

CHAPTER 10

General Offenses

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ARTICLE I

General Provisions

Sec. 10-1. Legislative intent and construction.

It is the intent and purpose of this Chapter not to cover and include those offenses which are felonies under state statutes, and this Chapter shall be so construed notwithstanding any language contained in the same which might otherwise be construed to the contrary. (Prior code 9.52.010)

Sec. 10-2. 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 commission of the offense. A substantial step is any conduct, whether act, commission 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 10-23 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. (Ord. 26-1992 §1)

Sec. 10-3. Property held as evidence.

The Chief of Police shall keep in his or her custody all articles of personal property seized or held as evidence, which property has been delivered to the custodian or one (1) of his or her subordinates for care, custody and control for use in a pending or prospective court proceeding, unless otherwise ordered by a court having jurisdiction, or upon proper authorization of a prosecuting attorney, until final disposition of any pending charges, including appeals, or the lapse of time for filing an appeal. Thereafter, unless ordered to the contrary by the court having jurisdiction, the custodian shall dispose of such property in accordance with the provisions of Chapter 1, Article VI of this Code. (Prior code 9.02.030)

Sec. 10-4. Definitions.

(a) Except as set forth in Subsection (b) below, terms used in this Chapter shall be as defined in Title 18, C.R.S., or as used in their ordinary, usual and accepted sense and meaning.

(b) As used in this Chapter, the following words have the meanings hereinafter set forth:

(1) *Blackjack* means any billy, sandclub, sandbag, sap 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, or any device or article consisting of

two (2) or more separate portions, linked together by a chain, strap or other fastener, which configuration is designed to increase the striking force or impact of the device or article.

(2) *Conceal* means the deliberate hiding of a weapon upon or near the person with the intent to avoid the lawful detection thereof. It shall be evidence of concealment that the weapon is hidden in such manner as to make it immediately available for use in the fashion in which the weapon is designed to be used.

(3) *Crossbow* includes any device resembling a rifle or handgun in configuration, having a bow or similar device mounted perpendicularly to a stock, grip or frame, and usually equipped with a winch or similar device which draws back the bowstring and cocks the weapon, and which fires an arrow, bolt, quarrel, stone or similar shaft from a groove or depression in the stock, grip or frame by the manipulation of a trigger or similar mechanism.

(4) *Custodian* means the Chief of Police or a designee thereof.

(5) *Firearm* means any pistol, revolver, self-loading pistol, rifle, shotgun or any other device designed to shoot, project, throw or hurl a projectile or projectiles by means of the explosion of gunpowder or other explosive substance.

(6) *Government* includes any branch, subdivision, institution or agency of the government of the State or any political subdivision within it.

(7) *Government function* includes any activity which a public servant is legally authorized to undertake on behalf of a government.

(8) *Gravity knife* means any knife, the blade of which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force, and which blade, upon release, becomes locked in place by means of a button, spring, plate, lever or other device.

(9) *Knife* means any dagger, knife, bayonet, straight-razor, dirk, machete, stiletto, sword or swordcane with a blade over three and one-half (3½) inches in length, or any other dangerous instrument designed to inflict cutting, stabbing or tearing wounds; but, as used in this Section, does not include a knife or hatchet of the type customarily used in hunting, fishing or camping, when such is being carried for sporting use; and does not include any instrument being used in pursuance of a lawful home use, trade, occupation or profession, or otherwise being lawful under federal or state statutes, used as an item of display or a collector's item in any home or place of business.

(10) *Park* means any place for the resort of the public for recreation, but does not include any grounds or premises owned by any person where the public is admitted for a charge made by such person for the purpose of private profit.

(11) *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.

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

(13) *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 9.02.010, 9.08.010, 9.32.020, 9.50.010, 9.52.030, 9.52.040)

Secs. 10-5—10-20. Reserved.

ARTICLE II

Parties to Offenses, Accountability

Sec. 10-21. Liability based upon behavior, generally.

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 Sections 10-22 through 10-27. (Ord. 26-1992 §1)

Sec. 10-22. Accountability for 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 ordinance defining the offense, or by specific provisions 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. 26-1992 §1)

Sec. 10-23. Complicity.

A person is legally accountable as principal for the behavior of another constituting a municipal 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. (Ord. 26-1992 §1)

Sec. 10-24. Liability based upon behavior of another, exemptions.

(a) Unless otherwise provided by the ordinance defining the offense, a person shall not be legally accountable for behavior of another constituting an offense if he or she is a victim of that offense or the offense is so defined that his or her conduct is inevitably incidental to its commission.

(b) It shall be an affirmative defense to a charge under Section 10-23 if, prior to the commission of the offense, the defendant terminated his or her effort to promote or facilitate its commission and either gave timely warning to law enforcement authorities or gave timely warning to the intended victim. (Ord. 26-1992 §1)

Sec. 10-25. Liability based upon behavior of another, no defense.

