

CHAPTER 10

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ARTICLE I

General Provisions

Sec. 10-1-10. Authority.

The City adopts this Chapter relating to public peace, safety and morals in accordance with the powers granted it in Section 31-15-401, C.R.S., and the City Charter. (Prior code 13.02.010; Ord. 4 §1, 2005)

Sec. 10-1-20. Purpose.

This Chapter shall be construed in such a manner as to promote maximum fulfillment of its general purposes, namely:

(1) To define offenses, to define adequately the act and mental state which constitute each offense, to place limitations upon the condemnation of conduct as criminal when it is without fault and to give fair warning to all persons concerning the nature of the conduct prohibited and the penalties authorized upon conviction.

(2) To forbid the commission of offenses, and to prevent their occurrence through the deterrent influence of the sentences authorized; and to provide for the rehabilitation of those convicted, and their punishment when required in the interest of public protection. (Prior code 13.02.020)

Sec. 10-1-30. Applicability.

This Article shall be applicable to all offenses defined in this Chapter, as well as any other criminal offenses prosecuted in Municipal Court. (Prior code 13.04.010)

Sec. 10-1-40. Penalties.

(a) All municipal misdemeanor offenses are divided into three (3) categories of municipal offenses. The classification and maximum penalties for each offense are as follows:

<i>Class</i>	<i>Maximum Fine</i>	<i>Maximum Imprisonment</i>
A	\$1,000.00	One Year
B	\$500.00	Six Months
C	\$100.00	None

(b) If an offense carries a specific penalty, that penalty shall apply.

(c) Any offense not otherwise classified which does not carry a specific penalty is denominated as a Class A municipal offense. (Prior code 13.02.030)

Sec. 10-1-50. Definitions.

The following definitions are applicable to the determination of culpability requirements for offenses defined in this Chapter, as well as any other criminal offenses prosecuted in Municipal Court:

Act means a bodily movement, and includes words and possession of property.

Conduct means an act or omission and its accompanying state of mind or, where relevant, a series of acts or omissions.

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

Culpable mental state means intentionally, with intent, knowingly, willfully, recklessly or with criminal negligence, as these terms are defined in this Section.

Intentionally or with intent. All criminal offenses 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 his or her conscious objective is to cause the specific result proscribed by the section defining the offenses. It is immaterial to the issue of specific intent whether or not the result actually occurred.

Knowingly or willfully. All criminal offenses 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 a section in this Chapter defining an offense when he or she is aware that his or her conduct is of such nature or that such circumstance exists. A person acts *knowingly* or *willfully* with respect to a result of his or her conduct when he or she is aware that his or her conduct is practically certain to cause the result.

Omission means a failure to perform an act as to which a duty of performance is imposed by law.

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.

Voluntary act means an act performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a sufficient period to have been able to terminate it. (Prior code 13.04.020)

Sec. 10-1-52. Requirements for criminal liability.

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he or she is physically capable of performing. If that conduct is all that is required for commission of a particular offense or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, the offense is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to any material element of an offense, the offense is one of "mental culpability." (Ord. 7 §12, 2010)

Sec. 10-1-54. Construction of sections with respect to culpability requirements.

(a) When the commission of an offense, or some element of an offense, requires a particular culpable mental state, that mental state is ordinarily designated by use of the terms "intentionally," "with intent," "knowingly," "willfully," "recklessly" or "with criminal negligence."

(b) Although no culpable mental state is expressly designated in a section defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.

(c) If a section provides that criminal negligence suffices to establish an element of an offense, that element also is established if a person acts recklessly, knowingly or intentionally. If recklessness suffices to establish an element, that element also is established if a person acts knowingly or intentionally. If acting knowingly suffices to establish an element, that element also is established if a person acts intentionally.

(d) When a section defining an offense prescribes as an element thereof a specified culpable mental state, that mental state is deemed to apply to every element of the offense unless an intent to limit its application clearly appears. (Ord. 7 §12, 2010)

Sec. 10-1-56. Liability based upon behavior.

A person is guilty of an offense if it is committed by the behavior of another person for which he or she is legally accountable as provided in this Chapter. (Ord. 7 §12, 2010)

Sec. 10-1-58. Behavior of another.

(a) A person is legally accountable for the behavior of another person if:

(1) He or she is made accountable for the conduct of that person by the law defining the offense or by specific provision of this Code; or

(2) He or she acts with the culpable mental state sufficient for the commission of the offense in question and he or she causes an innocent person to engage in such behavior.

(b) As used in Subsection (a) above, *innocent person* includes any person who is not guilty of the offense in question, despite his or her behavior, because of duress, legal incapacity or exemption or unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or any other factor precluding the mental state sufficient for the commission of the offense in question. (Ord. 7 §12, 2010)

Sec. 10-1-60. Criminal attempt.

(a) A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he or she 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 his or her complicity under Section 10-1-80 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 his or her effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of his or her criminal intent.

(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 13.04.080; Ord. 4 §1, 2005)

Sec. 10-1-70. Conspiracy.

(a) A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he or she agreed with another person or persons 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 agreed to aid the other person or persons 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. 4 §1, 2005)

Sec. 10-1-80. Complicity.

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, he or she aids, abets or advises the other person in planning or committing the offense. (Prior code 13.06.040)

Sec. 10-1-90. Accessory to crime.

(a) A person is an accessory to 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 under this Chapter, he or she renders assistance to such person. Being an accessory to a crime is a Class A municipal offense.

(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, conviction 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 A municipal 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. (Prior code 13.20.040; Ord. 4 §1, 2005)

Sec. 10-1-100. Compounding.

(a) A person commits the Class A municipal offense of compounding if he or she accepts or agrees to accept any pecuniary benefit as consideration for:

- (1) Refraining from seeking prosecution of an offender; or
- (2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any municipal offense or information relating to a municipal offense.

(b) It is an affirmative defense to prosecution under this Section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the offense. (Prior code 13.20.070)

Sec. 10-1-110. 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. 4 §1, 2005)

ARTICLE II

Government and Public Officers

Sec. 10-2-10. Definitions.

For purposes of this Chapter, the following words shall have the meanings ascribed hereafter:

Government includes any branch, subdivision, institution or agency of the government of the City.

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

Public servant means any officer or employee of the City, 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 peace officers or witnesses. (Ord. 4 §1, 2005)

Sec. 10-2-20. Obstructing government operations.

(a) It is unlawful to obstruct government operations.

(b) A person commits the Class A municipal offense of obstructing government operations if he or she intentionally obstructs, impairs or hinders the performance of a governmental function by a public 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. (Prior code 13.20.010; Ord. 4 §1, 2005)

Sec. 10-2-30. Resisting arrest.

(a) It is unlawful to resist arrest or interfere with a peace officer.

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

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

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

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

(d) The term *peace officer*, as used in this Section, means the Chief of Police or any police officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted or one whom the person knew was a City peace officer at the time of the alleged offense.

(e) Resisting arrest is a Class A municipal offense. (Prior code 13.20.020; Ord. 4 §1, 2005)

Sec. 10-2-40. Obstructing a peace 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, in any way, interfere with or hinder any police officer who is discharging or apparently discharging the duties of the position.

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

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

(e) It is no defense to a prosecution 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 10-2-30(c) above.

(f) This Section does not apply to the interference with a peace officer making an arrest or pursuing an investigation. (Prior code 13.20.030; Ord. 4 §1, 2005)

Sec. 10-2-50. Refusal to permit inspection.

(a) A person commits a Class C municipal offense if, knowing that a public servant, as defined in Section 10-2-10, is legally authorized to inspect property:

(1) He or she refuses to produce or make available the property for inspection at a reasonable hour; or

(2) If the property is available for inspection, he or she refuses to permit the inspection at a reasonable hour.

(b) For the purposes of this Section, *property* means any real or personal property, including books, records and documents, which are owned, possessed or otherwise subject to the control of such person. A *legally authorized inspection* means any lawful search, sampling, testing or other examination of property, in connection with the regulation of a business or occupation, that is authorized by any City ordinance or lawful regulatory provision. (Prior code 13.20.050; Ord. 4 §1, 2005)

Sec. 10-2-60. Refusing to aid a peace officer.

A person eighteen (18) years of age or older commits a Class A municipal offense when, upon command by a person known to him or her to be a peace officer, he or she unreasonably refuses or fails to aid the peace officer in effecting or securing an arrest or preventing the commission by another of any offense. (Prior code 13.20.060)

Sec. 10-2-70. False reporting to authorities.

It is unlawful for a person to falsely report to authorities. A person commits the Class A municipal offense of false reporting to authorities if he or she knowingly:

(1) 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 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 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) Gives false information to any law enforcement officer with the purpose of implicating another; or

(5) Gives a false name or address to a law enforcement officer with the intent of concealing or hiding his or her own real name, address and/or age. (Prior code 13.20.080; Ord. 4 §1, 2005)

Sec. 10-2-80. Impersonating a public servant.

(a) A person commits the Class A municipal offense of impersonating a public servant if he or she knowingly and falsely pretends to be a public servant, as defined in Section 10-2-10, other than a peace officer, and performs any act in that pretended capacity.

(b) 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 13.20.100; Ord. 7 §13, 2010)

Sec. 10-2-90. Aiding escape.

(a) Any person who knowingly aids, abets or assists another person in custody or confinement and charged with, held for or convicted of a municipal offense, to escape or attempt to escape from custody or confinement commits the Class A municipal offense of aiding escape.

(b) *Escape* is deemed to be a continuing activity commencing with the conception of the design to escape and continuing until the escapee is returned to custody or the attempt to escape is thwarted or abandoned.

(c) *Assist* includes any activity characterized as *rendering assistance* in Subsection 10-1-90(b) above. (Prior code 13.20.110; Ord. 7 §13, 2010)

Sec. 10-2-100. Escapes.

(a) A person commits a Class A municipal offense if, while being in custody or confinement and held for or charged with a municipal offense or while being in custody or confinement under a sentence following conviction of a municipal offense, he or she knowingly escapes from said place of custody or confinement.

