

CHAPTER 10

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ARTICLE I

Criminal Code

Sec. 10-1. Jurisdiction.

This Chapter shall apply to conduct and occurrences within the corporate limits of the Town, the manner of which the Town has jurisdiction and authority to regulate. (Ord. 463, § 1, 1991)

Sec. 10-2. Interpretation.

This Chapter shall be so interpreted and construed as to effectuate its general purpose. Articles and section headings of this Article and the adopted Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof. (Ord. 463, § 1, 1991)

Secs. 10-3--10-10. Reserved.

ARTICLE II

Offenses Against the Public

Sec. 10-11. Resisting arrest.

(a) It shall be unlawful for any person to resist arrest. For purposes of this Section, a person commits resisting arrest if he or she intentionally 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.

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

(c) The term *peace officer*, as used in this Section and Section 10-12, means a police officer in uniform, or if out of uniform, who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted. (Prior code 16-2)

Sec. 10-12. Obstructing peace officer or fireman.

(a) It shall be unlawful for any person to obstruct a peace officer or fireman. For purposes of this Section, a person commits obstructing a peace officer or fireman when, by using or threatening to use violence, force or physical interference or obstacle, he or she intentionally obstructs, impairs or hinders the enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his or her official authority, or intentionally obstructs, impairs or hinders the prevention, control or abatement of fire by a fireman acting under color of his or her official authority.

(b) It is no defense to a prosecution under this Section that the peace officer was acting in an illegal manner if he or she was acting under color of his or her official authority as defined in Section 10-11(b).

(c) This Section does not apply to obstruction, impairment or hindrance of the making of an arrest. (Prior code 16-3)

Sec. 10-13. Accessory to crime.

(a) It shall be unlawful for a person to be an accessory to a crime. For purposes of this Section, a person is an accessory to a crime if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he or she renders assistance to such person, as provided in this Section.

(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) In order to be an accessory to a crime, the offender must know that the person being assisted has committed or 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. (Prior code 16-4)

Sec. 10-14. Refusing to aid peace officer.

It shall be unlawful for a person to refuse to aid a peace officer. For violation of this Section, a person must be eighteen (18) years of age or older and, upon command by a person known to him or

her to be a peace officer, he or she unreasonably refuses or fails to aid such peace officer in effecting or securing an arrest or preventing the commission by another of any offense. (Prior code 16-5)

Sec. 10-15. Impersonating a peace officer.

It shall be unlawful for a person to falsely pretend to be a peace officer and perform an act in that pretended capacity. (Prior code 16-6)

Sec. 10-16. Impersonating a public servant.

(a) It shall be unlawful for any person to impersonate a public servant. For purposes of this Article, a person commits impersonating a public servant if he or she falsely pretends to be a public servant other than a peace officer and performs any act in that pretended capacity.

(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 16-7)

Sec. 10-17. Aiding escape.

(a) It shall be unlawful for any person to aid the escape of another as provided in this Section. For purposes of this Section, any person who aids, abets or assists another person to escape or attempt to escape from custody or confinement commits the 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 Section 10-13. (Prior code 16-8)

Sec. 10-18. Inducing prisoners to absent selves.

It shall be unlawful for any person to invite, entice, solicit or induce any prisoner in custody or confinement, to absent himself or herself from his or her work, or substantially delay or hinder such prisoner in his or her work. (Prior code 16-9)

Sec. 10-19. Aiding escape from civil process.

It shall be unlawful for any person to aid, abet or assist the escape of a person in legal custody under civil process. (Prior code 16-10)

Sec. 10-20. Escape.

It shall be unlawful for any person, while being in custody or confinement under a sentence following conviction, to escape from said custody or confinement. (Prior code 16-11)

Sec. 10-21. Obstructing highway or other passageway.

(a) It shall be unlawful for any person to obstruct a highway or other passageway, as provided in this Section. For purposes of this Section, a person commits an offense if without legal privilege he or she intentionally, knowingly or recklessly:

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

(2) Disobeys a reasonable request or order to move issued by a person he or she knows to be a peace officer, 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 render impassable or to render passage unreasonably inconvenient or hazardous. (Prior code 16-12)

Sec. 10-22. False alarms.

Any person who shall make a false alarm of fire by outcry or by using any bell or other sounding instrument, or shall make any false alarm of any kind calculated to disturb the peace, shall be deemed guilty of an offense. (Prior code 12-1)

Sec. 10-23. Desecration of venerated objects.

(a) It shall be unlawful for any person to intentionally desecrate any public monument, structure or place of worship or burial or desecrate in a public place any other object of veneration by the public or a substantial segment thereof.

(b) The term *desecrate* means defacing, damaging, polluting or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover his or her action or its result. (Prior code 16-19)

Sec. 10-24. Loitering.

(a) For purposes of this Section, the word *loiter* shall mean to be dilatory, to stand idly around, to linger, delay or wander about, to remain, abide or tarry in a public place.

(b) It shall be unlawful for any person to:

(1) Loiter for the purpose of begging;

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

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

(4) Loiter in or about a school building or grounds, not having any reason or relationship involving custody or responsibility for, a pupil or any other specific, legitimate reason for being there and not having written permission from a school administrator; or

(5) Loiter with one (1) or more persons for the purpose of unlawfully using or possessing a narcotic or dangerous drug.

