; trichloroethane; trichloroethylene; 1, 2, 3-trichloropropane; triorthoscesyl phosphate; xylene.

c. Narcotics. 1, 3-butadiene; tert-butyl chromate; chlorobromomethane (Halon); methyl chloride; 1, 2, 3-trichloropropane; trifluorobromemethane (Halon).

d. Fuel additives. Decaborane; diborane; L.P.G.; methyl hydrazine; phosphorus pentasulfide; propane; tetraethyllead; tetramethyl lead; tetranitromethane; tin.

e. Automotive antifreeze. 1, 2-dimethyl-hydrazine.

- f. Photographic developers. Hydroquinone.
- g. Medical apparatus. Mercury.
- h. Paper impregnation. Diphenyl.
- i. Flame resistance/waterproofing. Pentachloronaphthalene.
- j. Anti-corrosion. Hydrazine; pentaborane.
- k. Combustibles. n-Butyl glycidyl ether.
- l. Explosives. Dinitrobenzene; 2, 4, 6-trinitrotoluene.
- m. Antiseptics/sanitizers. Bromine; iodine.

n. Pesticides. Aldrin; 2-aminopyridine; azinphos-methyl (Guthion); butyl mercaptan; camphor; carbaryl (Sevin); carbon disulfide; carbon tetrachloride; chlordane; chlorinated camphene; cyanides; 2, 4-D; DDT; demeton; dichlorvos; dieldrin; dimethyl-I, 2-dibromo-2; 2-dechloroethyl phosphate; endrin; EPN; ethylene chlorohydrin; ethylene dichloride; fluorides; heptachlor; hydrogen cyanide; lindane; malathion; methyl bromide; methyl formate; methyl hydrazine; methyl iodide; naphthalene; parathion; phosdrin; pyrethrum; rotenone; sodium fluoroacetate; strychnine; sulfuryl fluoride; TEPD; tellurium; TEPP; 1, 1, 2, 2-tetrachloroethane; thallium; tin.

(2) Common examples. The following serve as examples of common products containing *toxic vapor* compounds, but is not meant to limit the prohibitions contained herein: spray paint, model airplane glue, nonwater soluble household glue, nail polish remover and paint thinner.

(b) Use or possession. It is unlawful for any person intentionally to smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system, or to possess, buy or use any such substance for the purpose of violating or aiding another to violate this Section.

(c) Under the influence. It is unlawful for any person to be intentionally under the influence of any toxic vapors.

(d) Sale.

(1) It is unlawful for any person to sell, give, deliver or furnish to any minor, without the written consent of a parent, guardian, or other person having legal care or custody of such minor, any substance which is known or reasonably should be known to release or to be capable of releasing toxic vapors, and which could be used for the purpose of inducing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system, or for other unlawful purposes; except that the sale of one (1) tube of glue shall not be unlawful if made simultaneously with the sale, purchase and delivery of a hobby or model kit.

(2) It is unlawful for any person, except a person who is at the time of such sale actually employed by or engaged in operating a bona fide commercial establishment at a fixed location, to

sell to any other person any substance which is known or reasonably should be known to release or to be capable of releasing toxic vapors, and all sales of such substance not made in or from such an establishment shall be unlawful.

(3) It is unlawful for any person knowingly to sell or offer for sale, deliver or give away to any other person any substance which is known or reasonably should be known to release or to be capable of releasing toxic vapors, where the seller, offerer, deliverer or donor knows or has reason to believe that such substance will be used for the purpose of inducing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system, or for other unlawful purposes.

(e) Prima facie evidence. In a prosecution for a violation of this Section, evidence that a container lists one (1) or more of the substances described in Subsection (a) hereof as one (1) of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.

(f) Exception. This Section shall not apply to the inhalation of anesthesia for medical or dental purposes under the appropriate supervision of a physician or dentist. (Prior code 15-96; Ord. 12-08 §1, 2008)

## ARTICLE 11

### Domestic Violence

#### Sec. 10-11-10. Definitions.

As used in this Article, the following words and phrases shall have the following meanings, unless the context clearly indicates another meaning:

*Court* means the Edgewater Municipal Court.

*Domestic violence* means any of the following offenses, and any other act of violence, if any such offense or act is committed or threatened upon or with respect to a person with whom the actor is or has been involved in an intimate relationship:

- a. Assault (Section 10-3-10);
- b. Reckless endangerment (Section 10-3-20);
- c. Menacing without deadly weapon (Section 10-3-30);
- d. Disorderly conduct (Section 10-3-40);
- e. Harassment (Section 10-3-60);
- f. Hindering transportation (Section 10-3-80);
- g. Loitering (Section 10-3-90);

- h. Throwing dangerous missile (Section 10-3-100);
- i. Disturbing the peace (Section 10-4-20);
- j. Destruction of property (Section 10-5-20);
- k. Trespassing (Section 10-5-30);
- l. Theft (Section 10-5-50);
- m. Invasion of privacy (Section 10-6-30);
- n. Harboring minors (Section 10-7-50);
- o. Violation of restraining order (Section 10-11-50);
- p. Unlawful use of weapon (Section 10-12-50);
- q. Concealment and sale of injurious substances (Section 10-12-80);
- r. Attempting to commit any of the offenses specified in this Section; or
- s. Complicity in the commission of any of the offenses specified in this Section.