(b) Upon conviction of the offense of escape, said person shall be punished by imprisonment in the county jail for not less than one (1) month nor more than one (1) year. Any sentence imposed following conviction of this offense shall run consecutively and not concurrently with any sentence which the offender was serving at the time of the escape. (Prior code 13.20.120; Ord. 7 §13, 2010)

Sec. 10-2-110. Attempting to escape.

If a person, while in custody or confinement and held for or charged with a municipal offense or while in custody or confinement following conviction of a municipal offense, knowingly attempts to escape from said custody or confinement, he or she is guilty of a Class A municipal offense and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than one (1) month nor more than one (1) year. Any sentence imposed pursuant to this Section shall run consecutively with any sentences being served by the offender. (Prior code 13.20.130; Ord. 7 §13, 2010)

Sec. 10-2-120. Failure to appear in court.

(a) It is a Class A municipal offense for any person to knowingly fail to appear in Municipal Court to answer any offense pursuant to a summons and complaint or penalty assessment notice issued to said person at the time and place specified in such summons and complaint or penalty assessment notice, unless said person has paid the penalty assessment as permitted by law; and it is unlawful for such person to knowingly fail to appear for any subsequent proceedings in such case.

(b) A person who is released on bail bond of whatever kind and either before, during or after release is accused by a complaint of any offense contained in this Code arising from the conduct for which he or she was arrested, commits a Class A municipal offense if he or she knowingly fails to appear for trial or other proceedings in the Municipal Court in the case in which the bail bond was filed. (Prior code 13.20.140; Ord. 7 §13, 2010)

ARTICLE III

Public Peace, Order and Safety

Sec. 10-3-10. Obstructing highway or other passageway.

(a) A person commits a Class C municipal offense if, without legal privilege, he or she intentionally, knowingly or recklessly:

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

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

(b) For purposes of this Section, *obstruct* means to interfere with, to render impassable or to render passage unreasonably inconvenient or hazardous. (Prior code 13.12.010; Ord. 4 §1, 2005)

Sec. 10-3-20. Disrupting lawful assembly.

A person commits a Class A municipal offense of 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. (Prior code 13.12.020; Ord. 4 §1, 2005)

Sec. 10-3-30. Interference at educational institution.

(a) No person shall, on or near the premises or facilities of any educational institution, willfully deny to students, school officials, employees and invitees:

- (1) Lawful freedom of movement on the premises;
- (2) Lawful use of the property or facilities of the institution; or
- (3) The right of lawful ingress and egress to the institution's physical facilities.

(b) No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties or willfully impede a student of the institution in the lawful pursuit of his or her educational activities through the use of restraint, abduction, coercion or intimidation or when force and violence are present or threatened.

(c) No person shall willfully refuse or fail to leave the property of or any building or other facility used by any educational institution upon being requested to do so by the chief administrative officer or his or her designee charged with maintaining order on the school premises and in its facilities, if such person

is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions of the institution.

(d) Any violation of this Section is a Class A municipal offense.

(e) It shall be an affirmative defense that such person was exercising his or her right to lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, any contractor or subcontractor or any employee thereof. (Prior code 13.12.030; Ord. 4 §1, 2005)

Sec. 10-3-40. Trespass and interference in public buildings.

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

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

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

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

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

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

(g) Any violation of this Section is a Class A municipal offense.

(h) It shall be an affirmative defense that the defendant was exercising his or her right to lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between the City and its employees, any contractor or subcontractor or any employee thereof. (Prior code 13.12.040)

Sec. 10-3-50. Harassment.

(a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:

- (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 makes an obscene gesture to or at another person, which is a Class B municipal offense;
- (3) Follows a person in or about a public place, which is a Class B municipal offense;
- (4) Initiates communication with a person, anonymously or otherwise by telephone, computer, computer network or computer system, in a manner intended to harass or threatens bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network or computer system which is obscene, which is a Class B municipal offense;
- (5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation, which is a Class B municipal offense;
- (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, which is a Class B municipal offense; 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, which is a Class B municipal offense.

(b) Any act prohibited by Paragraph (a)(4) above 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.

(c) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions. (Prior code 13.12.050; Ord. 4 §1, 2005)

Sec. 10-3-60. Disorderly conduct.

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

- (1) Makes a coarse and obviously offensive utterance, gesture or display in a public place, and the utterance, gesture or display tends to incite an immediate breach of the peace;
- (2) Makes unreasonable noise in a public place or near a private residence that he or she has no right to occupy;
- (3) Fights with another in a public place except in an amateur or professional contest of athletic skill;

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

(5) 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; or

(6) Urinates or defecates in any public or private place not designed for such purposes.

(b) Any violation of Paragraph (a)(1) or (a)(2) above is a Class C municipal offense; any violation of Paragraph (a)(3) above is a Class A municipal offense; and any violation of the other paragraphs of this Section is a Class B municipal offense. (Prior code 13.12.060; Ord. 4 §1, 2005; Ord. 7 §14, 2010)

Sec. 10-3-70. Assault.

(a) It is unlawful for any person to assault, beat, strike, injure, imprison or inflict violence on another.

(b) *Assault*, as used in this Section, means an attempt, coupled with a present ability, to commit a bodily injury upon the person of another.

(c) Any violation of this Section is a Class A municipal offense. (Prior code 13.12.070; Ord. 4 §1, 2005)

Sec. 10-3-80. Loitering.

(a) The word *loiter* means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide or tarry in a public place.

(b) A person commits a Class C municipal offense if he or she knowingly:

(1) Loiters for the purpose of begging;

(2) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia;

(3) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;

(4) With intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, loiters in or upon a school building or 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, not having any reason or relationship involving custody of, or responsibility for a pupil or any other specific legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer; or

(5) Loiters with one (1) or more persons for the purpose of unlawfully using or possessing a controlled substance, as defined in Section 10-8-10 of this Chapter.

(c) It shall be an affirmative defense that the defendant's acts were lawful and he or she was exercising his or her rights of lawful assembly as part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise. (Prior code 13.12.090; Ord. 4 §1, 2005)

Sec. 10-3-90. Restrictions on use of tents, campers and trailers.

It is unlawful and a Class C municipal offense for any person to knowingly sleep, spend the night, cook or establish a place of abode in any vehicle, tent, travel trailer, mobile home or camper vehicle in any public park, place, street, way or sidewalk within the City or owned by the City, except in any area designated for camping and the temporary parking of such vehicles referred to herein. In no event shall any vehicle, travel trailer, mobile home, tent or camper vehicle be parked or stored in the designated area for a period in excess of ten (10) days. (Prior code 13.12.100; Ord. 4 §1, 2005)

Sec. 10-3-100. Hindering transportation.

A person commits a Class C municipal offense if he or she knowingly and without lawful authority forcibly stops or hinders the operation of any vehicle used in providing transportation of any kind to the public or to any person. (Prior code 13.12.110; Ord. 4 §1, 2005)

Sec. 10-3-110. Throwing stones or missiles.

No person shall knowingly throw or shoot any stone, snowball or other missile at or upon any person, animal, motor vehicle, public property, building, structure, tree or other public or private property not belonging to that person. Any violation of this Section is a Class B municipal offense. (Prior code 13.12.120; Ord. 4 §1, 2005)

Sec. 10-3-120. 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. 4 §1, 2005)

Sec. 10-3-130. Unlawful assembly.

It is unlawful for any persons to congregate in any place which encourages the disturbance of the peace, or where the conduct of persons in or about that place is such as to annoy or disturb the peace of the occupants of or persons attending such place, the residents in the vicinity or the passers-by on the public streets or highways. (Prior code 13.24.030; Ord. 4 §1, 2005)

Sec. 10-3-140. 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. 4 §1, 2005)

Sec. 10-3-150. False alarms.

Any person who shall intentionally make or give a false alarm of fire shall be deemed guilty of a misdemeanor. (Ord. 4 §1, 2005)

Sec. 10-3-160. Storage of flammable liquids.

It is unlawful to store or cause to be stored or parked, except for delivery, any tank vehicle carrying flammable liquids or gases upon any streets, ways or avenues of the City or in any other part of the City, except those areas zoned for such uses. (Ord. 4 §1, 2005)

Sec. 10-3-170. Explosives.

It is unlawful for any person to store within the City limits or within one (1) mile thereof any amount of gunpowder, blasting powder, nitroglycerine, dynamite or other high explosive in excess of one (1) fifty-pound box or in excess of five hundred (500) caps or other devices used for the detonation of such high explosives. (Ord. 4 §1, 2005)

ARTICLE IV

Public, Private and Personal Property

Sec. 10-4-10. Theft.

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

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

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

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

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

(b) Where the value of the thing of value is less than one hundred dollars (\$100.00), theft is a Class B municipal offense. Where the value of the thing of value is more than one hundred dollars (\$100.00) but less than five hundred dollars (\$500.00), theft is a Class A municipal offense. (Prior code 13.14.010; Ord. 4 §1, 2005)

Sec. 10-4-20. Theft of rental property.

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

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

(2) Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return 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) Any violation of this Section is a Class B municipal offense if the value of the personal property is less than one hundred dollars (\$100.00) and a Class A municipal offense where the value of the personal property is more than one hundred dollars (\$100.00) and less than five hundred dollars (\$500.00). (Prior code 13.14.015; Ord. 4 §1, 2005)

Sec. 10-4-30. 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 five hundred dollars (\$500.00). (Ord. 4 §1, 2005)

Sec. 10-4-40. Concealment of goods.

If any person willfully conceals unpurchased goods, wares or merchandise valued at less than five hundred dollars (\$500.00) owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment is on his or her own person or otherwise and whether on or off the premises of the store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft. (Ord. 4 §1, 2005)

Sec. 10-4-50. Fraud by check.

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

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

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

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

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

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

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

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

(b) Any person, knowing he or she has insufficient funds with the drawee who, with intent to defraud, issues a check in the sum of less than five hundred dollars (\$500.00) for the payment of services, wages, salary, commission, labor, rent, money, property or other thing of value, commits the offense of fraud by check. Where the check is in the sum of one hundred dollars (\$100.00) to five hundred dollars (\$500.00), this offense is a Class A municipal offense; if the check is in the sum of less than one hundred dollars (\$100.00), this offense is a Class B municipal offense.