(c) Lawful acts in the course of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise, shall not be held to be in violation of this Section. (Prior code 16-20)

Secs. 10-25—10-40. Reserved.

ARTICLE III

Offenses Against the Person

Sec. 10-41. Assault.

It shall be unlawful for any person to commit the offense of assault as provided in this Section. For purposes of this Section, a person commits the crime of assault if he or she intentionally, knowingly or recklessly causes bodily injury to another person. (Prior code 16-14)

Sec. 10-42. Criminal intimidation.

It shall be unlawful for any person to commit the offense of criminal intimidation as provided in this Article. For purposes of this Article, whoever without legal authority threatens to confine, restrain or cause bodily harm to the threatened person or another, or to damage the property or reputation of the threatened person or another with intent thereby to induce the threatened person or another against his or her will to do an act or refrain from doing a lawful act commits criminal intimidation. (Prior code 16-15)

Sec. 10-43. Reckless endangerment.

It shall be unlawful for any person to commit the offense of reckless endangerment as provided in this Section. For purposes of this Section, a person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment. (Prior code 16-16)

Sec. 10-44. 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;

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

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

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

(6) Makes repeated communications at inconvenient hours or in offensively coarse language.

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

(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received. (Prior code 16-21; Ord. 488, 1994)

Sec. 10-45. Disorderly conduct.

(a) It shall be unlawful for any person to commit the offense of disorderly conduct as provided in this Section. For purposes of this Section, a person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

(1) Makes a course and obviously offensive utterance, gesture or display in a public place;

(2) Abuses or threatens a person in a public place in an obviously offensive manner;

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

(4) Fights with another in a public place; or

(5) Not being a peace officer, discharges a firearm in a public place other than a shooting gallery or rifle range.

(b) It is an affirmative defense to prosecution under Subsection (a)(2) that the actor had significant provocation for his or her abusive or threatening conduct. (Ord. 473, 1992)

Secs. 10-46—10-60. Reserved.

ARTICLE IV

Offenses Against Property

Sec. 10-61. Criminal mischief.

It shall be unlawful for any person to intentionally damage the real or personal property of one (1) or more other persons in the course of a single criminal episode. (Prior code 16-75)

Sec. 10-62. Criminal trespass.

It shall be unlawful for any person to commit the offense of criminal trespass, as provided in this Section. For purposes of this Section, a person commits the crime of criminal trespass if he or she unlawfully enters or remains in or upon premises, whether enclosed in a manner designed to exclude intruders or fenced or not. (Prior code 16-76)

Sec. 10-63. Remaining on certain premises after request to leave prohibited.

(a) It shall be unlawful for any person to congregate or remain in any place of business, school or private residence or on the grounds thereof within the Town against the will of the proprietor or the person in charge of such premises after having been requested by such person to vacate said premises.

(b) For the purposes of this Section, the terms *grounds adjacent thereto* shall include but not be limited to any highway, street, alley or sidewalk within the Town adjacent to the property in question. (Prior code 16-77)

Sec. 10-64. Criminal tampering.

It shall be unlawful for any person to commit the offense of criminal tampering as provided in this Section. For purposes of this Section, a person commits the crime of criminal tampering if, with intent to cause interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he or she tampers with property of such utility or institution. In addition, a person commits the crime of criminal tampering if he or she tampers with property of another with intent to cause injury, inconvenience or annoyance to that person or to another, or if he or she makes unauthorized connections with property of a utility. (Prior code 16-78)

Sec. 10-65. Defacing or destruction of written instruments.

Every person who defaces or destroys any written instrument evidencing a property right, whether vested or contingent, with the intent to defraud shall be deemed guilty of defacing or destruction of written instruments. (Prior code 16-79)

Sec. 10-66. Defacing and destroying landmarks.

Anyone who intentionally cuts, fells, alters or removes any certain boundary tree, monument or other allowed landmark, to the damage of any person; or anyone who intentionally defaces, removes, pulls down, injures or destroys any location stake, side post, corner post, landmark or monument, or any other legal land boundary monument in this State, designating or intending to designate the location, boundary or name of any mining claim, lode or vein of mineral or the name of the

discoverer, or date of discovery thereof, shall be deemed guilty of defacing and destroying landmarks. (Prior code 16-80)

Sec. 10-67. Defacing or destroying historical monuments.

It shall be unlawful for any person to destroy, deface, remove or damage any historical monument. (Prior code 16-81)

Sec. 10-68. Defacing or aiding in defacing public or private property.

(a) It shall be unlawful for any person to deface or cause, aid in or permit the defacing of any public or private property without the consent of the owner of such property.

(b) It shall be unlawful to mark, injure, damage, destroy or deface any public property owned by the Town, specifically but not limited to cemetery property, library property, water works property, sewer works property, Town Hall and storage buildings. (Prior code 16-82)

Sec. 10-69. Defacing posted notice.

Any person who intentionally mars, destroys or removes any posted notice authorized by law shall be deemed guilty of defacing a posted notice. (Prior code 16-83)

Sec. 10-70. Criminal use of a noxious substance.