*Domestic violence* also includes any crime committed, attempted or threatened against a person or against property, when used as a method of coercion, control, punishment, intimidation or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

*Intimate relationship* means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

*Protected person* means any person identified in a restraining order as a person for whose benefit the order was issued.

*Restrained person* means any person identified in a restraining order as a person required to do or prohibited from doing the act or acts specified in the order.

*Restraining order* means any order issued by the Court pursuant to this Article which prohibits a restrained person from contacting, harassing, injuring, intimidating, molesting, threatening or touching a protected person or from coming within a specified distance of a protected person or premises, or which otherwise contains any requirement or prohibition determined necessary or appropriate by the Court for the prevention of domestic violence.

*Victim* means any person who has been subjected to domestic violence. (Prior code 15-300)

**Sec. 10-11-20. Domestic violence unlawful; penalties.**

- (a) It is unlawful for any person to commit an act of domestic violence.

(b) No person who is arrested on a charge of domestic violence shall be released at the scene of the alleged offense.

(c) Whenever the Court finds a substantial likelihood that a defendant, if released from custody following an arrest on a charge of domestic violence, would commit additional acts of domestic violence, the Court may order that the defendant be held without bond pending arraignment or advisement of rights regarding the charge. The procedures pertaining to the issuance of such an order shall be established in rules and regulations adopted by the Court.

(d) A person who is found guilty at trial, or who pleads guilty or no contest to a violation of this Section, shall be punishable by a fine or imprisonment, or both, as provided in Section 1-4-20.

(e) In addition to or in lieu of any fine or imprisonment, the Court shall have discretion to order a sentence which includes one (1) or more of the following elements: restitution, treatment for substance abuse, probation counseling for domestic violence, counseling for mental health disorders, corrective training, participation in a community service program, deferred judgment and sentence, or the issuance of one (1) or more restraining orders pursuant to this Article. If any of such elements is ordered as part of a sentence, the Court shall impose court costs in an amount determined by the Court to be sufficient to defray the costs of supervision of the defendant. The amount of such court costs shall not be less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00).

(f) Whenever the Court orders counseling as part of a sentence, the Court shall order such counseling to occur in a treatment program certified pursuant to Section 18-6-801, C.R.S. (Prior code 15-301; Ord. 12-08 §1, 2008)

**Sec. 10-11-30. Duties of Municipal Court.**

(a) The Court, in any domestic violence case before it:

(1) Shall not dismiss any charge or delay arraignment or disposition by reason of any pending or concurrent judicial proceedings;

(2) Shall not require that the location or residence of any victim be disclosed to the defendant or to any other person unless such person shows the Court that the victim's location or residence is necessary for purposes of formulating an affirmative defense; and

(3) Shall give domestic violence cases priority on the docket whenever practicable.

(b) In addition to any other rules and regulations required by this Article, the Court may issue rules and regulations as are not inconsistent with this Article and as the court deems necessary for the proper administration of this Article. (Prior code 15-302)

**Sec. 10-11-40. Restraining orders; general.**

(a) The Municipal Court may issue a temporary or permanent restraining order to prevent domestic violence, in any manner consistent with this Article, whenever the Court finds that an imminent danger exists to the life, health or safety of one (1) or more protected persons. The order

shall be issued on a standardized form prescribed by the Judicial Department of the State pursuant to Section 14-4-102(5), C.R.S.

(b) A restraining order may be issued under any of the following circumstances:

- (1) As a condition of the release of a defendant from custody, by bond or otherwise;
- (2) At the time of arraignment of a defendant for a charge of domestic violence or at any other time prior to the defendant's trial;
- (3) As a sentence or as a part of a sentence pursuant to Section 10-11-20(c); or
- (4) At any other time as determined necessary by the Court.

(c) Each restraining order issued by the Court, and any subsequent order amending, modifying, supplementing or superseding such order, shall be entered by the Municipal Court Clerk, not later than twenty-four (24) hours after issuance, into the computerized registry of restraining orders maintained by the Colorado Bureau of Investigation pursuant to Section 18-6-803.7(2)(a), C.R.S.

(d) The Court shall establish, in rules and regulations adopted by the Court, complaint, notice and hearing procedures pertaining to a restraining order which is issued at any time other than as a sentence or as a part of a sentence pursuant to Section 10-11-20(c).