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

(d) Any person who opens a checking account, negotiable order withdrawal account or share draft account using false identification or an assumed name for the purposes of issuing fraudulent checks commits a Class A municipal offense.

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

(f) 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 sheriff, deputy sheriff, undersheriff, police officer, district attorney, assistant district attorney, deputy district attorney or authorized investigator for a district attorney investigating or prosecuting a charge under this Section.

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

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

(2) He or she 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 13.14.020; Ord. 4 §1, 2005)

Sec. 10-4-55. Procuring food or accommodations with intent to defraud.

(a) Any person who, with intent to defraud, procures food or accommodations in any public establishment, without making payment therefor in accordance with his or her agreement with such public establishment, is guilty of a Class A municipal offense if the total amount due under such agreement is more than one hundred dollars (\$100.00) and less than five hundred dollars (\$500.00) and a Class B municipal offense if the total amount is less than one hundred dollars (\$100.00).

(b) *Agreement with such public establishment* means any written or verbal agreement as to the price to be charged for, or the acceptance of, food, beverage, service or accommodations where the price to be charged therefor is printed on a menu or schedule of rates shown to or made available by a public establishment to the patron and includes the acceptance of such food, beverage, service or accommodations for which a reasonable charge is made.

(c) *Public establishment* means any establishment selling or offering for sale prepared food or beverages to the public generally or any establishment leasing or renting overnight sleeping accommodations to the public generally, including but not exclusively restaurants, cafes, dining rooms, lunch counters, coffee shops, boardinghouses, hotels, motor hotels, motels and rooming houses, unless the rental thereof is on a month-to-month basis or a longer period of time.

(d) It shall be evidence of an intent to defraud that food, service or accommodations were given to any person who gave false information concerning his or her name or address, or both, in obtaining such food, service or accommodations, or that such person removed or attempted to remove his or her baggage from the premises of such public establishment without giving notice of his or her intent to do so to such public establishment. These provisions shall not constitute the sole means of establishing evidence that a person accused under Subsection (a) above had an intent to defraud. Proof of such intent to defraud may be made by any facts or circumstances sufficient to establish such intent to defraud beyond a reasonable doubt as provided by law. (Ord. 7 §15, 2010)

Sec. 10-4-60. Damaging or destroying public property.

(a) No person shall intentionally, knowingly, negligently or recklessly injure, deface, destroy or remove real property or improvements thereto or moveable or personal property belonging to the City.

(b) No person shall intentionally, knowingly, negligently or recklessly tamper with, injure, deface, destroy or remove any sign, notice, marker, fire alarm box, fire plug, topographical survey monument or any other personal property owned, erected or placed by the City.

(c) Any violation of this Section is a Class A municipal offense. (Prior code 13.14.040)

Sec. 10-4-70. Damaging or destroying private property.

It is unlawful for any person to either willfully, maliciously or wantonly damage or destroy real property or improvements thereto, or moveable or personal property, belonging to any person. (Ord. 4 §1, 2005)

Sec. 10-4-80. Criminal mischief.

(a) Any person who knowingly damages real or personal property of one (1) or more other persons, including property owned by the person jointly with another person or property owned by the person in which another person has a possessory or proprietary interest, in the course of a single criminal episode where the aggregate damage to the real or personal property is less than five hundred dollars (\$500.00) but more than one hundred dollars (\$100.00) commits a Class A municipal offense; and if the damage is less than one hundred dollars (\$100.00), such person commits a Class B municipal offense.

(b) For the purposes of this Section, property shall be deemed to be damaged when physical effort or the expenditure of moneys is required to restore the property to its previous condition. (Prior code 13.14.050; Ord. 4 §1, 2005)

Sec. 10-4-90. Trespassing.

(a) A person commits the Class A municipal offense of trespassing if he or she intentionally, knowingly or willfully:

(1) Unlawfully enters or remains in or upon premises which are enclosed in a manner designed to exclude intruders or are fenced;

(2) Unlawfully enters or remains in or upon the premises of a hotel, motel, bar, lounge, restaurant, condominium or apartment building; or

(3) Unlawfully enters or remains in or upon any other premises or a motor vehicle.

(b) A person unlawfully enters or remains in or upon premises when he or she is not licensed, invited or otherwise privileged to do so. A person who, regardless of his or her intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he or she defies a lawful order not to enter or remain, personally communicated to him or her by the owner of the premises or some other authorized person in charge or control thereof. License or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or notice forbidding entry is given by posting with signs at intervals of not more than four hundred forty (440) yards or, if there is a readily identifiable entrance to the land, by posting with signs at such entrance to the private land or the forbidden part of the land.

(c) As used in this Section, *premises* means real property, buildings and other improvements thereon. (Prior code 13.14.060; Ord. 4 §1, 2005)

Sec. 10-4-100. Littering.

(a) Any person who knowingly deposits, throws or leaves any litter on any public or private property or in any waters, or permits the same, commits the Class C municipal offense of littering.

(b) It shall be an affirmative defense that:

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

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

(3) Such person is the owner or tenant in lawful possession of such property, such person has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.

(c) Definitions.

Litter, as used in this Section, means all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.

Public or private property, as used in this Section, includes but is not limited to the right-of-way of any road or highway; any body of water or watercourse, including frozen areas or the shores or beaches thereof; any park, playground or building; any refuge, conservation or recreation area; and any residential, commercial, farm or ranch property.

(d) Littering is punishable, upon conviction, by a fine of twenty dollars (\$20.00) if only one (1) item is deposited, thrown, or left. If two (2) or more items are thrown, deposited or left, said offense shall be punishable, upon conviction, by a fine of not less than twenty-five dollars (\$25.00).

(e) It is in the discretion of the court, upon the conviction of any person and the imposition of a fine under this Section, to suspend the fine upon the condition that the convicted person gather and remove from specified public property or specified private property, with prior permission of the owner or tenant in lawful possession thereof, any litter found thereon.

(f) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this Section, the operator of said motor vehicle is presumed to have caused or permitted the litter to be so thrown, deposited, dropped or dumped therefrom. (Prior code 13.14.070; Ord. 4 §1, 2005)

Sec. 10-4-110. Posting of handbills and circulars.

(a) It is a Class C municipal offense for any person to knowingly place, post, erect or paint any handbill, placard, circular, notice, advertising device or matter of any kind upon any public building or structure, or upon any tree, post, pole or other improvement located within a City right-of-way, park or open space without the prior written permission of the City Manager.

(b) It is unlawful for any person to knowingly place, post, erect or paint any handbill, placard, circular, notice, advertising device or matter of any kind upon any private residence, fence, tree, store, building or other private premises without permission from the owner, tenant or occupant of the same. (Prior code 13.14.080)

Sec. 10-4-120. Abandoned containers and appliances.

It is a Class A municipal offense for any person to knowingly leave or permit to remain outside of any dwelling, building or other structure or within any unoccupied or abandoned building, structure or dwelling under his or her control, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator, washer, dryer, freezer or other container or appliance which has a door, lid, snap lock or other locking device which may not be released from the inside, without first removing said door lid, snap lock or other locking device. (Prior code 13.14.090; Ord. 4 §1, 2005)

Sec. 10-4-130. Accumulation of tires.

It is unlawful for any person or agent, either as owner, lessee, tenant or occupant of any lot or land within the City, to store or accumulate any of the following:

(1) Any new or marketable used tires that are not neatly stacked or displayed in a marketable manner;

(2) Nonmarketable tires in any manner for a period of greater than one (1) month. *Nonmarketable tires* are defined as those tires which are incapable of holding air or which have less than two thirty-seconds ($\frac{2}{32}$) of an inch of tread, or both. Any person charged with a violation of this Paragraph may produce a receipt evidencing the removal and quartering of nonmarketable tires during the thirty-one (31) days prior to the notice of violation, which receipt shall create a rebuttable presumption that no such violation has occurred; or

(3) Any tires on property located in a residential district, except that up to two (2) tires per dwelling unit may be kept outside for up to one (1) week on any property within a residential district. (Prior code 13.24.030; Ord. 4 §1, 2005)

Sec. 10-4-140. Tampering and unauthorized connection.

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

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

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

(d) Nothing in this Section shall be construed to apply to any licensed electrical or plumbing contractor while performing usual and ordinary services in accordance with recognized customs and standards. (Ord. 4 §1, 2005)

ARTICLE V

Decency and Morals

Sec. 10-5-10. Prostitution.

Any person who knowingly performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse with any person not his or her spouse in exchange for money or other thing of value commits the offense of prostitution, which is a Class A municipal offense. (Prior code 13.16.010; Ord. 4 §1, 2005)

Sec. 10-5-20. Soliciting for prostitution.

A person commits a Class A municipal offense of soliciting for prostitution if he or she knowingly:

- (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 such direction is for the purpose of prostitution. (Prior code 13.16.020; Ord. 4 §1, 2005)

Sec. 10-5-30. Pandering.

Any person who knowingly arranges or offers to arrange a situation in which a person may practice prostitution commits pandering, which is a Class B municipal offense. (Prior code 13.16.030)

Sec. 10-5-40. Keeping a place of prostitution.

Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who performs any one (1) or more of the following commits the Class A municipal offense of keeping a place of prostitution if he or she knowingly:

- (1) 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 he or she should reasonably know that the place is being used for purposes of prostitution. (Prior code 13.16.040; Ord. 4 §1, 2005)

Sec. 10-5-50. Patronizing a prostitute.

Any person who performs any of the following with a person not his or her spouse commits the Class B municipal offense of patronizing a prostitute:

- (1) Knowingly engages in an act of sexual intercourse or of deviate sexual conduct with a prostitute; or
- (2) Knowingly enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct. (Prior code 13.16.050)

Sec. 10-5-60. Prostitute making display.

Any person who knowingly, by word, gesture or action, endeavors to further the practice of prostitution in any public place or within public view commits a Class B municipal offense of a prostitute making display. (Prior code 13.16.060; Ord. 4 §1, 2005)

Sec. 10-5-70. Public indecency.