Any person who deposits on the land or in the building or vehicle of another, without his or her consent, any stink-bomb or device, irritant or offensive-smelling substance, with the intent to interfere with another's use or enjoyment of the land, building or vehicle shall be deemed guilty of criminal use of a noxious substance. This Section shall not apply to the reasonable use of noxious substances by a peace officer in the performance of his or her duties. (Prior code 16-84)

Sec. 10-71. Petty theft unlawful.

It shall be unlawful for any person knowingly to obtain or exercise control over anything, of the value of less than two hundred dollars (\$200.00), of another without authorization, by threat or deception or knowing said thing of such value to have been stolen, when the person who so obtains or exercises control over such thing of such value:

- (1) Intends to deprive such other person permanently of the use or benefit of such thing of value;
- (2) Knowingly uses, conceals or abandons such thing of value as to deprive such other person permanently of the use or benefit of the same;
- (3) Uses, conceals or abandons such thing of value, intending that such use, concealment or abandonment will deprive such other person permanently of the use or benefit of the same; or
- (4) Demands any consideration to which such person is not legally entitled, as a condition of restoring such thing of value to such other. (Prior code 16-85)

Sec. 10-72. Possession of burglary tools.

It shall be unlawful for any person to possess burglary tools. For purposes of this Section, a person commits possession of burglary tools if he or she possesses any explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking, intends to use the thing possessed, or knows that some person intends to use the thing possessed in the commission of such an offense. (Prior code 16-1)

Sec. 10-73. Unlawful to discard or abandon iceboxes or similar items.

It shall be unlawful for any person to abandon or discard in any public or private place accessible to children any chest, closet, piece of furniture, refrigerator, icebox or other article having a compartment of a capacity of one and one-half (1½) cubic feet or more, and having a door or lid which when closed cannot be opened easily from the inside or for any person, being the owner, lessee or manager of such place, to knowingly permit such abandoned or discarded article to remain in such condition. (Prior code 16-13)

Sec. 10-74. Littering of public and private property.

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

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

(c) 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, or he or she 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.

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

(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 any or all of the fine in excess of the minimum fine upon the condition that the convicted person gather and remove from specified property litter found thereon, or upon the condition that the convicted person pick up litter from designated property at the time

prescribed by and a place within the jurisdiction of the court for not less than eight (8) hours upon a second or subsequent conviction.

(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, dropped or dumped. (Ord. 474, 1992)

Sec. 10-75. Fraud by check.

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

(1) *Check* means a written, unconditional order to pay a certain sum in money, drawn on a bank, payable on demand and signed by the drawer.

(2) *Drawee* means the bank upon which a check is drawn.

(3) *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 himself or herself.

(4) *Insufficient funds* means not having a sufficient balance in account with a bank or other drawee for the payment of a check or order when it is presented for payment and it remains unpaid thirty (30) days after such presentment.

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

(b) A person commits a misdemeanor if he or she issues or passes a check or similar sight order for the payment of money, knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(c) This Section does not relieve the prosecution from the necessity of establishing the required knowledge by evidence. 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 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 presentment within thirty (30) days after issue. (Ord. 546, § 1, 1996)

Secs. 10-76—10-90. Reserved.

ARTICLE V

Offenses Relating to Public Morals

Sec. 10-91. Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them:

- (1) *Harmful to minors* means obscenity which:
 - a. Predominantly appeals to the prurient interest of minors;
 - b. Goes substantially beyond customary limits of candor recognized in the adult community with respect to what is suitable for minors; and
 - c. Is utterly without redeeming social value for minors.
- (2) *Knowingly* means having general knowledge of, reason to know, a belief or ground for belief which warrants further inspection or inquiry concerning:
 - a. The character and content of any material which is reasonably susceptible of examination by the defendant;
 - b. If the offense involves conduct with respect to a minor, the age of the minor, but the defendant does not act knowingly with respect to the age of a minor if he or she shows as an affirmative defense that he or she was honestly mistaken as to such age after making a reasonable and bona fide attempt to ascertain the true age of the minor.
- (3) *Material* means any physical object used as a means of presenting or communicating information, knowledge, sensation, image or emotion to or through the visual, aural, tactile or olfactory senses of a human being.
- (4) *Minor* means a person who has not reached his or her eighteenth birthday.
- (5) *Obscene* means that which, considered as a whole, predominantly appeals to prurient interests, i.e., a lustful or morbid interest in nudity, sex, sexual conduct, sexual excitement, excretion, sadism, masochism or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in describing, portraying or dealing with such matters and is utterly without redeeming social value.
- (6) *Owner* includes any person who has a financial interest in an activity or thing entitling him or her to participate in the promotion, management or proceeds of the activity or thing. It does not include a person whose connection with the activity entitles him or her only to reasonable salary or wages for services actually rendered.
- (7) *Performance* means the presentation or showing to another person or for recording by any means of:

a. Any material, including the information, knowledge, sensation, image or emotion which that material presents or communicates; or

b. Any live physical presence or live physical activity, including vocal activity.

(8) *Predominant appeal, customary limits of candor and redeeming social value* of a thing shall be judged by reference to the average adult in the community as a whole, except that where the thing appears to be designed for, or is made available to, minors, they shall be judged with reference to the average minor in the age group for which the thing appears to be designed or to which it is made available.