(e) Whenever a restraining order is issued, the restrained person and each protected person shall be served with a copy of the order, or shall be given actual notice of the existence and substance of the order. (Prior code 15-303)

**Sec. 10-11-50. Violation.**

(a) It is unlawful for any person to commit an act which is prohibited by any restraining order issued pursuant to this Article, or for such person to fail to perform any act mandated by such an order, after such person has been personally served with any such order or otherwise acquired actual knowledge of the existence and substance of any such order.

(b) Violation of a restraining order is an offense punishable by a fine or imprisonment, or both, as provided in Section 1-4-20.

(c) Any sentence imposed for violation of Subsection (a) shall run consecutively and not concurrently with any sentence imposed for any offense which gave rise to the issuing of the restraining order.

(d) No person charged with violation of a restraining order pursuant to this Section shall be permitted, in any prosecution resulting from such charge, to collaterally attack the validity of the order which such person is accused of violating. (Prior code 15-304)

## ARTICLE 12

### Weapons

#### Sec. 10-12-10. Definitions.

As used in this Article, unless the context otherwise requires, the following definitions shall apply:

*Blackjack* means any billy, sand club, sandbags or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact.

*Bomb* means any explosive or incendiary device or Molotov cocktail as defined in Section 9-7-103, C.R.S., or any chemical device which causes or can cause an explosion, which is not specifically designed for lawful and legitimate use in the hands of its possessor.

*Firearm* means any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

*Gas gun* means a device designed for projecting gas-filled projectiles which release their contents after having been projected from the device, and includes projectiles designed for use in such device.

*Gravity knife* means any knife that has a blade released from the handle or sheath thereof by the force of gravity or the application of centrifugal force that, when released, is locked in place by means of a button, spring, lever or other device.

*Handgun* means a pistol, revolver or other firearm of any description, loaded or unloaded, from which any shot, bullet or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable or magazine breech, does not exceed twelve (12) inches.

*Knife* means any dagger, dirk, knife or stiletto with a blade over three and one-half (3½) inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing or tearing wounds; but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.

*Nunchaku* means an instrument consisting of two (2) sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain which is in the design of a weapon used in connection with the practice of a system of self-defense.

*Stun gun* means a device capable of temporarily immobilizing a person by the infliction of an electrical charge.

*Switchblade knife* means any knife the blade of which opens automatically by hand pressure applied to a button, spring or other device in its handle.

*Throwing star* means a disk having sharp radiating points or any disk-shaped bladed object which is handheld and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense. (Prior code 15-155; Ord. 12-08 §1, 2008)

**Sec. 10-12-20. Law enforcement officers.**

Nothing in Sections 10-12-50 through 10-12-70 or 10-12-90 shall be construed to forbid any enforcement agencies of the United States government or the State, any sheriff or the sheriff's deputies, or any regular, special or ex officio peace or police officer from carrying, wearing or using such weapon as shall be necessary in the proper discharge of such person's duties. (Prior code 15-152; Ord. 12-08 §1, 2008)

**Sec. 10-12-30. Forfeiture of weapons.**

(a) Any weapon used or possessed in violation of this Article is contraband and shall be forfeited to the City upon a conviction or any negotiated disposition resulting from such use or possession.

(b) Every person who pleads guilty or no contest to or is convicted of any violation of this Article may be required, by order of the Municipal Court, to forfeit any knife, firearm or illegal or deadly weapon and/or ammunition when the same was used, possessed or displayed during the course of the episode which gave rise to the conviction, no contest plea or guilty plea, or when such weapon and/or ammunition formed the basis of the complaint. Such forfeiture may be an element of sentencing or of any other disposition of the offense. (Prior code 15-153, 15-163)

**Sec. 10-12-40. Disposition of confiscated weapons.**

It is the duty of every police officer upon making an arrest and taking such a weapon from the person of the offender to deliver or cause to be delivered the weapon to the Chief of Police to be held in custody until the final determination of the prosecution of such offense. The Chief of Police, shall dispose of such weapons in accordance with the procedures set forth in Subsection 4-7-40(b). (Prior code 15-154; Ord. 12-08 §1, 2008)

**Sec. 10-12-50. Unlawful use.**

(a) It is unlawful for any person to:

- (1) Knowingly aim a firearm at another person.
- (2) Recklessly or with criminal negligence discharge a firearm or shoot a bow and arrow.
- (3) Knowingly set a loaded gun, trap or device designed to cause an explosion upon being tripped or approached, and leave it unattended by a competent person immediately present.
- (4) Possess a firearm while under the influence of intoxicating liquor or of a controlled substance as defined by state law.
- (5) Knowingly aim, swing or throw a throwing star or nunchaku or knowingly possess a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized

school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, nonaccessible container.

(b) Nothing in this Section shall prevent the use of any such instruments in shooting galleries or in any private grounds or residences under circumstances when such instrument can be fired, discharged or operated in such a manner as not to endanger persons or property and also in such manner as to prevent the projectile from traversing any grounds or space outside the limits of such gallery, grounds or residence. In addition, nothing contained herein shall be construed to prevent the carrying of any type of gun whatsoever, when unloaded and properly cased, to or from any range or gallery.