Any person who knowingly performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits the Class A municipal offense of 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 13.16.070; Ord. 4 §1, 2005)

Sec. 10-5-80. 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. 4 §1, 2005)

Sec. 10-5-90. Definitions for sexually explicit materials harmful to children.

As used in Section 10-5-100 below, unless the context otherwise requires:

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

Harmful to children means that quality of any description or representation, in whatever form, of sexually explicit nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when, taken as a whole, it:

- a. Predominantly appeals to the prurient interest in sex of children;
- b. Is patently offensive to prevailing standards in the adult community within the City with respect to what is suitable material for children; and
- c. Is lacking in serious literary, artistic, political and scientific value for children.

Knowingly means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry, or both, of:

- a. The character and content of any material described herein which is reasonably susceptible of examination; and
- b. The age of the child; however, an honest mistake shall constitute an excuse from liability hereunder if a reasonable bona fide attempt is made to ascertain the true age of such child.

Sadomasochistic abuse means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

Sexual conduct means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, sodomy or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if the person is a female, her breast.

Sexual excitement means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Sexually explicit nudity means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the depiction of covered or uncovered male genitals in a discernibly turgid state. (Prior code 13.16.090; Ord. 4 §1, 2005)

Sec. 10-5-100. Sale of sexually explicit materials harmful to children.

(a) It is a Class A municipal offense for any person knowingly to sell or loan for monetary consideration to a child:

(1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to children; or

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in Paragraph (1) above, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to children.

(b) It is unlawful for any person knowingly to sell to a child an admission ticket or pass, or knowingly to admit a child to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and is harmful to children, or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by children not admitted to any such premises.

(c) It is unlawful for any child to knowingly and falsely represent to any person mentioned in Subsection (a) or (b) above, or to his or her agent, that he or she is eighteen (18) years of age or older, with the intent to procure any material set forth in Subsection (a) above, or show or other presentation, as set forth in Subsection (b) above.

(d) It is unlawful for any person knowingly to make a false representation to any person mentioned in Subsection (a) or (b) above, or to his or her agent, that he or she is the parent or guardian of any juvenile, or that any child is eighteen (18) years of age or older, with the intent to procure any material set forth in Subsection (a) above, or with the intent to procure any child's admission to any motion picture, show or other presentation, as set forth in Subsection (b) above. (Prior code 13.16.080; Ord. 4 §1, 2005)

Sec. 10-5-110. Applicability.

Nothing contained within Sections 10-5-90 and 10-5-100 above shall be construed to apply to:

(1) The purchase, distribution, exhibition or loan of any work of art, book, magazine or other printed or manuscript material by any accredited museum, library, school or institution of higher education; or

(2) The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum, school or institution of higher education, either supported by public appropriation or which is an accredited institution supported by private funds. (Prior code 13.16.100)

ARTICLE VI

Gambling

Sec. 10-6-10. General.

(a) Pursuant to Section 31-15-401(g), C.R.S., it is declared to be the policy of the City Council, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from gambling activities in the City; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom of the press and to avoid restricting participation by individuals in sport and social pastimes which are not for profit, do not affect the public and do not breach the peace.

(b) All the provisions of this Article shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out the declaration of policy stated in Subsection (a) above. (Prior code 13.18.010)

Sec. 10-6-20. Definitions.

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

Gain means the direct realization of winnings; *profit* means any other realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management or unequal advantage in a series of transactions.

Gambling means risking any money, credit, deposit or other thing of value for 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 or contracts;
- c. Other acts or transactions now or hereafter expressly authorized by law;
- 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; or
- e. Gambling conducted by an organization pursuant to the provisions of Section 12-47-128(5)(n), C.R.S., or participation in the Colorado lottery, as authorized by law.

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 information means a communication with respect to any wager made in the course of, and any information intended to be used for, professional gambling. In the application of this definition, the following shall be presumed to be intended for use in professional gambling: information as to wagers, betting odds or changes in betting odds. Legitimate news reporting of an event for public dissemination is not gambling information within the meaning of this Article.

Gambling premises means any building, 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 is 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.

Gambling record means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling.

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. (Prior code 13.18.020)

Sec. 10-6-30. Gambling and professional gambling.

It is a Class B municipal offense for any person to knowingly engage in gambling or professional gambling. (Prior code 13.18.030)

Sec. 10-6-40. Gambling devices, records and proceeds.

(a) Except as provided in Subsection (b) below, all gambling devices, gambling records and gambling proceeds are subject to seizure by any peace officer and may be confiscated and destroyed by order of a court. Gambling proceeds shall be forfeited to the City and shall be transmitted by court order to the General Fund of the City.

(b) If a gambling device is an antique gambling device and is not operated for gambling purposes for profit or for business purposes, it shall not be confiscated or destroyed pursuant to Subsection (a) above. If a gambling device is confiscated and the owner shows that such gambling device is an antique gambling device and is not used for gambling purposes, the court shall order such gambling device returned to the person from whom it was confiscated. For the purpose of this Section, a gambling device

shall be conclusively presumed to be an antique gambling device if it was manufactured prior to 1950. (Prior code 13.18.040)

Sec. 10-6-50. Possession of gambling device or record.

A person who knowingly owns, manufactures, sells, transports, possesses or engages in any transaction designed to affect the ownership, custody or use of a gambling device commits the Class B municipal offense of possession of a gambling device or record. (Prior code 13.18.050)

Sec. 10-6-60. Gambling information.

(a) Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, facsimile, electronic mail or other means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information, commits a Class B municipal offense.

(b) Facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of the utility while so furnished, shall not be seized except in connection with an alleged violation of this Article by the public utility and shall be forfeited only upon conviction of the public utility therefor. (Prior code 13.18.060)

Sec. 10-6-70. Gambling premises.

Any person, as owner, lessee, agent, employee, operator or occupant who knowingly maintains, aids or permits the maintaining of gambling premises for professional gambling commits the offense of maintaining a gambling premises. (Prior code 13.18.070)

ARTICLE VII

Minors

Sec. 10-7-10. Curfew.

(a) It is unlawful for any child under the age of eighteen (18) years to knowingly wander, loiter, idle or play in or upon any public street, highway, road, alley or other public ground, public place or public building, vacant lot or other unsupervised place, including in a motor vehicle, subsequent to the hour of 10:00 p.m. on Sunday, Monday, Tuesday, Wednesday and Thursday, and prior to the hour of 5:00 a.m. of the following day; or subsequent to the hour of 12:00 a.m. and prior to the hour of 5:00 a.m. on Friday and Saturday; provided, however, that the above restrictions shall not apply to lawful employment, an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the child. The above restrictions shall not apply if such child is accompanied by the parent, guardian or other person of the age of twenty-one (21) years, having express permission of the parent or guardian to have temporary custody and care of such child.

(b) Each violation of the provisions of this section shall constitute a separate Class C municipal offense. (Prior code 13.22.010)

Sec. 10-7-20. Responsibility of parent or guardian.

(a) It is a Class A municipal offense for a parent, guardian or other person having care or custody of any child under the age of eighteen (18) years to intentionally, knowingly or negligently allow or permit any such child to loiter, wander, idle or play in or upon a public street, highway, road, alley or other public ground, public place or public building, vacant lot or other unsupervised place, including in a motor vehicle, in violation of the provisions of Section 10-7-10 above.

(b) The fact that the child is upon the street, highway, road, alley or other public ground, public place, public building vacant lot or other unsupervised place, including in a motor vehicle, contrary to the provisions of Section 10-7-10 above, shall be prima facie evidence that the parent, guardian or other person having custody of the child, is guilty of violating this Article. (Prior code 13.22.020)

Sec. 10-7-30. Aiding or abetting a minor.

It is a Class A municipal offense for any person to knowingly permit any minor child to aid, abet, approve, encourage, allow, permit, tolerate or consent to the violation by any minor child of any provisions of this Article or any other ordinances of the City. (Prior code 13.22.030; Ord. 4 §1, 2005)

Sec. 10-7-40. 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. 4 §1, 2005)

Sec. 10-7-50. 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 or documents 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. 4 §1, 2005)

Sec. 10-7-60. Services of others.

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 the minor is forbidden by law to purchase. (Ord. 4 §1, 2005)

Sec. 10-7-70. Loitering and other acts around schools.

It is unlawful for any person to loiter, idle, wander, stroll or play in, about or on any public, private or parochial school, college or seminary grounds or buildings, either on foot or in or on any vehicle, without having some lawful business therein or thereabout or in connection with such school or the employees thereof, or for any person to:

(1) Annoy, disturb or otherwise prevent the orderly conduct of classes and activities of any such school;

(2) Annoy, disturb, assault or molest any student or employee of any such school, college or seminary while in any such school building or on any school grounds;

(3) Conduct himself or herself in a lewd, wanton or lascivious manner in speech or behavior in or about any school building or school grounds; or

(4) Park or move a vehicle in the immediate vicinity of or on the grounds of any such school, college or seminary for the purpose of annoying or molesting the students or employees thereof or in an effort to induce, entice or invite students into such vehicles for immoral purposes. (Ord. 4 §1, 2005)

ARTICLE VIII

Alcoholic Beverages and Drugs

Sec. 10-8-10. Authority.

The City adopts this Article relating to intoxicating liquor and drugs in accordance with the powers granted it in Articles 46, 47 and 48 of Title 12, C.R.S., Article 15 of Title 31, C.R.S., and the City Charter. (Prior code 7.02.010)

Sec. 10-8-20. Definitions.

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

Alcoholic beverage or *alcoholic liquor* means fermented malt beverage or malt, vinous or spirituous liquors.

Controlled substance means a drug or other substance or an immediate precursor which is declared to be a controlled substance under this Article, and also includes marijuana, marijuana concentrate and cocaine.

Drug paraphernalia means any machine, instrument, tool, equipment or device which is primarily designed and intended for one (1) or more of the following:

a. To introduce into the human body any controlled substance under circumstances in violation of state law;

b. To enhance the effect on the human body of any controlled substance under circumstances in violation of state law;

c. To conceal any quantity of any controlled substance under circumstances in violation of state law; or

d. To test the strength, effectiveness or purity of any controlled substance under circumstances in violation of state law.