(9) *Promote* means to produce, direct, perform in, manufacture, issue, sell, give, provide lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise for pecuniary gain or offer or agree to do any of these things for pecuniary gain. (Prior code 16-107)

Sec. 10-92. Promoting obscenity.

It shall be unlawful for any person to promote obscenity as provided in this Section. For purposes of this Section, a person commits promoting obscenity if he or she knowingly:

(1) Promotes, or possesses with intent to promote, any obscene material; or

(2) As owner, producer, director, manager or performer, promotes any obscene performance or any portion of such a performance which contributes to the obscenity of the performance as a whole. (Prior code 16-108)

Sec. 10-93. Promoting obscenity to a minor.

It shall be unlawful for any person to promote obscenity to a minor as provided in this Section. For purposes of this Section, a person commits promoting obscenity to a minor if he or she knowingly:

(1) Promotes to a minor any material which, taken as a whole, is harmful to minors;

(2) As owner, producer, director, manager or performer, promotes to a minor a performance which, taken as a whole, is harmful to minors, or admits a minor to premises where such a performance is exhibited or takes place; or

(3) Permits a minor to participate in a performance which, taken as a whole, is harmful to minors. (Prior code 16-109)

Sec. 10-94. Evidence of violation of Sections 10-92 and 10-93.

In prosecutions under Sections 10-92 and 10-93, evidence of the circumstances of the production, presentation, sale, dissemination, distribution, advertising or publicity connected with the material or performance which tend to show that the material or performance is being promoted for the sake of its prurient appeal shall be admitted in evidence as bearing upon the nature of the material or performance. (Prior code 16-110)

Sec. 10-95. Prostitution prohibited.

It shall be unlawful for any person to commit the offense of prostitution as provided in this Section. For purposes of this Section, any person who performs, offers or agrees to perform any act of sexual intercourse or any act of deviate sexual intercourse with any person not his or her spouse in exchange for money or other thing of value commits prostitution. (Prior code 16-111)

Sec. 10-96. Soliciting for prostitution.

It shall be unlawful for any person to commit the offense of soliciting for prostitution as provided in this Section. For purposes of this Section, a person commits soliciting for prostitution if he or she:

- (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 16-112)

Sec. 10-97. Pandering.

It shall be unlawful for any person to commit the offense of pandering as provided in this Section. For purposes of this Section, any person who knowingly arranges or offers to arrange for money or other thing of value a situation in which a female may practice prostitution commits pandering. (Prior code 16-113)

Sec. 10-98. Keeping a place of prostitution.

It shall be unlawful for any person to commit the offense of keeping a place of prostitution as provided in this Section. For purposes of this Section, 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 keeping a place of prostitution if he or she:

- (1) Knowingly grants or permits the use of such place for the purpose of prostitution; or
- (2) Permits the continued use of such place for the purpose of prostitution after becoming aware of acts or circumstances from which he or she should reasonably know the place is being used for purposes of prostitution. (Prior code 16-114)

Sec. 10-99. Patronizing a prostitute.

It shall be unlawful for any person to commit the offense of patronizing a prostitute, as provided in this Section. For purposes of this Section, any person who performs any of the following with a person not his or her spouse commits patronizing a prostitute:

- (1) Engages in an act of sexual intercourse or of deviate sexual conduct with a prostitute; or
- (2) Enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct. (Prior code 16-115)

Sec. 10-100. Aiding prostitution prohibited.

Any person who by word, gesture or action endeavors to further the practice of prostitution in any public place or within public view commits aiding prostitution. (Prior code 16-116)

Sec. 10-101. Promoting sexual immorality.

(a) It shall be unlawful for any person to promote sexual immorality as provided in this Section. For purposes of this Section, any person who, for pecuniary gain, furnishes or makes available to another person any facility, knowing that the same is to be used for or in aid of sexual intercourse between persons who are not husband and wife, or for or in aid of deviate sexual intercourse, or who shall advertise in any manner that he or she furnishes or is willing to furnish or make available any such facility for such purposes, commits promoting sexual immorality.

(b) *Facility*, as used in this Section, means any place or thing which provides seclusion, privacy, opportunity, protection, comfort or assistance to or for a person or persons engaging or intending to engage in sexual intercourse or deviate sexual intercourse. (Prior code 16-117)

Sec. 10-102. Public indecency.

It shall be unlawful for any person to commit the offense of public indecency as provided in this Section. For purposes of this Section, any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

- (1) An act of sexual intercourse;
- (2) An act of deviate sexual intercourse;
- (3) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
- (4) A lewd fondling or caress of the body of another person. (Prior code 16-118)

Secs. 10-103—10-120. Reserved.

ARTICLE VI

Alcoholic Beverages

Sec. 10-121. Definitions.

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

- (1) *Alcoholic beverages* or *alcoholic liquors* means malt, vinous or spirituous liquors.
- (2) *Fermented malt beverage* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in

water containing not less than one-half of one percent (0.5%) and not more than three and two-tenths percent (3.2%) alcohol by weight.

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

(4) *Spirituous liquors* means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (0.5%) alcohol and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except malt liquors and vinous liquors shall be construed to be spirituous liquor.