(c) Nothing in this Section shall prevent the use of any such instruments by any peace officer as shall be necessary in the proper discharge of his or her duties. (Prior code 15-155; Ord. 12-08 §1, 2008)

**Sec. 10-12-60. Unlawful possession.**

It is unlawful for any person to knowingly possess an illegal weapon. (Prior code 15-156; Ord. 12-08 §1, 2008)

**Sec. 10-12-70. Concealment of deadly weapons.**

(a) It is unlawful for any person to wear under his or her clothes, conceal about his or her person or conceal in a motor vehicle within his or her immediate reach, any knife, firearm or deadly weapon.

(b) For purposes of this Section, *conceal* shall mean placement of the knife, firearm, or deadly weapon in question about the person, or within his or her immediate reach, in such a manner as to be either completely hidden from view or partially hidden to such an extent that another person making ordinary contact with that person cannot ascertain the true nature of the weapon.

(c) 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 motor vehicle or other private means of conveyance for the lawful protection of his or her person or property while traveling.

(3) A person who, prior to the time of carrying a concealed weapon, has been issued a written permit to carry the weapon by the sheriff of a county or other permit; and the written permit states that it shall be effective in all areas of the State; or

(4) A peace officer, as issued under the provisions of Title 18, Article 12, Part 2, C.R.S.; or

(5) Carrying a folding-type knife with a blade not exceeding three and one-half (3½) inches in length. (Prior code 15-157; Ord. 12-08 §1, 2008)

**Sec. 10-12-80. Concealment, use and sale of injurious substances.**

(a) It is unlawful for any person to wear under his or her clothes or conceal about his or her person, with intent to use as a weapon, or to use or to attempt to use as a weapon, any substance or article containing any substance whatsoever which is capable of inflicting bodily harm to any person or animal, or which may be the cause of illness to any person or animal; provided, however, that, where such a substance is used by a person as a deadly weapon and causes bodily injury to another person, this Section does not apply.

(b) It is unlawful for any person to possess, sell, offer for sale, give away, lend, furnish, use or threaten to use any device for dispensing mace, paralyzing gas or any similar chemicals or combination of chemicals, or other ingredients, designed to injure, maim, paralyze, immobilize or cause the illness of a person or animal, whether or not such substance is packaged in a container under pressure; provided, however, that any such device designed to be carried in a handbag or pocket and which does not contain more than three (3) ounces of chemical may be possessed and sold and may be used by such persons in self-defense only. Nothing in this Section shall be construed to prohibit the use of such devices by police officers and mail personnel in the discharge of their duties, or by City employees who have obtained the approval of the Chief of Police to use such devices in the discharge of their duties. (Prior code 15-160)

**Sec. 10-12-90. Weapons within licensed premises.**

(a) It is unlawful for any person as a patron of an establishment where fermented malt beverages or malt, vinous or spirituous liquors are sold for consumption on the premises, to possess or carry or display any knife, firearm or illegal or deadly weapon, whether concealed or not, while on the premises of such establishment.

(b) It is an affirmative defense to a charge of possession or carrying a knife under this Section that such weapon was a folding-type knife with a blade not exceeding three and one-half (3½) inches. This defense does not apply to a charge of displaying such a weapon. (Prior code 15-158)

**Sec. 10-12-100. Unlawful sale of a firearm.**

(a) No person, including any licensed dealer, licensed importer or licensed manufacturer who is licensed pursuant to 18 U.S.C. § 923, shall sell any firearm, other than a shotgun or rifle, to any person under the age of twenty-one (21) years. No person, including any licensed dealer, licensed importer or licensed manufacturer who is licensed pursuant to 18 U.S.C. § 923, shall sell any shotgun or rifle to any person under the age of eighteen (18) years.

(b) Any person who sells any type of firearm in violation of Subsection (a) hereof commits the offense of unlawful sale of a firearm. (Prior code 15-162)

**Sec. 10-12-110. Selling weapons to intoxicated persons or minors.**

It is unlawful for any person to purchase, sell, loan, or furnish any knife, firearm, or illegal or deadly weapon to any person intoxicated or under the influence of alcohol or any narcotic or dangerous drug, glue or toxic vapors or to any minor under the age of eighteen (18) years. (Prior code 15-159)

**Sec. 10-12-120. Possession of handguns by juveniles; prohibited; exceptions; penalty.**

(a) Except as provided in this Section, it is unlawful for any person who has not attained the age of eighteen (18) years knowingly to have any handgun in such person's possession.

(b) Any person possessing any handgun in violation of Subsection (a) hereof commits the offense of illegal possession of a handgun by a juvenile.