In any prosecution for an offense in which criminal liability is based upon the behavior of another pursuant to this Article, it is no defense that the other person has not been prosecuted for or convicted of any offense based upon the behavior in question, or has been convicted of a different offense or degree of offense, or the defendant belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity. (Ord. 26-1992 §1)

Sec. 10-26. Liability of corporations.

(a) A corporation is guilty of an offense if:

(1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(2) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment or in behalf of the corporation.

(b) As used in this Section, *agent* means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation, and *high managerial agent* means an officer of a corporation, or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(c) For every offense committed by a corporation, the corporation shall only be subject to the imposition of a fine as provided in Section 1-72 of this Code. (Ord. 26-1992 §1)

Sec. 10-27. Liability of an individual for corporate conduct.

A person is criminally liable for conduct constituting an offense which he or she performs or causes to occur in the name of or in behalf of a corporation to the same extent as if that conduct were performed or caused by him or her in his or her own name or behalf. (Ord. 26-1992 §1)

Secs. 10-28—10-40. Reserved.

ARTICLE III

**Justification and Exemption
from Responsibility**

Sec. 10-41. Execution of public duty.

(a) Unless inconsistent with other provisions of Sections 10-43 through 10-47, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and shall not constitute an offense when it is required or authorized by a provision of law or a judicial decree binding in the State.

(b) A *provision of law* and a *judicial decree* in Subsection (a) above means:

(1) Laws defining duties and functions of public servants.

(2) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions.

(3) Laws governing the execution of legal process.

(4) Laws governing the military service and conduct of war.

(5) Judgments and orders of court. (Ord. 26-1992 §1)

Sec. 10-42. Choice of evils.

(a) Unless inconsistent with other provisions of Sections 10-43 through 10-47, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and shall not constitute an offense when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of the actor, and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

(b) The necessity and justifiability of conduct under Subsection (a) above shall not rest upon considerations pertaining only to the morality and advisability of the ordinance, either in its general application or with respect to its application to a particular class of cases arising thereunder. When evidence relating to the defense of justification under this Section is offered by the defendant, before it is submitted for the consideration of the jury, the court shall first rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a justification. (Ord. 26-1992 §1)

Sec. 10-43. Use of physical force, special relationships.

The use of physical force upon another person which would otherwise constitute an offense is justifiable and shall not constitute an offense under any of the following circumstances:

(1) A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a minor, may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent it is reasonably necessary and appropriate to maintain discipline or promote the welfare of the minor or incompetent person.

(2) A superintendent or other authorized official of a jail, prison or correctional institution may, in order to maintain order and discipline, use reasonable and appropriate physical force when and to the extent that he or she reasonably believes it necessary to maintain order and discipline.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his or her direction, may use reasonable and appropriate physical force when and to the extent that it is necessary to maintain order and discipline.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself or herself may use reasonable and appropriate physical force upon that person to the extent that it is reasonably necessary to thwart the result.

(5) A duly licensed physician, or a person acting under his or her direction, may use reasonable and appropriate physical force for the purpose of administering a recognized form of treatment which he or she reasonably believes to be adapted to promoting the physical or mental health of the patient if:

a. The treatment is administered with the consent of the patient, or if the patient is a minor or an incompetent person, with the consent of his or her parent, guardian or other person entrusted with his or her care and supervision; or

b. The treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent. (Ord. 26-1992 §1)

Sec. 10-44. Physical force; defense of a person.

A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for that purpose. (Ord. 26-1992 §1)

Sec. 10-45. Physical force; defense of premises.

A person in possession or control of any building, realty or other premises, or a person who is licensed or privileged to be thereon, is justified in using reasonable and appropriate physical force upon another person when and to the extent that it is reasonably necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission of an unlawful trespass by the other person in or upon the building, realty or premises. (Ord. 26-1992 §1)

Sec. 10-46. Physical force; defense of property.

A person is justified in using reasonable and appropriate physical force upon another person when and to the extent that he or she reasonably believes it necessary to prevent what he or she reasonably believes to be an attempt by the other person to commit theft, criminal mischief or criminal tampering involving property. (Ord. 26-1992 §1)

Sec. 10-47. Physical force; arrest, escape.

A police officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he or she reasonably believes it necessary to do the following:

(1) To effect an arrest or prevent the escape from custody of an arrested person unless he or she knows that the arrest is unauthorized.

(2) To defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape. (Ord. 26-1992 §1)

Sec. 10-48. Entrapment.

The commission of acts which would otherwise constitute an offense shall not constitute an offense if the defendant engaged in the proscribed conduct because he or she was induced to do so by a law enforcement official or other person acting under his or her direction, seeking to obtain evidence for the

purpose of prosecution, and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, but for such inducement, would not have conceived of or engaged in conduct of the sort induced. Merely affording a person an opportunity to commit an offense is not entrapment even though representations or inducements calculated to overcome the offender's fear of detection are used. (Ord. 26-1992 §1)

Sec. 10-49. Duress.