(5) *Vinous liquors* means wine and fortified wines which contain not less than one-half of one percent (0.5%) and not more than twenty-one percent (21%) of alcohol by volume and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar. (Ord. 463, § 1, 1991)

Sec. 10-122. Possession in public places prohibited.

(a) It shall be unlawful for any person to serve, consume or have any open container of alcoholic, malt, vinous or spirituous liquor or fermented malt beverage when on, in or using by conveyance or otherwise, any public street, parking lot, alley, park, public place, avenue or sidewalk, within the Town limits.

(b) Subsection (a) above is subject to and modified to the extent it is in conflict with Section 11-86 authorizing the consumption of 3.2 beer in Hays Park.

(c) This Section shall not apply to the serving or consumption of alcoholic beverages in the Johnstown Community Center when the service or consumption of alcoholic beverages is in conjunction with an event sponsored by nonprofit organizations or authorized social gatherings (such as banquets, luncheons, wedding receptions, class reunions) held in the area specified, provided that no fee is charged for the alcoholic beverages. (Ord. 458, 1990; Ord. 472, 1992)

Sec. 10-123. Sales near schools.

It shall be unlawful for any person to sell, offer or expose for sale or gift, beer 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. (Prior code 3-3)

Sec. 10-124. Restrictions concerning sales to and dispensing by minors.

It shall be unlawful for any person to sell malt, vinous or spirituous liquors as defined by state law to any person under the age of twenty-one (21) years or to permit any malt or vinous liquors to be sold or dispensed by a person under twenty-one (21) 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. (Prior code 3-4)

Sec. 10-125. Sale to minors.

(a) It is unlawful to sell fermented malt beverages with an alcoholic content of three point two percent (3.2%) or less to any person under the age of twenty-one (21) years, or to any person between the hours of midnight and 5:00 a.m., or for any person under twenty-one (21) years to purchase or possess the same. It is unlawful to permit any fermented malt beverages with an alcoholic content of three point two percent (3.2%) or less to be sold or dispensed by a person under the age of twenty-one (21) years or to permit any such person to participate in the sale or dispensing thereof.

(b) It is unlawful for any person under the age of twenty-one (21) years to represent himself or herself to be of the age of twenty-one (21) years or more for the purpose of purchasing within the Town any fermented malt beverage with an alcoholic content of three point two percent (3.2%) or less.

(c) It is unlawful for any person over the age of twenty-one (21) years to purchase or attempt to purchase three point two percent (3.2%) beer for a person under the age of twenty-one (21) years.

(d) It is unlawful to fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen (14) inches and a 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 TWENTY-ONE YEARS OF AGE, AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE 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 TWENTY-ONE YEARS OF AGE OR OVER FOR YOU TO PURCHASE 3.2 BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE.

FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

(Ord. 463, § 1, 1991)

Sec. 10-126. Illegal possession or consumption of alcoholic beverages by an underage person.

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

(1) *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.

(2) *Private property* means any dwelling and its curtilage which is being used by a natural person or natural persons 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 alcoholic beverages or upon which alcoholic beverages are sold; or

c. Any establishment which leases, rents or provides accommodations to members of the public generally.

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

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

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

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

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

(e) Prima facie evidence of this violation of Subsection (b) above shall consist of:

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

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

(f) During any trial for a violation of Subsection (b) 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 not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. (Ord. 478, 1992)

Secs. 10-127—10-140. Reserved.

ARTICLE VII

Gambling

Sec. 10-141. Definitions.

The following definitions shall have the meanings ascribed to them herein:

(1) *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.

(2) *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 of 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.

(3) *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.

(4) *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.

(5) *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 shall be presumed to be intended to be used for professional gambling.

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

(7) *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.

(8) *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 16-30)

Sec. 10-142. Gambling and professional gambling.

(a) It shall be unlawful for any person to engage in gambling as defined in this Article.

(b) It shall be unlawful for any person to engage in professional gambling as defined in this Article. (Prior code 16-31)

Sec. 10-143. Seizure and destruction of gambling devices, records and proceeds.

All gambling devices, gambling records and gambling proceeds are subject to seizure by any member of the Police Department and may be confiscated and destroyed by order of a court acquiring jurisdiction. Gambling proceeds shall be forfeited to the State and shall be transmitted by court order to the general fund of the State. (Prior code 16-32)

Sec. 10-144. Possession of gambling device or record.

It shall be unlawful for any person to possess a gambling device or record. A person who owns, manufactures, sells, transports, possesses or engages in any transaction designed to affect the ownership, custody or use of a gambling device or gambling record, knowing that it is to be used in professional gambling, commits possession of a gambling device or record. (Prior code 16-33)

Sec. 10-145. Transmitting or receiving gambling information, installing or maintaining equipment for transmission or receipt of gambling information prohibited.

(a) It shall be unlawful for any person to knowingly transmit or receive gambling information by telephone, telegraph, radio, semaphore or other means, or knowingly install or maintain equipment for the transmission or receipt of gambling information.

(b) Facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished, shall not be seized except in connection with an alleged violation of this Section by such public utility, and shall be forfeited only upon conviction of such public utility therefor. (Prior code 16-34)

Sec. 10-146. Maintaining, aiding or permitting gambling premises prohibited; gambling premises declared nuisance.