(c) Any person under the age of eighteen (18) years who is taken into custody by a law enforcement officer for a second or subsequent offense of illegal possession of a handgun by a juvenile shall not be charged under this Section, but shall be charged under the appropriate state felony law.

(d) This Section shall not apply to:

(1) Any person under the age of eighteen (18) years who is at such person's residence and who, with the permission of such person's parent or legal guardian, possesses a handgun for the purpose of exercising rights contained in Section 18-1-704 or Section 18-1-704.5, C.R.S.

(2) Any person under the age of eighteen (18) years who is hunting or trapping pursuant to a valid license issued to such person pursuant to Article 4 of Title 33, C.R.S.

(3) Any person under the age of eighteen (18) years who is in attendance at a hunter's safety course, engaging in practice in the use of a firearm or target shooting at an established range authorized by the City Council or any other area where the discharge of a firearm is not prohibited, engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group under 501(c)(3) as determined by the Federal Internal Revenue Service which uses firearms as a part of such performance or traveling with any handgun in such person's possession being unloaded to or returning from any such activity.

(4) Any person under the age of eighteen (18) years who is on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such person's parent, legal guardian or grandparent to possess a handgun.

(5) For the purposes of this Section, a handgun is "loaded" if:

a. There is a cartridge in the chamber of the handgun;

b. There is a cartridge in the cylinder of the handgun, if the handgun is a revolver; or

c. The handgun and the ammunition for such handgun are carried on the person of a person under the age of eighteen (18) years or are in such close proximity to such person that such person could readily gain access to the handgun and the ammunition and load the handgun.

(e) Any person who intentionally, knowingly or recklessly provides a handgun with or without remuneration to any person under the age of eighteen (18) years in violation of this Section, or any parent or legal guardian of a person under eighteen (18) years of age who knows of such juvenile's conduct which violates this Section and fails to make reasonable efforts to prevent such violation,

commits the crime of unlawfully providing or permitting a juvenile to possess a handgun and shall be charged under the appropriate felony law. (Prior code 15-161)

## **ARTICLE 13**

### **Alarm Devices**

#### **Sec. 10-13-10. Definitions.**

As used in this Article, the following terms shall have the following meanings, except where the context indicates otherwise:

*Alarm device* means a device designed to cause emergency police or fire response at the location of an event reported by a signal transmitted, telephoned, radioed or otherwise relayed to the City's emergency communications center by an alarm device or by any person acting in response to a signal activated by such a device.

*Alarm device user* means the owner of premises on which an alarm device is installed.

*False alarm* means a signal from an alarm device which causes the Police Department or Fire Department to respond and which results from:

- a. False activation of an alarm, where there is no evidence to substantiate a reasonable belief that criminal activity was occurring or was to occur;
- b. An alarm malfunction, including mechanical failure or electrical failure, except when activated by telephone short circuits or by natural conditions, such as blizzards, tornados, earthquakes and similar conditions, where activation could not have been prevented by reasonable precautions.
- c. An alarm triggered by a failure to install or maintain an alarm device properly, including but not limited to overly sensitive settings or other negligence. (Prior code 15-401)

#### **Sec. 10-13-20. Intentional false alarms unlawful.**

It is unlawful for any person to cause the transmission of a false alarm. (Prior code 15-404; Ord. 12-08 §1, 2008)

#### **Sec. 10-13-30. Warnings and user fees to be imposed for false alarms.**

(a) A warning or a user fee shall be imposed against an alarm device user, in accordance with the following schedule, for each false alarm originating from the owner's premises in any calendar year:

- (1) First and second false alarm: warning issued by the Chief of Police
- (2) Third false alarm: user fee of fifty dollars (\$50.00).

(3) Fourth and each subsequent false alarm: user fee of fifty dollars (\$50.00) plus an additional fifty dollars (\$50.00) for each false alarm in excess of three (3) in the calendar year.

(b) No warning shall be issued or user fee assessed for a false alarm unless a police or fire unit actually responds to the alarm. (Prior code 15-402)

**Sec. 10-13-40. Collection of user fees for false alarms.**

(a) Following a police or fire response to a false alarm for which a user fee is due under this Article, the Chief of Police shall provide documentation to the City Clerk that such a fee is due.

(b) Upon receipt of such documentation, the City Clerk shall mail a user fee assessment notice to the alarm user stating the amount of the assessment, the reason therefor and the date payment is due, and notifying the alarm user of the right to a hearing with the City Clerk if a written request for such a hearing is received by the City Clerk before the due date. The City Clerk may establish, by regulation, procedures for the conduct of such a hearing.

(c) A user fee assessment is due and payable to the City Clerk within fifteen (15) days of the mailing of the user fee assessment notice except that, if a hearing is timely requested, the assessment is due within ten (10) days after the issuance of an adverse decision at or following such hearing.

(d) If the alarm user fails to pay the assessment within thirty (30) days after the same becomes due, the City Clerk may certify such assessment to the County Treasurer, to be levied on the premises and collected in the same manner as general taxes. Twenty-five percent (25%) of the amount shall be added to the assessment to pay the cost of collection.