A person may not be convicted of an offense based upon conduct in which he or she engaged at the direction of another person because of the use or threatened use of unlawful force upon him or her or upon another person, which force or threatened use thereof a reasonable person in his or her situation would have been unable to resist. This defense is not available when a person intentionally or recklessly places himself or herself in a situation in which it is foreseeable that he or she will be subjected to such force or threatened use thereof. The choice of evils defense, provided in Section 10-42, shall not be available to a defendant in addition to the defense of duress provided under this Section unless separate facts exist which warrant its application. (Ord. 26-1992 §1)

Sec. 10-50. Insufficient age.

The responsibility of a person for his or her conduct is the same for persons between the ages of ten (10) and eighteen (18) years, except to the extent that responsibility is modified by the provisions of the "Colorado Children's Code," Title 19, C.R.S. No child under ten (10) years of age shall be found guilty of any offense. (Ord. 26-1992 §1)

Sec. 10-51. Intoxication.

(a) Intoxication of the accused is not a defense to a charge, except as provided in Subsection (c) below, but in prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant when it is relevant to negate the existence of a specific intent if such intent is an element of the offense charged.

(b) Intoxication does not, in itself, constitute a mental disease or defect.

(c) A person is not criminally responsible for his or her conduct if, by reason of intoxication that is not self-induced at the time he or she acts, he or she lacks capacity to conform his or her conduct to the requirements of the law.

(d) *Intoxication*, as used in this Section, means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.

(e) *Self-induced intoxication* means intoxication caused by substances which the defendant knows or ought to know have the tendency to cause intoxication and which he or she knowingly introduced or allowed to be introduced into his or her body, unless they were introduced pursuant to medical advice or under circumstances that would afford a defense to a charge of any offense under this Code. (Ord. 26-1992 §1)

Sec. 10-52. Affirmative defenses.

The issues of justification, exemption from liability or responsibility under Sections 10-41 through 10-51 are affirmative defenses. The defendant may assert any other affirmative defense known to the common law. (Ord. 26-1992 §1)

Secs. 10-53—10-70. Reserved.

ARTICLE IV

Offenses Relating to Public Officers and Government

Sec. 10-71. Impersonating police officers.

(a) It is unlawful for any person other than a police officer of the Town to wear the insignias of office of a police officer of the Town or any other insignia of office like or similar to or a colorable imitation of that adopted and worn by the police officers of the Town.

(b) It is unlawful for any person other than a police officer of the Town to in any manner represent himself or herself to another as a police officer of the Town. (Prior code 9.06.010)

Sec. 10-72. Counterfeit insignias.

It is unlawful for any person to counterfeit, imitate or cause to be counterfeited, imitated or colorably imitated, the badge or insignia of office used by the Police Department of the Town. (Prior code 9.06.020)

Sec. 10-73. Unlawful impersonation; performance of duties.

(a) It is unlawful for any person other than a Town officer or employee to willfully represent himself or herself to be a Town officer or employee.

(b) It is unlawful for any person to purport to perform the duties of any Town officer or employee when he or she is not an authorized officer or employee of the Town. (Prior code 9.06.030)

Sec. 10-74. Obstructing government operations.

(a) A person commits 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.

(b) The following shall be affirmative defenses:

- (1) The obstruction, impairment or hindrance was of unlawful action by a public servant; or
- (2) The obstruction, impairment or hindrance was of the making of an arrest.

(c) Any action taken by a public servant in the course of his or her public duties shall be presumed to be lawful. (Prior code 9.08.020)

Sec. 10-75. Obstructing a peace officer or fireman.

(a) 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 knowingly 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 knowingly obstructs, impairs or hinders the prevention, control or abatement of fire by a fireman acting under color of his or her official authority; or knowingly disobeys any order of

a peace officer or fireman made in the course of the prevention, control or abatement of a fire, including the direction of traffic and persons in connection therewith.

(b) It is no defense to 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 10-76.

(c) This Section does not apply to obstruction, impairment or hindrance of the making of an arrest. (Prior code 9.08.040)

Sec. 10-76. Resisting arrest.

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

- (1) Using or threatening to use physical force or violence against the peace officer or another;
- (2) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another; or
- (3) Running from, eluding or attempting to run from or elude a peace officer.

(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 10-75, means a peace officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted. (Prior code 9.08.030)

Sec. 10-77. Accessory to offense.

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

(b) *Render assistance* has the following meanings:

- (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. (Prior code 9.08.050)

Sec. 10-78. Refusal to permit inspections.

(a) A person commits refusal to permit inspections if, knowing that a public servant 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 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 the defendant. 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 ordinance or state statute. (Prior code 9.08.060)

Sec. 10-79. Refusing to aid a peace officer.

A person eighteen (18) years of age or older commits refusing to aid a peace officer 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 9.08.070)

Sec. 10-80. Refusing to obey peace officer.

It is unlawful for any person to knowingly disobey the lawful or reasonable order of any peace officer given incident to the discharge of the official duties of such peace officer. (Prior code 9.08.080)

Sec. 10-81. Compounding.