It shall be unlawful for any person, as owner, lessee, agent, employee, operator or occupant to knowingly maintain or aid or permit the maintaining of a gambling premise. All gambling premises are common nuisances which shall be subject to abatement as provided by law. (Prior code 16-35)

Secs. 10-147—10-160. Reserved.

ARTICLE VIII

Noise

Sec. 10-161. Unnecessary noises generally prohibited and declared nuisance.

The making of unnecessary noises upon, near or adjacent to the streets, highways and other public places in the Town is hereby declared to be a public nuisance. The enumeration of the particular offenses particularly defined in this Article shall not be construed as limiting the generality of this Section, or limiting the offenses hereunder to the particular offenses herein enumerated. It shall be unlawful for any person to make, continue or cause to be made or continued any unnecessary or unusual noise, whether in the operation of any machine or the exercise of any trade or calling or otherwise any noise which either annoys, injures or endangers the comfort, repose, health or safety of others, unless the making and continuing of the same is necessary for the protection or preservation of property or health, safety, life or limb of some person. (Prior code 16-60)

Sec. 10-162. Noise, unreasonable.

No person shall make, continue or cause to be made or continued any unreasonable noise; and no person shall knowingly permit such noise upon any premises owned or possessed by such person or under such person's control. For purposes of this section, members of the Police Department are empowered to make a prima facie determination as to whether a noise is unreasonable. (Ord. 463, § 1, 1991)

Sec. 10-163. Limitations on loudspeakers.

It shall be unlawful to play, operate or use any device known as a sound track, loudspeaker or sound amplifier, radio or phonograph with loudspeaker or sound amplifier or any instrument of any kind or character which emits loud and raucous noises and is attached to and upon any vehicle upon public places unless such person in charge of such vehicle shall have first applied to and received permission from the Mayor or Chief of Police to operate any such vehicle so equipped. (Prior code 16-61)

Sec. 10-164. Mufflers.

It shall be unlawful for any person to operate a motor vehicle which shall not at all times be equipped with a muffler upon the exhaust thereof in good working order and in constant operation to prevent excessive or unusual noise, and it shall be unlawful for any person operating any motor vehicle to use a cutout, bypass or similar muffler elimination appliance. (Prior code 16-62)

Sec. 10-165. Sirens, whistles, gongs and red lights.

It shall be unlawful for any person to carry or use upon any 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. (Prior code 16-63)

Sec. 10-166. Noisy animals.

It shall be unlawful for any person to own, keep, have in his or her possession or harbor any domesticated animal which, by frequent or habitual howling, barking, meowing, squawking or otherwise, shall cause annoyance or disturbance to persons in the neighborhood; provided that the provisions of this Section shall not apply to hospitals conducted for the treatment of small animals which are approved by the Town or to premises occupied or used by the Town pound. (Prior code 16-64)

Sec. 10-167. Use of jake brakes prohibited.

It shall be unlawful for any person to use within the Town limits a device which is commonly called a jake brake, such device having been determined by the Board of Trustees to cause an unreasonable and unnecessary noise, and it is hereby declared to be a public nuisance. A jake brake is that device which is normally used on a truck or other vehicle for slowing or stopping such vehicle by reducing the engine compression and is sometimes referred to as an engine brake. (Ord. 565 §1, 1997)

Secs. 10-168—10-180. Reserved.

ARTICLE IX

Fireworks

Sec. 10-181. Applicability of Article.

The provision of this Article apply to the possession, sale or use by any person, partnership, association or corporation of any fireworks or pyrotechnic displays as those terms are defined in Section 10-182 within the Town limits; provided, however, that none of the provisions of this Article shall be construed to apply to or to prohibit any of the following:

- (1) The possession of fireworks for the sole purpose of immediate shipment or removal of the same by the person, partnership, association or corporation possessing the same to a location outside the Town;
- (2) The sale, possession, storage or use of flashlight composition by photographers or dealers in photographic supplies;
- (3) The sale to, use by or possession of any person, association, partnership or corporation duly licensed by the Town in accordance with this Article to put on a supervised public display within the Town;
- (4) The sale to, use by or possession of any person, partnership, association or corporation employed by the school system for use solely in organized athletic events;
- (5) The manufacture, sale, use or possession of educational rockets and toy propellant device type engines used in such rockets, when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two (2) ounces of propellant when such engine or model cartridge is designed to be ignited by electrical means.
- (6) Possession and use pursuant to Articles II and III, Chapter 6 of this Code. (Prior code 12.5-1; Ord. 463, § 1, 1991)

Sec. 10-182. Definitions.