(e) Failure of an alarm user to pay a user fee assessment within thirty (30) days after the same becomes due shall be deemed a violation of this Chapter. In a prosecution for such a violation, introduction of a true and correct copy of the assessment notice shall be prima facie evidence that a valid assessment was made and is due. (Prior code 15-403)

**ARTICLE 14**

**Noise**

**Sec. 10-14-10. Noise generally.**

(a) It is unlawful for any person to make, continue or cause to be made or continued any unreasonable noise which either annoys, injures or endangers the comfort, repose, health or safety of others, unless the making and continuing of the same is necessary for the protection or preservation of property or the health, safety, life or limb of a person.

(b) No person shall knowingly permit such unreasonable noise upon any premises owned or possessed by such person or under such person's control. For purposes of this Section, members of the Police Department are empowered to make a prima facie determination as to whether a noise is unreasonable. (Prior code 15-103; Ord. 12-08 §1, 2008)

**Sec. 10-14-20. Amplified sound.**

(a) No person shall use or operate any loudspeaker, public address system or other sound-amplifying equipment, between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day, in such a manner as to be plainly audible at the property line of the property from which said equipment is being used or operated.

(b) No person shall use or operate any loudspeaker, public address system or other sound-amplifying equipment in a motor vehicle in such a manner as to be plainly audible at twenty-five (25) feet from the motor vehicle.

(c) The provisions of this Section shall not apply to any bell or chime or any device for the production or reproduction of the sound of bells or chimes from any church, clock or school, nor to any alarm, siren or other device operated for emergency or public safety purposes.

(d) The provisions of this Section shall not apply to sound made on property owned by, controlled by or leased to the City, the federal government or any branch, subdivision, institution or agency of the government of this State or any political subdivision within it, and when such sound is made by an activity of the governmental body or sponsored by it or by others pursuant to the terms of a contract, lease or permit granted by such governmental body.

(e) For purposes of this Section:

*Plainly audible* means that the information content of sound is unambiguously transmitted to the auditor, including but not limited to the understanding of spoken speech, comprehension of voices or comprehension of musical rhythms.

*Sound-amplifying equipment* means any machine or device for the amplification of a human voice, music or any other sound, or by which the human voice, music or any other sound is amplified. (Prior code 15-104)

**Sec. 10-14-30. Animals.**

It is unlawful for any person to use, keep, have in his or her possession or harbor any domesticated animals which, by frequent or habitual howling, barking, meowing, squawking or otherwise, shall cause annoyance or disturbance to persons in the neighborhood; provided, however, that the provisions of this Section shall not apply to hospitals licensed for the treatment of small animals or to premises occupied or used by the City animal shelter. (Ord. 12-08 §1, 2008)

**ARTICLE 15**

**Miscellaneous Offenses**

**Sec. 10-15-10. Fireworks.**

(a) In this Section, *fireworks* means any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonation, including without limitation the following articles and devices: toy cannons or toy canes

in which explosives are used, blank cartridges, firecrackers, torpedoes, skyrocket, rockets, Roman candles, Day-Glo bombs, aerial shells, sparklers, trick matches, torches, fountains or other fireworks of like construction, and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance.

(b) No person shall sell, offer for sale or possess with intent to offer for sale any fireworks in the City; no person shall place any fireworks into any fire; and no person shall possess any fireworks while in any park, parkway, street, recreation area or open space, or use or explode any fireworks on any public or private property, unless such person has obtained a permit for the supervised public display of fireworks in accordance with Subsection (c) below. The Chief of Police or the Fire Chief may seize, take, remove and destroy, at the expense of the violator, any and all fireworks offered or exposed for sale, stored, held or possessed in violation of this Subsection.

(c) The City Council shall have the power to grant permits for supervised public display of fireworks by City associations, organizations and groups, and to adopt reasonable rules and regulations for the granting of such permits. Application for a permit shall be made in writing at least fourteen (14) days in advance of the date of display. Every display shall be supervised and controlled by a competent operator and shall be of such character and so located, discharged and fired as not to be hazardous to property or endanger any person. The City Council shall require each person obtaining such permit to give a satisfactory bond in a sum not less than five hundred dollars (\$500.00), conditioned on the payment of all damages which may be caused either to persons or property by reason of the licensed display and arising from any acts of the permittee or the permittee's agents, employees or subcontractors.

(d) The provisions of this Section do not apply to the use of blank cartridges at bona fide sporting events. (Prior code 15-99)

#### **Sec. 10-15-20. Idling of motor vehicles.**

(a) The unreasonable and prolonged idling of motors of any diesel fuel-burning bus or motor vehicle or the prolonged and unreasonable idling of the motor of any motor vehicle of any kind whatsoever is hereby declared to be a public safety and health hazard. For purposes of this Section, *idle* or *idling* means the running of a motor fuel-powered engine without engaging the engine to move the vehicle of which the engine is a part.