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

(1) Refraining from seeking prosecution of an offender; or

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime.

(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 in restitution or indemnification for harm caused by the crime. (Prior code 9.08.090)

Sec. 10-82. False reporting to authorities.

A person commits false reporting to authorities if he or she does the following:

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

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

(3) Makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false. (Prior code 9.08.100)

Sec. 10-83. Aiding escape.

(a) Any person who knowingly 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 10-77. (Prior code 9.08.110)

Sec. 10-84. Escape.

(a) It is unlawful for any person who is in the custody of a peace officer to knowingly escape or attempt to escape from the custody of such peace officer or from the custody of any person aiding such peace officer after being commanded by such peace officer to do so.

(b) This Section shall not apply whenever the escapee is being held on account of a felony or charged with or held for any felony. (Prior code 9.08.120)

Sec. 10-85. Failure to obey summons or notice.

It is unlawful for any person to violate his or her written promise to appear given to an officer upon arrest or issuance of a summons or notice for any violation of this Code. This Section shall not apply to a failure to appear when the offense charged is under the Model Traffic Code for Colorado Municipalities as adopted and enforced by the Town. (Prior code 9.08.130)

Sec. 10-86. Violations designated; exceptions.

(a) It is unlawful for any person to report the existence of a fire or other emergency to the Police Department, Fire Department or any other agency empowered to deal with an emergency involving risk or injury to persons or property, when such person knows the report to be false. For purposes of this subsection, *Fire Department* means any fire protection district or fire-fighting agency of the State, County or Town, whether the employees or officers of such agency are volunteers or receive compensation for their services as firemen, or both.

(b) It is unlawful for any person to report or cause to be reported to any police agency any information concerning the commission of any offense or other incident, which would require police action, when:

- (1) He or she knows that no such offense or other incident has occurred; or
- (2) He or she knows the information is false or that he or she has no such information.

(c) This Section does not apply to reports of the existence or placement of a bomb or other explosive in any public or private place or vehicle designed for transportation of persons or property. (Prior code 9.04.010)

Sec. 10-87. Failure to conserve water.

(a) It shall be unlawful and a municipal offense for any person to violate the restrictions or regulations concerning the use of water from the Town's municipal water system established by the Mayor or Board of Trustees pursuant to Section 13-41(c) of this Code. Failure to conserve water is a strict liability offense.

(b) It shall be an affirmative defense to a prosecution under this Section that at the time of the alleged offense there was in existence a valid certificate issued by the Town exempting the property where the offense allegedly occurred from compliance with the restrictions or regulations on the use of water established by the Mayor or Board of Trustees.

(c) Any person convicted of violating this Section shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 6, 1995 §1)

Secs. 10-88—10-100. Reserved.

ARTICLE V

Offenses Against Public Decency

Sec. 10-101. Public indecency.

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

- (1) An act of sexual intercourse;
- (2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
- (3) A lewd fondling or caress of the body of another person. (Ord. 26-1992 §1)

Sec. 10-102. Window peeping.

It is unlawful for any person to trespass upon the property owned or occupied by another in the Town for the purpose of looking or peeping into any window, door, skylight or other opening in a house, room

or building, or to loiter in a public street, alley, parking lot or other public place, for the purpose of wrongfully observing the actions of the occupants of such house, room or building. (Prior code 9.16.020)

Sec. 10-103. 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. 26-1992 §1)

Secs. 10-104—10-120. Reserved.

ARTICLE VI

Offenses Against Property

Sec. 10-121. Criminal mischief.

It is unlawful for any person to knowingly damage the real or personal property of one (1) or more other persons in the course of a single criminal episode where the aggregate damage to the real or personal property is less than four hundred dollars (\$400.00). (Ord. 26-1992 §1)

Sec. 10-122. Trespassing deemed unlawful.

It is unlawful for any person without legal privilege to enter or to remain upon the premises of another, or to fail or refuse to remove himself or herself from said premises when requested to leave by the owner, occupant or person having lawful control thereof. (Prior code 9.30.010)

Sec. 10-123. Theft.

(a) A person commits theft when he or she knowingly obtains or exercises control over anything of value of another without authorization, by threat or deception, or knowing said thing of value to have been stolen, and does the following:

- (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) This Section shall apply only to theft of things of a value of less than four hundred dollars (\$400.00). (Prior code 9.28.010)

Sec. 10-124. Theft of rental property.

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

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

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

(3) The value of the property involved is less than four hundred dollars (\$400.00). (Ord. 26-1992 §1)

Sec. 10-125. Theft by receiving.

It is unlawful to commit theft by receiving. A person commits theft by receiving when he or she receives, retains, loans money by pawn or pledge on or disposes of anything of value of another, knowing or believing that the thing of value has been stolen, and when he or she intends to deprive the lawful owner permanently of the use or benefit of the thing of value, where the value of the thing of value is less than four hundred dollars (\$400.00). (Ord. 26-1992 §1)

Sec. 10-126. Price switching.