Establishment means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group or residence, and any real property, including buildings and improvements connected therewith, and shall also include any members, employees and occupants associated therewith.

Ethyl alcohol means any substance which is or contains ethyl alcohol.

Fermented malt beverage shall have the same definition as in Section 12-46-103(1), C.R.S.

Legal drinking age means twenty-one (21) years of age.

Malt, vinous, or spirituous liquor shall have the same definition as in Section 12-47-103, C.R.S.

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 the mature stalks of the plant, the 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 *marijuana* herein.

Minor means any person under the age of twenty-one (21) years of age.

Possession of ethyl alcohol means that a person has or holds any amount of ethyl alcohol anywhere on his or her person, or that a person owns or has custody of ethyl alcohol or has ethyl alcohol within his or her immediate presence and control.

Private property means any dwelling and its curtilage which is being used by a natural person for habitation and which is not open to the public, and privately owned real property which is not open to the public. *Private property* shall not include:

- a. Any establishment which has or is required to have a license pursuant to Article 46, 47 or 48 of Title 12, C.R.S.;
- b. Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or
- c. Any establishment which leases, rents or provides accommodations to members of the public generally.

Public place means any place commonly or usually open to the general public or to which members of the general public may resort, or accessible to members of the general public. 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, and automobiles or other vehicles in or upon any such place or places, but shall not include the interior or enclosed yard area of private homes, residences, condominiums or apartments.

Toxic vapors means the following substances or products containing such substances: alcohols, including methyl, isopropyl, propyl or butyl; aliphatic acetates, including ethyl, methyl, propyl or

methyl cellosolve acetate; acetone; benzene; carbon tetrachloride; cyclohexane; Freons, including Freon 11 and Freon 12; hexane; methyl ethyl ketone; methyl isobutyl ketone; naphtha; perchlorethylene; toluene; trichloroethane or xylene. (Prior code 7.04.005, 7.04.070, 7.06.010; Ord. 4 §1, 2005)

Sec. 10-8-30. Establishment restrictions.

(a) Except as provided for elsewhere in this Article, it shall be unlawful for the licensee, proprietor, agent or employee of any establishment possessing a liquor license for the sale of fermented malt beverages or malt, vinous or spirituous liquors for consumption of the premises, to permit or allow the following:

(1) Persons under the age of twenty-one (21) years to enter, frequent, visit or be present in any such establishment; and

(2) Customers, guests and any other persons to be present in such establishments during the hours and days that state law prohibits the sale, serving or distribution of fermented malt beverages or malt, vinous or spirituous liquors.

(3) The consumption of any alcoholic beverage on the licensed premises at any time during such hours as the sale of such beverages is prohibited by law.

A violation of Subsections (a)(1) and (a)(3) above is a Class A municipal offense. A violation of Subsection (a)(2) above is a Class B municipal offense. Penalties for these violations are set forth in Section 10-1-40 of this Chapter.

(b) A licensee or proprietor of any establishment having a license or possessing a license to sell fermented malt beverages or malt, vinous or spirituous liquors for consumption on the premises shall be legally accountable for the conduct of any agent or employee of said licensee or proprietor who violates any provision of this Section. A licensee or proprietor shall be guilty of any offense created under this Section if it is committed by an agent or employee of such licensee or proprietor.

(c) Any offense committed under this Section shall be one of strict liability.

(d) It shall be an affirmative offense to any prosecution for violations contained within this Section if the licensee, proprietor, agent or employee of the licensed establishment can prove, by a preponderance of evidence, that such person required a minor to exhibit a State operator's license, chauffeur license, or identification card prior to entry by such person into the establishment, and that such proof of age exhibited was fraudulent. (Prior code 7.04.010; Ord. 1 §3, 2005; Ord. 4 §1, 2005)

Sec. 10-8-40. Warning display required.

(a) Every licensee or proprietor of an establishment where fermented malt beverages are sold shall display at all times, in a prominent place near every entryway of such establishment, a printed card with a minimum height of fourteen (14) inches and width of eleven (11) inches, with each letter to be a minimum of one-half (½) inch in height, which shall read as follows:

WARNING

It is illegal to sell 3.2 beer to any person under 21 years of age, and it is illegal for any person under 21 years of age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are 21 years of age or older for you to purchase 3.2 beer for a person under 21 years of age.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

(b) Every licensee or proprietor of a place where malt, vinous or spirituous liquors are sold shall display at all times in a prominent place near every entryway of such establishment a printed card with a minimum height of fourteen (14) inches and width of eleven (11) inches, with each letter to be a minimum of one-half (½) inch in height, which shall read as follows:

WARNING

It is illegal to sell whiskey, wine or beer to any person under 21 years of age, and it is illegal for any person under 21 years of age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are 21 years of age or older to purchase, whiskey, wine or beer for a person under 21 years of age.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

(c) A violation of this Section is a Class C municipal offense. The penalties for this violation are set forth in Section 10-1-40 above. (Prior code 7.04.020; Ord. 4 §1, 2005)

Sec. 10-8-50. Minors on premises prohibited.

(a) It is unlawful for a person under the legal drinking age to enter, visit, frequent or be present in any establishment where fermented malt beverages or malt, vinous or spirituous liquors are sold for consumption on the premises.

(b) Any offense created under this Section shall be one of strict liability.

(c) A violation of this Section is a Class A municipal offense. Penalties for this violation are set forth in Section 10-1-40 above. (Prior code 7.04.030; Ord. 4 §1, 2005)

Sec. 10-8-60. Exceptions.

Nothing contained in Sections 10-8-30 and 10-8-50 above shall prohibit:

(1) Minors from entering or remaining in the restaurant portion of an establishment holding a hotel and restaurant liquor license or a fermented malt beverage license for consumption on the premises, for the limited purpose of consuming meals actually and regularly served; provided, however, that a minor must leave the premises after consuming said meal.

(2) Minors from passing through the bar portion of an establishment for the necessary ingress and egress to and from rest rooms.

(3) Owners or necessary maintenance employees from being in the establishment which they own or where they work.

(4) Minors between the ages of eighteen (18) and twenty-one (21) years, who are members of an entertainment group paid or employed by the licensee, from being present in a licensed establishment during the period of time they are actually working or performing.

(5) Minors from entering or remaining upon any licensed establishment which holds a club license, as defined in Section 12-47-416, C.R.S.

(6) Minors from entering, frequenting, visiting or being present in a licensed establishment during the period the establishment is hosting an authorized underage event as provided for in this Subsection. A licensed establishment may host an underage event subject to the following:

a. The licensee, proprietor, agent or employee of the licensed establishment shall apply to the City Manager for an underage event permit, which shall be reviewed and approved at the City Manager's sole discretion. The City Manager shall refer the application to the Chief of Police for the Chief's review and comment. The application shall contain an underage event permit plan which shall contain the following information:

1. Dates and times of the underage event; provided, however, that in no event shall the underage event last later than one-half (1/2) hour before the City curfew;

2. A diagram of the establishment, indicating which portions of the establishment are accessible to minors and those portions to which access will be prohibited and locked;

3. Measures to secure all alcoholic beverages to prevent consumption during the underage event;

4. Security measures for crowd control and monitoring of minors in the establishment and on the premises, including parking lots; and

5. How, to the extent reasonably practicable, all advertisements for alcohol and tobacco will be removed or covered during the period of the authorized underage event.

The City Manager shall have sole discretion in approving an underage event permit and may place those restrictions and conditions on the permit to effectuate the intent of this Article. Any adverse decision on an underage event permit by the City Manager may be appealed by the licensee, proprietor, agent or employee of the licensed establishment applying for the permit to the City Council for its review and approval. The decision of the City Council shall be the final decision on the application.

b. The following shall be conditions on all underage events:

1. NO ALCOHOLIC BEVERAGES MAY BE SOLD OR CONSUMED IN THE LICENSED ESTABLISHMENT OR ON THE PREMISES DURING THE PERIOD OF THE AUTHORIZED UNDERAGE EVENT;

2. Except for the age of the customers, all state and local liquor licensing laws shall be obeyed;

3. Any violation of state and local liquor licensing laws, this Code or conditions placed on the underage event permit by the City Manager shall be one of strict liability and shall prohibit any future underage events for a period of six (6) months, in addition to any remedies under applicable local and state laws, including, without limitation, this Article;

4. The licensee, proprietor, agent or employee of the licensed establishment shall notify the Police Department seven (7) days prior to the underage event; and

5. The underage event shall prohibit all smoking and/or use of tobacco.

(7) Minors from entering or remaining at a licensed special event for which a permit has been issued by the City pursuant to Section 6-5-120 of this Code, where such special event permit authorizes the attendance of minors and establishes appropriate conditions at the discretion of the City Council. (Prior code 7.04.040; Ord. 1 §2, 2005; Ord. 4 §1, 2005; Ord. 10 §2, 2007)

Sec. 10-8-70. Distribution to minors and others prohibited.

(a) It is unlawful for any person to sell, serve, give away, dispose of, exchange, procure, deliver or permit the sale, serving, giving or procuring of any fermented malt beverages or malt, vinous or spirituous liquors to or for any person under the legal drinking age, to a visibly intoxicated person, or to a known habitual drunkard. Said offense shall be one of strict liability.

(b) A violation of this Section is a Class A municipal offense. Penalties for this violation are set forth in Section 10-1-40 of this Chapter. (Prior code 7.04.050; Ord. 4 §1, 2005)

Sec. 10-8-80. Open container.

(a) Except as provided in Subsection (c) below, it is unlawful for any person to intentionally, knowingly, willfully or negligently have either in his or her possession or within a motor vehicle under his or her control, while in or upon any public street, highway, alley, sidewalk, park, elementary or secondary school building or grounds, or other publicly owned property located within the City limits, or parking area open to the public, a bottle, can or other receptacle which is open, which has a broken seal or the contents of which have been partially removed, and which contains any alcoholic or fermented malt beverage.