(b) It is unlawful for any person to idle or permit the idling of the motor of any diesel-burning bus or motor vehicle or to idle or permit the idling of the motor of any motor vehicle of any kind whatsoever for a prolonged and unreasonable period of time within the limits of the City at any time of the day or night.

(c) Proof that the motor of a motor vehicle was left idling for a period of time of fifteen (15) minutes or longer shall be prima facie proof that the vehicle was idling for a prolonged and unreasonable period of time. (Prior code 15-100)

#### **Sec. 10-15-30. Fireplaces and outdoor cooking appliances.**

(a) No person shall burn any rubbish, paper or other combustible waste matter in any outdoor location in the City or in any fireplace or other indoor location in the City.

(b) No person shall burn any combustible material in any indoor fireplace, other than:

(1) Firewood; or

(2) Commercially produced wood products manufactured for the express purpose of burning in an indoor fireplace.

(c) Nothing in Subsection (a) or (b) hereof shall prohibit the use of a wood stove, a fireplace insert or an electric or gas fireplace appliance in accordance with the manufacturer's specifications and instructions.

(d) No person shall operate any barbecue, hibachi or other outdoor cooking appliance fueled by coal, gas or other combustible materials, on any balcony of any building more than one (1) story in height. (Prior code 7-1)

**Sec. 10-15-40. Camping restrictions.**

(a) It is unlawful for any person to camp or sleep in any park, public right-of-way or open space, upon any public street or thoroughfare or upon any public property; or to set up a tent, shack or any other temporary shelter upon such public property which could be used for residing, camping or sleeping within the City.

(b) It is unlawful for any person to allow any movable structure, recreational vehicle or motor vehicle to remain in a City park after closing.

(c) It is unlawful for any person to trespass or enter upon the land of another or in possession of another for the purpose of camping, sleeping or setting up a tent, shack or any other temporary shelter which could be used for residing, camping or sleeping, or to allow any movable structure, recreational vehicle or motor vehicle to remain on such property without permission of the owner or the person in possession thereof. (Prior code 15-233)

**ARTICLE 16**

**Smoking Prohibited**

**Sec. 10-16-10. Legislative intent.**

The City Council finds, determines and declares that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most areas open to the public, public meetings, food service establishments and places of employment. The City Council further finds, determines and declares that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the City Council hereby declares that the purpose of this Article is to preserve and improve the health, comfort and environment of the people of this City by limiting exposure to tobacco smoke. (Ord. 11-10 §1, 2010)

**Sec. 10-16-20. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Auditorium* means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways or lobbies adjacent thereto.

*Bar* means any area that is operated and licensed under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

*Customer service area* means, with respect to any building or facility that is not exempted from this Article under Section 10-16-40, all of the outdoor or semi-enclosed areas, except for designated parking areas, of the building, facility, business or establishment that is used, has ever been used or is reasonably capable of being used to serve customers of, or visitors to, the building facility, business or establishment. Without limiting the generality of the foregoing sentence, a *customer service area* shall mean and include all outdoor or semi-enclosed seating or service areas, all outdoor or semi enclosed waiting areas and any other outdoor areas of any food service establishment or bar other than designated parking areas for the food service establishment or bar.

*Employee* means any person who:

- a. Performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; or
- b. Provides uncompensated work or services to a business or nonprofit entity.

*Employee* includes every person described in this Paragraph of this Section, regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer, or by any other designation or title.

*Employer* means any person, partnership, association, corporation or nonprofit entity that employs one (1) or more persons. *Employer* includes, without limitation, the legislative, executive and judicial branches of state government, any county, city and county, city or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency, or any other separate corporation instrumentality or unit of state or local government.

*Entryway* means the outside of any doorway leading into the indoor area of any building or facility that is not exempted from this Article under Section 10-16-40. *Entryway* also includes the area of public or private property within twenty (20) feet of the doorway.

*Environmental tobacco smoke, ETS or secondhand smoke* means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke," and smoke exhaled by the smoker.

*Food service establishment* means any indoor or outdoor area, or portion thereof, in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops and short-order cafes.

*Indoor area* means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

*Place of employment* means any indoor area, or portion thereof, under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

*Public building* means any building owned or operated by:

- a. The State, including the legislative, executive and judicial branches of state government;
- b. Any county, city and county, city or town, or instrumentality thereof, or any other political subdivision of the State, a special district, an authority, a commission or an agency of any of the same; or
- c. Any other separate corporate instrumentality or unit of state or local government.

*Public meeting* means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of the State.

*Smoke-free work area* means an indoor area in a place of employment where smoking is prohibited under this Chapter.

*Smoking* means the burning of a lighted cigarette, cigar, pipe or any other matter of substance that contains tobacco.