It is unlawful for any person to willfully alter, remove or switch the indicated price of any unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, with the intent to defraud such store or mercantile establishment; provided, however, that this Section shall not apply to goods, wares or merchandise of a value of three hundred dollars (\$300.00) or more. (Prior code 9.28.020)

Sec. 10-127. Procuring food or accommodations with intent to defraud.

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 the offense of procuring food or accommodations with intent to defraud. Removal of baggage from the premises of a public establishment or leaving such establishment without paying for food ordered by such person shall constitute prima facie evidence of intent to defraud. (Prior code 9.28.030)

Sec. 10-128. Concealment of goods.

If any person willfully conceals unpurchased goods, wares or merchandise valued at less than three hundred dollars (\$300.00) 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. 1-1992 §1; Ord. 26-1992 §1)

Sec. 10-129. 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, electricity or cable television service to any building without the knowledge and consent of the person supplying such gas, water, electricity or cable television service 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. 26-1992 §1)

Secs. 10-130—10-140. Reserved.

ARTICLE VII

Offenses Relating to Streets and Public and Private Places

Sec. 10-141. Limitations on use of certain vehicles and equipment.

It is unlawful for any person to drive, install, cause the installation to be made, or use upon any motor vehicle any siren, exhaust whistle, bell, any red lights visible from the front of a motor vehicle, or any red spotlight; however, nothing in this Article shall prevent the possession, use or installation of such equipment on any Town-owned, County-owned, State-owned or federal-owned vehicle, or any vehicle authorized or permitted to have or use any such equipment by state laws, if there is compliance with all requirements of any such state laws, including obtaining necessary permits, licenses, approval or approvals, as required by any such state laws or by any applicable Town ordinance. (Prior code 9.10.010)

Sec. 10-142. Solicitation of towing business.

(a) It is unlawful for any person or persons to drive or cause any tow truck or vehicle equipped to provide towing service to be driven to, or to stop or park any such vehicle or cause the same to be stopped or parked at or near, the scene of any fire, explosion, traffic accident or other disaster, when such tow truck or vehicle has not been called to the scene by the owner or operator of a damaged vehicle or the owner of property required to be towed from the scene or by his or her duly authorized agent or insurance carrier, by a police officer or representative of the Police Department of the Town, or by a fireman or other peace officer attending the scene.

(b) It is unlawful for any person or persons to solicit any other person or persons at or near the scene of any fire, explosion, traffic accident or other disaster, for the purpose of procuring towing business, that is, for the purpose of securing authorization or agreement from any person or persons at or near such scene to tow or haul away any vehicle or other personal property from any such scene, for hire. (Prior code 9.10.020)

Sec. 10-143. Property injury prohibited; exceptions.

It is unlawful for any person to intentionally injure, damage or destroy the real or personal property of another; provided, however, that this Section shall not apply to any person showing a legal right or authority to injure, damage or destroy such property. This Section shall not apply where the aggregate

damage to such real or personal property is three hundred dollars (\$300.00) or more or where the damage is effected by means of fire or explosives with the intent to defraud. (Prior code 9.26.010)

Sec. 10-144. Injury or removal of signs.

It is unlawful for any unauthorized person to willfully remove, deface, injure, damage or destroy any street sign or traffic control or warning device erected or placed in or adjacent to any street. This Section shall not apply where the aggregate damage to such street sign or traffic control or warning device is three hundred dollars (\$300.00) or more. (Prior code 9.26.020)

Sec. 10-145. Destroying posters.

It is unlawful for any person to intentionally tear down, deface or cover up any lawfully posted advertisement or bill of any person; provided, however, that this Section shall not apply to any person showing the lawful right or authority to tear down, deface or cover up any such advertisement or bill. (Prior code 9.26.030)

Sec. 10-146. Lug wheels and treaded vehicles prohibited.

It is unlawful for any vehicles equipped with treads and/or lug wheels which are injurious to pavement to be operated or caused to be operated by any person upon public streets unless the operator of such vehicle first planks and protects such streets from damage. Nothing in this Section shall be construed to prohibit the use of studded snow tires. (Prior code 9.26.040)

Sec. 10-147. Placement of objects.

It is unlawful for any person to intentionally, knowingly or recklessly place in any doorway or driveway not owned by him or her or under his or her lawful control, or on any sidewalk, public highway, street or alley in the Town, any item, article or object which causes or tends to cause the obstruction thereof or any part thereof. (Prior code 9.24.010)

Sec. 10-148. Parking in private driveways or on private property.

It is unlawful for any person to park or stand a vehicle, whether such vehicle is occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in, loading or unloading the vehicle, in a private driveway or on private property without the express or implied consent of the owner or person in lawful control of such driveway or property. (Prior code 9.24.020)

Sec. 10-149. Depositing debris in streams and waters.