For the purposes of this Article, the following words, terms and phrases carry the following definition or include the following:

- (1) *Fireworks* includes:
 - a. Any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonation, including, without limitation, the following articles and devices commonly known and used as fireworks: blank cartridges, toy pistols, toy cannons, toy canes, toy guns, in which explosives are used; fire balloons (balloons of the type which have a burning material of any kind attached thereto or which require fire underneath to propel them); firecrackers, torpedoes, skyrockets, rockets, Roman candles, Day-Glow bombs, torches or other fireworks of like construction and any fireworks containing any explosive or flammable compound, any tablets or other device containing any explosive substance.

b. The term *fireworks* does not include toy pistols, toy cannons or toy guns in which paper caps containing not more than twenty-five one-hundredths (.25) of a grain of explosive compound per cap are used whether such caps are of single roll or tape type; nor shall the term *fireworks* be construed to include sparklers, trick matches, cigarette loads, trick noise makers, toy smoke devices, novelty auto alarms, highway flares, railway fuses, ship distress signals, smoke candles or other emergency signal devices.

(2) *Pyrotechnic display* refers to a public display of fireworks by persons, organizations or governmental entities permitted to make such displays under applicable state law and under the terms of this Article. (Prior code 12.5-2)

Secs. 10-183—10-190. Reserved.

ARTICLE X

Weapons

Sec. 10-191. Definitions.

The following definitions apply to this Article:

(1) *Blackjack* includes any billy, sandclub, sand bag 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.

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

(3) *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.

(4) *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 a device.

(5) *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.

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

(7) *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.

(8) *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.

(9) *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.

(10) *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. (Prior code 16-129)

Sec. 10-192. Article not to affect duties of peace officer.

The provisions of this Article shall not be held to prohibit any act by a peace officer in the lawful discharge of his or her duties. (Prior code 16-130)

Sec. 10-193. Possessing an illegal weapon.

(a) As used in this Section, the term *illegal weapon* means a blackjack, bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle, metallic knuckles, gravity knife or switchblade knife.

(b) It shall be unlawful for any person other than a peace officer or member of the Armed Forces of the United States or State National Guard to knowingly possess an illegal weapon. (Prior code 16-131)

Sec. 10-194. Possession of a defaced firearm.

It shall be unlawful for any person to knowingly and unlawfully possess a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed. (Prior code 16-132)

Sec. 10-195. Defacing a firearm.

It shall be unlawful for any person to intentionally remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing numbers or identification mark of a firearm. (Prior code 16-133)

Sec. 10-196. Unlawfully carrying a concealed weapon.

(a) It shall be unlawful for any person to knowingly and unlawfully:

- (1) Carry a knife concealed on or about his or her person; or
- (2) Carry 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, place of business or on property owned or under his or her control at the time of the act of carrying;

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

(3) A person who, prior to the time of carrying a concealed weapon, has been issued a written permit to carry the weapon by the Chief of Police, the Mayor or the County Sheriff; and such written permit shall be effective in all areas of the State. (Prior code 16-134)

Sec. 10-197. Prohibited use of weapons.

It shall be unlawful for any person to:

(1) Intentionally and unlawfully aim a firearm at another person;

(2) Recklessly or with criminal negligence discharge a firearm or shoot a bow and arrow;

(3) Set a loaded gun, trap or device designed to cause an explosion upon being tripped or approached, and leave it unattended by a competent person immediately present;

(4) Have in his or her possession a firearm while he or she is under the influence of intoxicating liquor or of a narcotic drug or dangerous drug. Possession of a permit issued under Section 18-12-105, C.R.S., is no defense to a violation of this Subsection;

(5) Not being a peace officer, discharge a firearm in the Town, other than a shooting gallery or rifle range; or

(6) Not being a peace officer, display a deadly weapon in the Town in a manner calculated to alarm. (Prior code 16-17, 16-135)

Sec. 10-198. Possessing, carrying or using dangerous or deadly weapons.

Except within his or her own domicile, it shall be unlawful for any person to have in his or her possession, or to carry or use, a revolver or pistol of any description, shotgun or rifle which may be used for the explosion of cartridges, any air gun, gas-operated gun or spring gun or any instrument, toy, weapon or bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever, whether such instrument is called by any name set forth above or by any other name; provided that nothing contained in this Section shall prevent the use of any such instruments in shooting galleries or in any private grounds or residence 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; and further provided that 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. (Ord. 465, 1991)

Secs. 10-199—10-210. Reserved.

ARTICLE XI

Offenses Relating to Minors

Sec. 10-211. Loitering near schools and other interference with schools prohibited.

(a) It shall be unlawful for any person to loiter, idle, wander, stroll or play in, about or on any public, private or parochial school, its grounds or buildings or grounds or buildings adjacent thereto, 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.

(b) No person shall annoy, disturb or otherwise prevent the orderly conduct of class or activities of any such school, or annoy, assault, disturb or molest any student or employee of any school while in any such school building or any school grounds or grounds adjacent to any school, or 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 grounds adjacent to any school.

(c) No person shall park or move a vehicle in the vicinity or on the grounds of any school for the purpose of annoying or molesting the students or employees thereof or in any effort to induce, entice or invite students into such vehicles for immoral purposes. (Ord. 466 § 1, 1991)

Sec. 10-212. Curfew.

(a) It shall be unlawful for the parent, guardian or person having the care, custody or control of a child under the age of eighteen (18) years to cause or permit such child to be in any public street, alley or public place between the hours of 10:00 p.m. of one (1) day and 5:00 a.m. on the following day at any time unless accompanied by his or her parent, guardian, adult member of his or her family, or adult person in whose charge such minor child was placed.