*Tobacco* means cigarettes, cigars, cheroots, stogies and periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

*Tobacco business* means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

*Work area* means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for, or on behalf of, their employer. (Ord. 11-10 §1, 2010)

**Sec. 10-16-30. General smoking restrictions.**

(a) Except as provided in Section 10-16-40, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted, and no person shall smoke, in any indoor area, or in any outdoor area described in Paragraph (31) below, or within the entryway to any indoor area, all including, but not limited to:

- (1) Public meeting places;
- (2) Elevators;
- (3) Government-owned or -operated means of mass transportation, including but not limited to buses, vans and trains;
- (4) Taxicabs and limousines;
- (5) Grocery stores;
- (6) Gymnasiums;
- (7) Jury waiting and deliberation rooms;
- (8) Courtrooms;
- (9) Child day care facilities;
- (10) Health care facilities, including hospitals, health care clinics, doctor's offices and other health care related facilities;
- (11) a. Any place of employment that is not exempted;  
b. In the case of employers who own facilities otherwise exempted from this Article, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free from environmental tobacco smoke;
- (12) Food service establishments;
- (13) Bars;
- (14) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
- (15) Indoor sports arenas;
- (16) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-unit residential facilities;

(17) Restrooms, lobbies, hallways and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;

(18) Bowling alleys;

(19) Billiard or pool halls;

(20) Facilities in which games of chance are conducted;

(21) The common areas of retirement facilities, publicly owned housing facilities and, except as specified in Paragraph 10-16-40(a)(7), nursing homes, not including any resident's private residential quarters or areas of assisted living facilities specified in Paragraph 10-16-40(a)(7);

(22) Public buildings;

(23) Auditoria;

(24) Theatres;

(25) Museums;

(26) Libraries;

(27) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools;

(28) Other educational and vocational institutions;

(29) Tobacco businesses;

(30) The entryways of all buildings and facilities listed in Paragraphs (a)(1) through (a)(29) of this Section; and

(31) Customer service areas.

(b) In order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted, and no person shall smoke, in any public park or certain designated areas therein, within the City when the park or certain designated areas of the park have been posted with official signs prohibiting smoking. For the purposes of this Subsection, an "official" sign shall be any sign placed, or authorized for placement, by the City's Parks and Recreation Director. (Ord. 11-10 §1, 2010)

**Sec. 10-16-40. Exceptions to smoking restrictions.**

This Article shall not apply to:

(1) Private homes, private residences and private automobiles, except that Section 10-16-30 of this Article shall apply if any such home, residence or vehicle is being used for child care or day

care, or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) Limousines under private hire;

(3) A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);

(4) The outdoor area of any business, except to the extent that the outdoor area of any business is within twenty (20) feet of an entryway and except to the extent that the outdoor area is a customer service area;

(5) A private nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has an annual gross income of less than five hundred thousand dollars (\$500,000); or

(6) The areas of assisted living facilities:

- a. That are designated for smoking for residents;
- b. That are fully enclosed and ventilated; and
- c. To which access is restricted to the residents or their guests.

As used in this Paragraph, *assisted living facility* means a nursing facility, as that term is defined in Section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in Section 25-27-102, C.R.S. (Ord. 11-10 §1, 2010)

**Sec. 10-16-50. Optional prohibitions.**

(a) The owner or manager of any place not specifically listed in Section 10-16-30 above, including a place otherwise exempted under Section 10-16-40 above, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Article.

(b) If the owner or manager of a place not specifically listed in Section 10-16-30 above, including a place otherwise exempted under Section 10-16-40 above, is an employer and receives a request from an employee to create a smoke-free work area, the owner or manager shall post a sign, or signs, in the smoke-free work area as provided in Subsection (a) of this Section. (Ord. 11-10 §1, 2010)

**Sec. 10-16-60. Other applicable regulations of smoking.**

This Article shall not be construed to permit smoking where it is otherwise restricted by any other applicable law. (Ord. 11-10 §1, 2010)

**Sec. 10-16-70. "No Smoking" signs required.**

The owner of any entryway that is subject to the prohibitions of Subsection 10-16-30(a) of this Article shall post a clearly legible sign within five (5) feet of each such entryway stating, by way of the international "no smoking" symbol, that smoking is prohibited within twenty (20) feet of the entryway. (Ord. 11-10 §1, 2010)

**Sec. 10-16-80. Unlawful acts – penalty – disposition of fines and surcharges.**

(a) It is unlawful for a person who owns, manages, operates or otherwise controls the use of property subject to the provisions of this Article to violate any provision of this Article.

(b) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Article.

(c) A person who violates any provision of this Article is guilty of an offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars (\$200.00) for a first violation within a calendar year; a fine not to exceed three hundred dollars (\$300.00) for a second violation within a calendar year; and a fine not to exceed five hundred dollars (\$500.00) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation. (Ord. 11-10 §1, 2010)