It is unlawful for any person to throw, deposit, cause or permit to be thrown or deposited in the Town's water treatment facilities and its appurtenances, and in any stream, storm or sanitary sewer, ditch, pond, well, cistern, trough, reservoir, artificially or naturally created, or so near thereto as to be liable to pollute the water, any offal composed of animal or vegetable substance or both, dead animal, sewage, excrement, garbage, trash, debris, waste fuel, oil or other petroleum-based products, paint, chemicals, whether liquid or solid, scrap, construction materials or any other materials that may cause the water to become contaminated. Pursuant to Section 31-15-707(1)(b), C.R.S., the Town's jurisdiction under this Section shall extend to the Town's water treatment facilities and its appurtenances, including all reservoirs, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of such facilities, notwithstanding that such facilities and appurtenances are located outside the corporate limits of

the Town, and over all streams and other sources of the water used in the Town's water system for five (5) miles above the point from which it is taken. (Prior code 9.36.010)

Sec. 10-150. Harassing, killing or injuring wildlife.

(a) It is unlawful for any person to willfully and unnecessarily shoot, capture, harass, injure or destroy any wild bird or animal or to attempt to shoot, capture, harass, injure or destroy any such wild bird or animal anywhere within the Town.

(b) No person shall willfully destroy, rob or disturb the nest, nesting place, burrow, eggs or young of any wild bird or animal anywhere within the Town.

(c) *Wild bird* includes all undomesticated birds native to North America and undomesticated game birds implanted in North America by governmental agencies and includes any domestic duck or goose released by any private person or recreational authority upon any recreational area within the Town.

(d) *Wild animal* includes any animal native to the State, but does not include rattlesnakes, fish or any species of amphibians, Norway rats and common house mice.

(e) The provisions of this Article do not apply to personnel of any police, fire or animal control agency, the State Division of Wildlife, Department of Health or other state or federal agency when such persons are acting within the scope of their official duties as employees of said agencies.

(f) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by the laws of the State or the United States of America. (Prior code 9.38.010)

Sec. 10-151. Public buildings; trespass, interference.

(a) It is unlawful for any person to so conduct himself or herself at or in any public building owned, operated or controlled by the Town, the State or any of its political subdivisions, as to willfully deny to any public official, public employee or any 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) It is unlawful for any person, at or in any such public building, to willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, coercion or intimidation, or by force and violence or threat thereof.

(c) It is unlawful for any person to willfully refuse or fail to leave any such public building upon being requested to do so by the chief administrative officer, or designee charged with maintaining order in such public building, if such 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 such public building.

(d) It is unlawful for any person, at any meeting or session conducted by any judicial, legislative or administrative body or official at, or in, any public building, to 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 such 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 of such meeting or session.

(e) It is unlawful for any person, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official act, or in any public building, to willfully impede, disrupt or hinder the normal proceedings of such body or official. (Prior code 9.18.040)

Sec. 10-152. Operation of motorscooters, motorbicycles, bicycles, inline skates and similar devices prohibited.

(a) No person shall operate, ride or use any motorscooter, motorbicycle, motor-driven cycle, human-propelled scooter, toy vehicle, go-cart, bicycle, inline skates or rollerblades, roller skates, skateboard or similar device upon any public sidewalk, trail, park or other public pedestrian way or area where the use of such device is prohibited by official signage.

(b) Any person operating, riding or using a motorscooter, motorbicycle, motor-driven cycle, human-propelled scooter, toy vehicle, go-cart, bicycle, inline skates or rollerblades, roller skates, skateboard or similar device on any public sidewalk, trail, park or other public pedestrian way or area shall yield the right-of-way at all times to pedestrians and animals and shall otherwise obey all posted regulations and official signage.

(c) Notwithstanding any provision in Subsections (a) or (b) above, no person shall operate, ride or use any motorscooter, motorbicycle, motor-driven cycle, human-propelled scooter, toy vehicle, go-cart, bicycle, inline skates or rollerblades, roller skates, skateboard or similar device on any public tennis court, basketball court, athletic field or other recreational field or area not specifically designed, intended and signed for such operation and use.

(d) For purposes of this Section the terms *motorscooter*, *motorbicycle* and *motor-driven cycle* shall mean a vehicle with or without a seat designed to transport one (1) or two (2) persons and travel on not more than three (3) wheels in contact with the ground and which is powered by an engine or motor not exceeding six (6) brake-horsepower, and shall include motorized skateboards.

(e) The Police Chief is empowered and delegated the authority to install appropriate signage within or along those public sidewalks and/or other public pedestrian ways or areas as he or she deems necessary to protect pedestrians and pedestrian travel from the operation of the motor vehicles and other devices described in this Section. (Ord. 21, 1995 §1; Ord. 21-2003 §1)

Secs. 10-153—10-170. Reserved.

ARTICLE VIII

Public Peace, Order and Safety

Sec. 10-171. Assault.

(a) Intentionally or knowingly without deadly weapon. It is unlawful for any person to intentionally or knowingly cause bodily injury to another person; provided, however, that this Subsection shall not apply to injury caused by means of a deadly weapon, nor shall it apply in the event of a serious bodily injury.