(b) Nothing in this Section shall prohibit the consumption, possession or sale of alcoholic or fermented malt beverages when the City Manager has issued a permit therefor; provided that:

(1) Such permit shall be issued only for a designated area;

(2) Such permit shall not be issued for longer than ten (10) calendar days in any year; and

(3) The City Manager has determined that the permit is necessary or desirable for conducting a public event or celebration and that adequate provision has been made for police supervision and area maintenance.

(c) It shall not be unlawful for any person to have in his or her possession or under his or her control one (1) opened container of vinous liquor removed from a licensed premises pursuant to Section 12-47-411(3.5), C.R.S.

(d) A violation of Subsection (a) or (b) above is a Class B municipal offense. Penalties for this violation are set forth in Section 10-1-40 of this Chapter. (Prior code 7.04.060; Ord. 4 §1, 2005)

Sec. 10-8-90. Purchase or possession of alcoholic or fermented malt beverages by minors.

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

(b) It is unlawful for any person to knowingly obtain, or attempt to obtain, ethyl alcohol by any method in any place where ethyl alcohol is sold when such person is under the age of twenty-one (21) years.

(c) Illegal possession of, consumption of, obtaining or attempting to obtain ethyl alcohol by an underage person is a class A municipal offense, and penalties for this violation are set forth in Section 10-1-40 of this Chapter.

(d) The court, upon sentencing a defendant pursuant to this Section may, in addition to any fine, order that the defendant perform up to twenty-four (24) hours of useful public service, subject to the conditions and restrictions of Section 16-11-701 C.R.S., and may further order that the defendant submit to and complete an alcohol evaluation or assessment and alcohol education program, or an alcohol treatment program, at such defendant's own expense.

(e) It shall be an affirmative defense to the offense described in Subsections (a) through (c) above that the ethyl alcohol was 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 ethyl alcohol was 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 ethyl alcohol in a person's body was due solely to the ingestion of a confectionary which contained ethyl alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S., the ingestion of any substances which was manufactured, designed or intended primarily for a purpose other than oral human ingestion, the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes, or the ingestion of a beverage which contained less than one-half of one percent (0.5%) of ethyl alcohol by weight.

(f) The possession or consumption of ethyl alcohol 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.

(g) Prime facie evidence of a violation of Subsections (a) through (c) above shall consist of:

(1) Evidence that the defendant was under the age of twenty-one (21) years and possessed or consumed ethyl alcohol anywhere in the City; or

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

(h) During any trial for a violation of Subsections (a) through (c) above, any bottle, can or any 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 be admissible into evidence and 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 ethyl alcohol. 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 was composed in whole or in part of ethyl alcohol.

(i) 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 ethyl alcohol to or by a person under the age of twenty-one (21) years under the conditions described in Paragraph (e)(1) above. 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 ethyl alcohol to a person under twenty-one (21) years of age.

(j) Upon the expiration of one (1) year from the date of a conviction for a violation of Subsections (a) through (c) above, any person convicted of such violation may petition the court in which the conviction was entered for an order sealing the record of such conviction. The court shall grant such petition if the petitioner has not been arrested for, charged with or convicted of any felony, misdemeanor or petty offense during the period of one (1) year following the date of such petitioner's conviction for a violation of Subsections (a) through (c) above.

(k) The qualitative result of an alcohol test shall be admissible at the trial of any person charged with a violation of Subsections (a) through (c) above upon a showing that the device used to conduct such test has been approved as accurate in detecting alcohol by the Executive Director of the Colorado Department of Public Health and Environment.

(l) Official records of the Colorado Department of Health and Environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions and certification of laboratories shall be official records of the State. Copies of such records, attested by the Executive Director of the Colorado Department of

Health and Environment or his or her deputy and accompanied by a certificate bearing the official seal for said department, which state that the Executive Director of the Department has custody of such records, shall be admissible in all courts of record and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this Subsection may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

(m) In any judicial proceeding in any court of the State concerning a charge under Subsections (a) through (c) above, the court shall take judicial notice of methods of testing a person's blood, breath, saliva or urine for the presence of alcohol and the design and operation of devices certified by the Colorado Department of Public Health and Environment for testing a person's blood, breath, saliva or urine for the presence of alcohol. This Subsection shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this Subsection shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(n) It is unlawful for any person to knowingly use any false, fraudulent or altered identification card or make other misrepresentations of age, in order to purchase or attempt to purchase any ethyl alcohol.

(o) No law enforcement officer shall enter upon any private property without probable cause to investigate any violation of this Section. (Prior code 7.04.070; Ord. 4 §1, 2005)

Sec. 10-8-100. Alcohol-related violations.

(a) It is unlawful for any person under the age of twenty-one (21) years to represent himself or herself to be over the age of twenty-one (21) years for the purpose of purchasing within the City any fermented malt beverage or malt, vinous or spirituous liquors.

(b) It is unlawful for any person under the age of twenty-one (21) years to attempt to purchase, purchase or obtain, either directly or through an intermediary, any fermented malt beverage or malt, vinous or spirituous liquors by misrepresentation or any other means.

(c) It is unlawful for any person under the age of twenty-one (21) years to possess or consume, whether actual or constructive, fermented malt beverage or malt, vinous or spirituous liquors.

(d) It is unlawful to sell fermented malt beverage or malt, vinous or spirituous liquors to any person under the age of twenty-one (21) years, or to permit any fermented malt beverage, malt or vinous liquors to be sold or dispensed by a person under eighteen (18) years of age, or spirituous liquors to be sold or dispensed by a person under twenty-one (21) years of age, or to permit any such person to participate in the sale or dispensing thereof.

(e) It is unlawful for any person, whether for remuneration or not, to procure for any person under twenty-one (21) years of age any fermented malt beverage or malt, vinous or spirituous liquors.

(f) It is unlawful in any place of business where alcoholic beverages are sold and consumed upon the premises, for any person to beg or to solicit any patron or customer of or visitor in such premises to purchase any alcoholic beverage for the one begging or soliciting. (Ord. 4 §1, 2005)

Sec. 10-8-110. 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 private, public or parochial school, 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, upon the expiration thereof, of any license in effect at such time authorizing such business within the restricted area hereby established. (Ord. 4 §1, 2005)

Sec. 10-8-120. Possession of drug paraphernalia.

(a) A person commits possession of drug paraphernalia if he or she possesses drug paraphernalia and intends to use the drug paraphernalia under circumstances in violation of state law.

(b) Any person who commits possession of drug paraphernalia commits a Class B municipal offense. (Ord. 4 §1, 2005)

Sec. 10-8-130. Possession of marijuana.

(a) Any person who knowingly possesses 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) above, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in court. The written notice or summons shall contain the name and address of such arrested or detained person, the date, time and place where such person shall appear and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One (1) copy of said notice or summons shall be given to the person arrested or detained, one (1) copy shall be sent to the 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. Any person who does not honor such written promise to appear commits the offense of failure to appear and, upon conviction, shall be punished as set forth in Section 1-4-20 of this Code.

(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 three hundred dollars (\$300.00) and, notwithstanding the provisions of Subsection (b) above, by fifteen (15) days in jail.

(d) A violation of this Section is a Class A municipal offense. Notwithstanding any other provision in this Section, penalties for this violation are set forth in Section 10-1-40 of this Chapter.

(e) 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 7.06.020; Ord. 4 §1, 2005)

Sec. 10-8-140. Abusing toxic vapors.

(a) No person shall knowingly 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. No person shall knowingly possess, buy or use any such substance for the purposes described in this Section. This Subsection shall not apply to the inhalation of anesthesia for medical or dental purposes.

(b) It is unlawful for any person knowingly to sell, offer for sale, deliver or give away to any other person any substance or product releasing toxic vapors, where the seller, offeror or deliverer 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.

(c) 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) above 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. (Ord. 4 §1, 2005)

ARTICLE IX

Weapons

Sec. 10-9-10. Definitions.

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

Ballistic knife means any knife that has a blade which is forcefully projected from the handle by means of a spring-loaded device or explosive charge.

Blackjack includes any billy, sand club, sandbag 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 silencer means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent or intended to lessen or muffle the noise of the firing of any such weapon.

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, switchblade knife 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.

Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

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.

Short rifle means a rifle having a barrel less than sixteen (16) inches long or an overall length of less than twenty-six (26) inches.

Short shotgun means a shotgun having a barrel or barrels less than eighteen (18) inches long or an overall length of less than twenty-six (26) inches.

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.

(b) It is an affirmative defense to any provision of this Article, that the act was committed by a peace officer in the lawful discharge of his or her duties. (Ord. 4 §1, 2005)

Sec. 10-9-20. Carrying concealed weapon; forfeiture.

(a) A person commits a Class A municipal offense if he or she knowingly and unlawfully:

- (1) Carries a knife concealed on or about his or her person; or
- (2) Carries a firearm concealed on or about his or her person.

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

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

(2) A person who, prior to the time of carrying a concealed weapon, has been issued a written permit pursuant to Section 18-12-105.1, C.R.S., to carry the weapon; or

(3) A peace officer, as defined in Section 18-1-901(3)(1), C.R.S.

(c) Every person convicted of any violation of this Section shall forfeit to the City such weapon so concealed.

(d) Nothing in this Section shall be construed to forbid United States Marshals, sheriffs, constables and their deputies and any regular, special or ex officio police officer or any other law enforcement officer from carrying or wearing, while on duty, such weapons as shall be necessary in the proper discharge of their duties. (Prior code 13.12.130; Ord. 4 §1, 2005)

Sec. 10-9-30. Disposition of confiscated concealed weapons.

It is the duty of every police officer, upon making any arrest and taking such a concealed weapon from the person of the offender, to deliver the weapon to the Chief of Police, to be held by him or her as evidence until the final determination of the prosecution for said offense. Upon the finding of guilt, it shall then be the duty of the Chief of Police to shall make disposition of the weapon. (Ord. 4 §1, 2005)

Sec. 10-9-40. Prohibited use of weapons.

(a) A person commits an offense if he or she:

(1) Knowingly and unlawfully displays or aims a deadly weapon at another person in a manner calculated to alarm.