(b) If said minor child is employed or has attended a school, church or other function duly organized and supervised by adults or persons over the age of twenty-one (21) years, which activity or employment terminates after 9:30 p.m. or commences before 5:30 a.m., then time requires specified in Subsection (a) above shall be expanded to the extent of one-half ($\frac{1}{2}$) hour after the termination of such activity or employment or one-half ($\frac{1}{2}$) hour before the commencement of said activity or employment if such minor is en route between his or her home and said activity or employment. (Ord. 466 § 1, 1991)

Sec. 10-213. Intoxication of minor.

It shall be unlawful for any parent, guardian or person having the care, custody or control of any child under the age of eighteen (18) years to cause or permit such child to become intoxicated by any alcoholic or fermented malt beverage, or by means of any narcotic or dangerous drug. (Ord. 466 § 1, 1991)

Secs. 10-214—10-230. Reserved.

ARTICLE XII

Possession and Use of Tobacco Products by Minors Prohibited

Sec. 10-231. Intent.

It is the intent of this Article to protect the public health, safety and welfare by prohibiting the possession and use of tobacco products by minors and by prohibiting the dissemination and furnishing of tobacco products to minors. (Ord. 566 §1, 1997)

Sec. 10-232. Definitions.

As used in this Article, the following words or phrases are defined as follows:

- (1) *Minor* means any person younger than eighteen (18) years of age.
- (2) *Retailer* means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption or who operates a facility where vending machines or self service displays are permitted under this Article.
- (3) *Smoking* means the holding or carrying of a lighted pipe, lighted cigar or lighted cigarette of any kind and includes the lighting of a pipe, cigar or cigarette of any kind.
- (4) *Tobacco product* means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco. (Ord 566 §1, 1997)

Sec. 10-233. Unlawful possession or use of tobacco products by minors.

- (a) It shall be unlawful for any minor to knowingly possess, consume or use, either by smoking, ingesting, absorbing or chewing, any tobacco product.
- (b) It shall be unlawful for any minor to knowingly obtain or attempt to obtain any tobacco product by misrepresentation of age or by any other method.
- (c) It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.
- (d) The Municipal Court may, in its discretion and as part of the sentence to be imposed, require a person convicted of violating any portion of this Section to complete Court-approved public service in an amount to be set by the Court. Additionally, upon the first conviction of any person, the Court shall emphasize education as a component of any sentence. (Ord. 566 §1, 1997)

Sec. 10-234. Unlawful furnishing of tobacco products to minors.

- (a) It shall be unlawful for any person to knowingly furnish to any minor, by gift, sale or any other means, any tobacco product.

(b) Each retailer shall verify by means of photographic identification containing the bearer's date of birth that a person purchasing a tobacco product is eighteen (18) years of age or older. No such verification is required for any person over the age of twenty-six (26). It shall be an affirmative defense to a prosecution under this Section that the person furnishing the tobacco product was presented with and reasonably relied upon photographic identification containing the bearer's date of birth which identified the minor receiving the tobacco product as being eighteen (18) years of age or older. (Ord. 566 §1, 1997)

Sec. 10-235. Retail sale of tobacco products.

(a) It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind to engage, employ or permit any minor to sell tobacco products from such retail business.

(b) It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind to stock or display a tobacco product in any way which allows a customer to access such tobacco product without first securing the physical assistance of an adult business employee for each transaction. The provisions of this Subsection shall not apply to stores possessing a valid retail liquor store license, as defined by the Colorado Liquor Code, issued by the Town and to vending machines meeting the requirements of Section 10-236 of this Code. (Ord. 566 §1, 1997)

Sec. 10-236. Vending machines.

(a) It shall be unlawful for any person to sell or offer to sell any tobacco product by use of a vending machine or other coin-operated machine, except that tobacco products may be sold at retail through vending machines only in places to which minors are not permitted access and such vending machine is under the direct supervision of the owner of the establishment or an adult employee of the owner.

(b) It shall be unlawful for any person to possess or allow upon premises controlled by such person an operable vending machine containing any tobacco product unless such vending machine is located in a place where minors are not permitted access and such vending machine is under direct supervision of the owner of the establishment or an adult employee of the owner.

(c) As used in this Section, *under direct supervision* means the vending machine shall be in plain vision of the adult employee or owner during regular business hours. (Ord. 566 §1, 1997)

Secs. 10-237—10-250. Reserved.

ARTICLE XIII

Miscellaneous Offenses

Sec. 10-251. Possession of marijuana and drug paraphernalia.

It is unlawful for any person to possess any amount of marijuana, and if such person possesses any amount of marijuana, and if such person possesses less than eight (8) ounces of marijuana he or she shall have committed a violation under this provision of this Code.

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

(2) It shall be unlawful to possess drug paraphernalia, if a person possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Code or the laws of this State.

(3) *Drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the laws of this State. (Ord 562 §1, 1997)

Sec. 10-252. Penalty.

The penalty for any violation of the provisions of this Article shall be as provided in Section 1-64 of this Code except that any person possessing not more than one (1) ounce of marijuana shall be punished by a fine of not more than one hundred dollars (\$100.00). (Ord. 562 §2, 1997)

Secs. 10-253—10-270. Reserved.