(b) Recklessly. It is unlawful for any person to recklessly cause bodily injury to another person; provided, however, that this Subsection shall not apply in the event of serious bodily injury.

(c) Deadly weapons. It is unlawful for any person with criminal negligence to cause bodily injury to another person by means of a deadly weapon. (Prior code 9.14.010)

Sec. 10-172. Menacing.

It is unlawful for any person to intentionally place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided, however, that if such threat or physical action involves the use of a deadly weapon, this Section shall not apply. (Prior code 9.14.020)

Sec. 10-173. Intimidation.

It is unlawful for anyone without legal authority to threaten to confine, restrain or cause bodily harm to the threatened person of 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. (Prior code 9.14.030)

Sec. 10-174. Reckless endangerment.

It is unlawful for any person to recklessly engage in conduct which creates substantial risk of serious bodily injury to another person. (Prior code 9.14.040)

Sec. 10-175. Harassment designated; prohibited.

- (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 harm or property damage, or makes 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;
 - (6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
 - (7) Repeatedly insults, taunts, challenges or makes communication in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of 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)(5) of this Section 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 9.22.010; Ord. 1-1994 §1; Ord. 18-1994 §§1, 2; Ord. 13-1998, §§ 1, 2)

Sec. 10-176. Loitering.

(a) As used in this Section, 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 the municipal offense of *loitering* if he or she:

(1) Loiters for the purpose of begging;

(2) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia, as those terms are defined by state law;

(3) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse, as those terms are defined by state law;

(4) With intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, loiters in 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 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 person for the purpose of unlawfully using or possessing a controlled substance, as defined in Section 12-22-303(7), C.R.S.

(c) It shall be an affirmative defense that the defendant's acts were lawful and that the defendant was exercising his or her rights 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. (Ord. 24-1994 §1)

Sec. 10-177. Disorderly conduct deemed unlawful.

(a) It is unlawful for any person to intentionally, knowingly or recklessly:

(1) Make a coarse and obviously offensive utterance, gesture or display in a public place when such utterance, gesture or display causes injury or tends to invite an immediate breach of the peace;

(2) Abuse or threaten a person in a public place in an obviously offensive manner when such abuse or threat causes injury or tends to incite an immediate breach of the peace;

(3) Fight with another in a public place except as a participant in a sporting event; or

(4) Make unreasonable noise in a public place or near a private residence that he or she has no right to occupy.

(b) It is an affirmative defense to prosecution under Subsection (a)(2) above where the actor has significant provocation for his or her abusive or threatening conduct. (Prior code 9.18.010; Ord. 18, 1996 §1)

Sec. 10-178. Disrupting lawful assembly.

It is unlawful for any person to disrupt a lawful assembly if, with the intent 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 utterances or any other means. (Prior code 9.18.020)

Sec. 10-179. Disturbing lawful assemblies.

No person shall disquiet or disturb any congregation or assembly met for religious worship or for any other lawful purpose, by making a noise or by rude and indecent behavior or profane discourse within the place of meeting or so near the same as to disturb the order or solemnity of the occasion; nor shall he or she disturb it in any other manner. (Ord. 26-1992 §1)

Sec. 10-180. Interference with educational institutions.

(a) It is unlawful for any person, on or near the premises or facilities of any educational institution, to 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 such institution; or
- (3) The right of lawful ingress and egress to the institution's physical facilities.

(b) It is unlawful for any person, on the premises of any educational institution or at or in any building or other facilities being used by any educational institution, to willfully impede the staff or faculty of such institution in the lawful performance of their duties, or willfully impede a student of such institution in the lawful pursuit of his or her educational activities, through the use of restraint, coercion or intimidation, or when force and violence are present or threatened.

(c) It is unlawful for any person to 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, his or her designee charged with maintaining order on the school premises and in its facilities, or a dean of such educational institution, 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) Nothing in this Section shall be construed to prevent 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 employees thereof. (Prior code 9.18.030)

Sec. 10-181. Physicians to report wounds.

It shall be the duty of every physician or surgeon practicing within the Town, who attends or has under his or her charge or care any patient or other person suffering from gunshot, puncture or cutting wounds which appear to be a result of violence inflicted by another, to report as soon as practicable to the Chief of Police the name of such patient or other person and all facts pertaining to such case within the knowledge of such physician or surgeon. (Prior code 9.12.010)

Sec. 10-182. Storage of flammable liquids.

It shall be 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 Town or in any other part of the Town, except those areas zoned for such uses. (Ord. 26-1992 §1)

Sec. 10-183. Explosives.

It shall be unlawful for any person to store within the Town 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 (50) pound box or in excess of five hundred (500) caps or other devices used for the detonation of such high explosives. (Ord. 26-1992 §1)

Sec. 10-184. Fraud by check.

(a) 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. *Check*, for the purposes of this Section only, also includes a negotiable order of withdrawal and a share draft.