(2) Recklessly or with criminal negligence fires or discharges any bow and arrow anywhere within the City.

(3) Discharges any air gun, gas-operated gun, B.B. gun, pellet gun, slingshot, or spring gun anywhere within the City.

(4) Sets off or explodes any firecracker, torpedo ball, rocket or other fireworks, except on the celebration or some holiday or event by the consent of the Mayor or City Manager.

(5) Explodes or sets off any combustible or explosive material.

(6) Knowingly sets a loaded gun, trap or device designed to cause explosion upon being tripped or approached, and leaves it unattended by a competent person immediately present.

(7) Has in his or her possession a firearm while he or she is under the influence of intoxicating liquor or of a controlled substance. Possession of a permit under Section 18-12-105(2)(c), C.R.S., is no defense to a violation of this Subsection.

(8) Knowingly aims, swings or throws a throwing star or nunchaku at another person, or knowingly possesses 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) The Mayor or the City Manager may grant an exception to the prohibitions contained in Subsection (a) above, in writing, for contests, sporting events, historical reenactments, indoor shooting galleries, arcade games or construction and/or maintenance work, or for the use of any such instruments 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. Nothing herein contained 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. Such permission shall limit the time and place of firing and shall be subject to being revoked by the City Council at any time after the same has been granted.

(c) Any violation of Paragraph (a)(4) above is a Class B municipal offense; any violation of the other paragraphs of this Section is a Class A municipal offense.

(d) It is an affirmative defense to Subsection (a) above that the actor was a peace officer or member of the armed forces of the United States or Colorado National Guard, acting in the lawful discharge of his or her duties.

(e) Every person convicted of any violation of this Section shall forfeit to the City such firearm or weapon illegally discharged or displayed. (Prior code 13.12.140; Ord. 4-03 §2; Ord. 4 §1, 2005)

Sec. 10-9-50. Selling weapons to intoxicated persons.

(a) It is a Class A municipal offense for any person to knowingly purchase, sell, loan or furnish a gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or of a controlled substance, as defined in Section 12-22-303(7), C.R.S., to any person in a condition of agitation or excitability, or to any minor under the age of eighteen (18) years.

(b) Any such unlawful purchase, sale, loan or furnishing of a weapon shall be grounds for the revocation of any license issued by the City to such person. (Prior code 13.12.150; Ord. 4 §1, 2005)

ARTICLE X

Open-Burning Fires and Fireworks

Sec. 10-10-10. Purpose.

This Article seeks to preserve the quality of life, health, safety and welfare of the City by empowering the City Council, in consultation with the Rifle Fire Protection District and the Chief of Police, to ban open-burning fires and the use, sale and possession of all fireworks from Memorial Day to Labor Day

each year. Due to the extremely volatile weather conditions that can occur in the City, Rifle Mountain Park and surrounding area, the use, sale and possession of fireworks and the open burning of fires may create a severe threat of wildfires resulting in a hazard to the citizens and property within the City and the surrounding area. Allowing for the prohibition of such activities will enable the City Council to reduce the risk of wildfires and help ensure the public peace, health and safety of the citizens. (Prior code 13.12.170; Ord. 4 §1, 2005; Ord. 8 §2, 2009)

Sec. 10-10-20. Authority and applicability.

The City, as a home rule municipality organized under Article XX of the Colorado Constitution, has the authority to adopt this Article both under the Colorado Constitution and under the express statutory language of Sections 12-28-107 and 31-15-401, C.R.S. (Prior code 13.12.170)

Sec. 10-10-30. Definitions.

For purposes of this Chapter, the following words shall have the meanings ascribed hereafter:

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 which meets the description of fireworks as set forth in the United States Department of Transportation Hazardous Materials Regulations, Title 49, C.F.R., Parts 173.88 and 173.100, and including, but not limited to, the following articles and devices commonly known and used as fireworks: toy cannons or toy canes in which explosives are used; blank cartridges; firecrackers; torpedoes; skyrockets; rockets; Roman candles; cylindrical fountains; cone fountains; wheels; ground spinners; illuminating torches and colored fire in any form; Day-Glo bombs and torches; sparklers; snakes; and any other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or devices containing any explosive substance. *Fireworks* does not include: toy caps which contain less than twenty-six hundredths (.26) of a grain of explosive compound per cap; highway flares, railroad fuses, ship distress signals, smoke candles and other emergency signal devices.

Open-burning fires means the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. *Open burning* does not include road flares, smudge pots and similar devices associated with the safety or occupational uses typically considered open flames or recreational fires. For the purposes of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

Recreational burning means an outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of three (3) feet or less in diameter and two (2) feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes. (Prior code 13.12.170; Ord. 4 §1, 2005; Ord. 8 §3, 2009)

Sec. 10-10-40. Open burning prohibited.

(a) Open burning of fires, including the sale, possession or use of fireworks, is prohibited in the City and Rifle Mountain Park from Memorial Day to Labor Day each year.

(b) Recreational burning as defined in this Article or possession of a permit issued by the Rifle Fire Protection District are the sole exceptions to the prohibition of open burning. Permits may be applied for through the Rifle Fire Protection District, which shall analyze the application based upon the activity requested, the time frame for the activity and the fire conditions at that time. Permits shall be granted in accordance with the appropriate sections of the International Fire Code and must be kept on the premises designated therein, along with approved on-site fire-extinguishing equipment, available for inspection by fire officials.

(c) Upon determining that the threat of wildfires for the City, Rifle Mountain Park and surrounding area has abated, and after consultation with the Rifle Fire Protection District, the City Manager may by executive order release the prohibition on open burning. Notice of a release shall be provided to the City Council at its next meeting following the issuance of the executive order. Notice shall be provided to the community through posting in at least six (6) conspicuous public places within the City and, if applicable, at the information signs in Rifle Mountain Park and through public access television.

(d) During periods of extreme fire danger, further restrictions, including prohibiting certain types of recreational burning, or an extension of the prohibition on open burning past Labor Day may be imposed by executive order of the City Manager, following consultation with the Rifle Fire Protection District. Notice of further restrictions shall be provided to the City Council at its next meeting following the executive order. Notice shall be provided to the community through posting in at least six (6) conspicuous public places within the City and, if applicable, at the information signs in Rifle Mountain Park, and through public access television. (Ord. 8 §4, 2009)

Sec. 10-10-50. Enforcement.

Any violation of the provisions of this Article is classified as a Class A municipal offense. In addition to criminal penalties outlined in this Chapter, the Police Department, City code enforcement officers and Fire Chief of the Rifle Fire Protection District or his or her designated representative may seize any fireworks or extinguish any open-burning fires prohibited under this Article. (Prior code 13.12.170; Ord. 8 §5, 2009)

ARTICLE XI

Noise

Sec. 10-11-10. Purpose.

This Article seeks to preserve the quality of life, health, safety and welfare of the City by preventing, reducing and monitoring noise. The hazards related to excessive noise include physical harm to community members and detrimental effects to the safety thereof, reduction in quality of life and decreased value of real, personal and business property. Eliminating activities or devices which create noise exceeding healthy levels, and regulating periods of operation for beneficial activities which produce excessive noise will improve the quality of life for all residents of the City. (Prior code 13.12.085; Ord. 4 §1, 2005)

Sec. 10-11-20. Definitions.

For purposes of this Article, the following words shall have the meanings ascribed hereafter:

Air-conditioning unit means any compressor equipment, including swamp coolers, which provides air conditioning to a residential, commercial or industrial structure. A portable electric fan is not an air-conditioning unit for purposes of this section.

Amplified sound device means any device which electronically produces, reproduces or amplifies sound, including but not limited to any radio, phonograph, tape player, compact disc player, television, microphone, loudspeaker, public address system, sound amplifier or other similar device. Any electronic bell or chime emanating sound from a church or public school, or any emergency equipment siren, bell or horn, shall not be deemed an amplified sound device for purposes of this Article.

Audible means heard or capable of being heard.

Authorized emergency vehicle shall have the meaning set forth in the *Model Traffic Code for Colorado Municipalities*, as adopted in Chapter 8 of this Code.

Commercial means any area zoned CBD, CS, PZ or TC by the City.

Commercial and industrial power equipment means any internal combustion, pneumatic or electric equipment or device used for the construction, repair, maintenance or operation of any commercial or industrial zoned structure or property, including but not limited to air conditioning units, air compressors, blowers, fans, pumps or trash compactors.

Construction noise means any noise created by or incidental to the erection, demolition, refurbishing, repositioning, removal or maintenance of any buildings, structures, appurtenances, roads or land. Construction noise emanates from a variety of internal combustion, pneumatic and electric construction equipment, including but not limited to tractors, loaders, rollers, graders, bulldozers, cranes, drillers, jackhammers, pumps and compressors.

Domestic power equipment means any internal combustion, pneumatic or electric equipment or device used for construction, repair or maintenance within any residential zoned area, including but not limited to mowers, weed trimmers, leaf blowers, chain saws, chippers, tillers or similar yard maintenance equipment.

Emergency work means any operation necessary to prevent or alleviate property damage, or to respond to situations placing persons in actual or imminent physical danger.

Engine braking device means an engine retarder or dynamic braking device using principles of compression for the purpose of braking without the use of wheel brakes, often referred to as a "Jake Brake."

Industrial means any area zoned LI or I by the City.

Motor vehicle means any vehicle driven or powered by a motor, including but not limited to passenger cars, trucks, motorcycles, campers, go-carts, snowmobiles and all-terrain vehicles.

Muffler means any device or apparatus used to abate the sound of gases escaping from an internal combustion engine.

Noise disturbance means any sound which poses a threat of danger to the health or safety of humans or animals, annoys or disturbs a reasonable person of normal sensibilities or injures personal or real property.

Outdoors means any area not part of an established structure, including the interior of any building containing no walls.

Person means any individual, association, partnership, organization, firm or corporation, including any officer, employee, department, agency or instrumentality of a State or any political subdivision of a State. *Person* shall not include any church or any member or attendee of a church or other regular place of worship for any religion or religious institution for which protection under the First Amendment of the United States Constitution has been or may be recognized.

Private property boundary means the imaginary line along the ground surface and its vertical extension separating private real property owned by one (1) person from real property owned by another or from public property.

Residential zoned area means any area zoned LDR, MDR, DR, EZ, or MDR-X by the City.

Special event permit means special authorization, issued by the City Manager, specifically contained within any permit issued by the City expressly exempting the holder of such permit from the provisions of this Article for a limited duration. (Prior code 13.12.085; Ord. 4 §1, 2005)

Sec. 10-11-30. General noise disturbance prohibition.

No person shall make or create any noise disturbances, including but not limited to the enumerated noise disturbances outlined in Sections 10-11-40 through 10-11-90 below. (Prior code 13.12.085)

Sec. 10-11-40. Construction noise.

No person shall create or permit the creation of any construction noise between the hours of 9:00 p.m. and 7:00 a.m. in or within two hundred (200) feet of a residential zoned area; provided, however, that this provision shall not prohibit outdoor construction noise created by travel upon public streets and highways, and emergency work by the City, its agents and contractors or any public utility. (Prior code 13.12.085)

Sec. 10-11-50. Commercial and industrial power equipment.

(a) Any person engaged in the installation or addition of any outdoor commercial and industrial power equipment in a commercial or industrial area located within one hundred (100) feet of a residential zoned area, and requiring a permit under Chapter 18, Article IX of this Code, shall ensure that such equipment is equipped with a noise reduction screen or similar device and is placed in a position on the premises which minimizes noise impacts upon the residential zoned area. Any violation may subject such person to permit denial, revocation or the issuance of a cessation order under Chapter 18 of this Code.

(b) No person shall install an air-conditioning unit within twenty (20) feet of any residential structure beyond the private property boundary in a residential zoned area, absent written permission from all

owners of the impacted residential property in the impacted residential zoned area. (Prior code 13.12.085)

Sec. 10-11-60. Domestic power equipment.

No person shall operate any domestic power equipment between the hours of 10:00 p.m. and 6:00 a.m. in, or within two hundred (200) feet of, a residential zoned area; provided, however, that such prohibition shall not preclude the operation of snow blowers or similar snow removal equipment. (Prior code 13.12.085)

Sec. 10-11-70. Trash compacting and collection.

No person shall operate any trash compacting mechanism on any motor vehicle or on any premises, nor shall any person engage in the collection of trash, rubbish, garbage or refuse between the hours of 8:00 p.m. and 6:00 a.m. in, or within two hundred (200) feet of, a residential zoned area, or within two hundred (200) feet of a hotel, motel or bed and breakfast establishment. (Prior code 13.12.085)

Sec. 10-11-80. Amplified sound devices.

(a) No person shall operate an outdoor amplified sound device in a commercial or industrial area at any time within two hundred (200) feet of any private property boundary; provided, however, that such provision shall not apply to such devices emanating sound from the County Fairgrounds, any City park, recreation site or athletic field, any public school or any public or private health care facility between the hours of 9:00 a.m. and 10:00 p.m. Sunday through Thursday, and between the hours of 9:00 a.m. and 12:00 a.m. Friday and Saturday, or hours allowed by a special event permit. For purposes of this Subsection, the owner of the property, or the leaseholder of such property if leased, shall be presumed to be the operator of an amplified sound device upon such property.

(b) No person shall operate an amplified sound device in a residential zoned which produces an audible sound more than three hundred (300) feet beyond the private property boundary containing the amplified sound device, nor shall any such operation produce an audible sound more than one hundred (100) feet beyond such property between the hours of 12:00 a.m. and 7:00 a.m. For purposes of this Subsection, the owner of the property, or the leaseholder of such property if leased, shall be presumed to be the operator of an amplified sound device upon such property. (Prior code 13.12.085)

Sec. 10-11-90. Motor vehicle noise.

(a) Muffler required. No person shall operate or cause to be operated any motor vehicle not equipped with an engine muffler or other sound-dissipative device conforming to vehicle manufacturer's specifications, in good working order and in constant working operation to prevent excessive noise. No person shall remove, modify or bypass any muffler or sound-dissipative device on a motor vehicle.

(b) Engine braking devices. No person shall operate any motor vehicle equipped with an engine braking device unless such engine braking device is equipped with a muffler or sound-dissipative device in good working order and in constant working operation.

(c) Excessive idling. No person shall operate or cause to be operated an engine of an unattended standing motor vehicle for a period in excess of five (5) minutes, if such vehicle is parked in or within

thirty (30) feet of a residential zoned area or if such vehicle is parked on a residential street or premises less than thirty (30) feet from the private property boundary of another residential premises; provided, however, that any operation of an engine of a standing motor vehicle within an enclosed structure shall not be subject to the provisions of this Subsection.

(d) Horns. No person shall at any time sound any horn or other audible motor vehicle signal device, unless it is used as a warning to prevent or avoid a traffic accident or as permitted by other statute or ordinance.

(e) Motor vehicle amplified noise.

(1) No person shall operate or cause to be operated any amplified sound device contained within or attached to any motor vehicle which emits audible sound more than two hundred (200) feet from the emitting source. The provisions of this Subsection shall not apply to any City vehicles, public utility vehicles or authorized emergency vehicles. For purposes of this Subsection, the driver of such motor vehicle shall be presumed to be the operator of the emitting amplified sound device.

(2) The provisions of this Subsection shall not apply to any ice cream truck duly authorized by the City to sell products on the local streets of the City as defined in Section 16-1-220 of this Code. Ice cream trucks may reasonably emanate amplified and/or nonamplified sound in excess of two hundred (200) feet only on local streets as defined in Section 16-1-220 of this Code and only during the hours between 9:00 a.m. and one (1) hour after sunset. Such reasonable emanation of amplified sound shall not disturb the peace of the local street. (Prior code 13.12.085)

Sec. 10-11-100. Exemption from noise disturbance prohibition.

Any noise disturbance otherwise prohibited by this Article, made pursuant to the express authorization of a special event permit or made or caused by an authorized emergency vehicle shall be exempt from the provisions of this Article. (Prior code 13.12.085)

Sec. 10-11-110. Enforcement.

Any violation of the provisions of this Article is classified as a Class B municipal offense. In lieu of or in addition to civil penalties outlined in this Section, the City Manager may issue an order requiring an abatement of any source of sound alleged to be in violation of this Article within a reasonable time period. (Prior code 13.12.085)

Sec. 10-11-120. 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. 4 §1, 2005)

Sec. 10-11-130. Sirens, whistles, gongs and red lights.

It is unlawful for any person to carry or use upon a vehicle, other than Police or Fire Department vehicles or emergency vehicles for public use, any gong, siren, whistle or red light similar to that used on ambulances or vehicles of the Police and Fire Departments. (Ord. 4 §1, 2005)

ARTICLE XII

Smoking Ban

Sec. 10-12-10. Purpose.

This Article seeks to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments and places of employment. The purpose of such smoking restrictions is to preserve and improve the health, comfort and environment of the citizens of the City by limiting exposure to tobacco smoke. (Ord. 22 §2, 2006)

Sec. 10-12-20. Definitions.

For the purposes of this Article, the following words shall have the meanings ascribed hereunder:

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 indoor 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.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income, or fifty thousand dollars (\$50,000.00) in annual sales, from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income, or fifty thousand dollars (\$50,000.00) in annual sales, from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a *cigar-tobacco bar* and shall not thereafter be included in the definition regardless of sales figures.

Employee:

a. Means any person who:

1. Performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; or

2. Provides uncompensated work or services to a business or nonprofit entity.

b. Includes every person described in Subparagraph a. above, 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 corporate instrumentality or unit of state or local government.

Entryway means the outside of the front or main doorway leading into a building or facility that is not exempted under Section 10-12-50 of this Code. *Entryway* also includes the area of public or private property within the specified radius of fifteen (15) feet outside 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 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; 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 Colorado law.

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

Smoking means the burning of a lighted cigarette, cigar, pipe or any other matter or 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. 22 §2, 2006)

Sec. 10-12-30. General smoking restrictions.

(a) Except as provided in Section 10-12-40 below, 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, 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, doctors' offices and other health care-related facilities.
- (11) Places of employment as follows:
 - a. Any place of employment that is not exempted.
 - b. In the case of employers who own facilities otherwise exempted from this Section, 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 of 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) Common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters.
- (22) Public buildings.
- (23) Auditoria.
- (24) Theaters.
- (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) Entryways of all buildings and facilities listed in this Section.

(b) A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2006. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and of at least four (4) inches by six (6) inches in size, stating:

"Smoking Allowed. Children under eighteen years of age must be accompanied by a parent or guardian."

(Ord. 22 §2, 2006)

Sec. 10-12-40. Exceptions to smoking restrictions.

This Article shall not apply to:

(1) Private homes, private residences and private automobiles; except that Chapter 10, Article XII 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 does not exceed twenty-five percent (25%);

(4) Any retail tobacco business;

(5) A cigar-tobacco bar;

(6) An airport smoking concession;

(7) The outdoor area of any business;

(8) A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees;

(9) A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000.00); or

(10) The retail floor plan, as defined in Section 12-47.1-509, C.R.S., of a licensed casino. (Ord. 22 §2, 2006)

Sec. 10-12-50. Optional prohibitions.

(a) The owner or manager of any place not specifically listed in Section 10-12-30 of this Article, including a place otherwise exempted under Section 10-12-40, 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 10-12-30 of this Article, including a place otherwise exempted under Section 10-12-40, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Subparagraph 10-12-30(a)(11)b., the owner or manager shall post a sign in the smoke-free work area as provided in Subsection (a) above. (Ord. 22 §2, 2006)

Sec. 10-12-60. Unlawful acts; penalty.

(a) It is unlawful for a person who owns, manages, operates or otherwise controls the use of a premises subject to 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) Upon conviction, a person who violates this Article 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. 22 §2, 2006)

Sec. 10-12-70. Severability.

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid provision or applications, and to this end the provisions of this Article are declared to be severable. (Ord. 22 §2, 2006)