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

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

(4) *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.

(5) *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.

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

(7) *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 for a sum less than four hundred dollars (\$400.00) for the payment of services,

wages, salary, commissions, labor, rent, money, property or other thing of value, commits fraud by check, which is unlawful.

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

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

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

(f) A bank, 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 town attorney, 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. (Ord. 26-1992 §1)

Secs. 10-185—10-200. Reserved.

ARTICLE IX

Offenses Relating to Alcoholic Beverages

Sec. 10-201. Definitions.

The following definitions are applicable to this Article:

(1) *Alcoholic beverages* means a fermented malt beverage as defined by the Colorado Beer Code (Article 46 of Title 12, C.R.S.) and malt, vinous or spirituous liquor as defined by the Colorado Liquor Code (Article 47 of Title 12, C.R.S.)

(2) *Colorado Beer Code* means the provisions of Article 46 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

(3) *Colorado Liquor Code* means the provisions of Article 47 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

(4) *Employee* means an employee of a licensee.

(5) *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.

(6) *Ethyl alcohol* means any substance which is or contains ethyl alcohol and includes fermented malt beverages (as defined in the Colorado Beer Code) and malt, vinous and spirituous liquors (as defined in the Colorado Liquor Code).

(7) *License* means a grant to a licensee to sell fermented malt beverages as provided by the Colorado Beer Code, a grant to a licensee to sell malt, vinous or spirituous liquors as provided by the Colorado Liquor Code or a special events permit.

(8) *Licensee* means the holder of a license under the Colorado Beer Code, the Colorado Liquor Code or the holder of a special events permit.

(9) *Licensed premises* means the premises specified in a license under the Colorado Beer Code, the Colorado Liquor Code or for a special events permit, which are owned or are in possession of the licensee and within which such licensee is authorized to sell, dispense or serve alcoholic beverages.

(10) *Manager* means the registered manager of a licensee.

(11) *Motor vehicle* means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways; but the term does not include motorized bicycles as defined by state law or vehicles moved solely by human power. For the purposes of this Article, the term *motor vehicles* includes a farm tractor operated on the streets and highways of the Town.

(12) *Person* means a natural person, partnership, association, company, corporation or organization, or a manager, agent, servant, officer or employee of any of them.

(13) *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.

(14) *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 the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., pertaining to special events licenses; or

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

(15) *Public place* means a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, streets, sidewalks, transportation facilities,

schools, places of amusement, parks, playgrounds and the common areas of public and private buildings and facilities.

(16) *Sell or sale* means any of the following: to exchange, barter or traffic in; to solicit or receive an order for except through a licensee; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to traffic in for any consideration promised or obtained, directly or indirectly.

(17) *Special events permits* means a special permit to sell fermented malt beverages or malt, vinous or spirituous liquors issued pursuant to the provisions of Article 48 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

(18) *Underage person* means a person under the age of twenty-one (21) years. (Ord. 12-1992 §1)

Sec. 10-202. Illegal possession or consumption of alcohol by underage person.

(a) It shall be unlawful for any underage person to possess or consume ethyl alcohol anywhere within the Town. Illegal possession or consumption of alcohol by an underage person is a strict liability offense.

(b) It shall be an affirmative defense to the offense described in Subsection (a) above that the ethyl alcohol was possessed or consumed by an underage person 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 such person's 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 confectionery which contained ethyl alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage which contained less than one-half of one percent (.5%) of ethyl alcohol by weight.

(c) Prima facie evidence of a violation of Subsection (a) 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 this 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 ethyl alcohol intoxication or impairment while present anywhere in this Town.

(d) During any trial for a violation of Subsection (a) 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," "wine

cooler," "champagne," "whiskey," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents in the bottle, can or other container were composed in whole or in part of ethyl alcohol.

(e) 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 an underage person under the conditions described in Subsection (b)(1) above. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 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 any underage person.

(f) An underage person shall be required to take and complete, and to cooperate in the taking and completion of, any test or tests of such person's breath for the purpose of determining the presence of ethyl alcohol in such person's breath when so requested and directed by a law enforcement officer having probable cause to believe that such person has violated Subsection (a) above. The breath test shall be administered in accordance with the rules and regulations prescribed by the Colorado State Board of Health; provided, however, that strict compliance with such rules and regulations shall not be a prerequisite to the admissibility of a test result at trial unless the Court finds that the extent of noncompliance with a Board of Health rule has so impaired the validity and reliability of the testing method and the test results so as to render the evidence unreliable. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test result. If an underage person refuses to take or to complete, or to cooperate with the completion of, a breath test as described above, such refusal shall be admissible into evidence at any trial for an alleged violation of Subsection (a) above.

(g) In any judicial proceeding in the Municipal Court concerning a charge under Subsection (a) above, the Court shall take judicial notice of methods of testing a person's breath for the presence of ethyl alcohol and of the design and operation of devices certified by the Colorado Department of Health for testing a person's breath for the presence of ethyl alcohol. Nothing in this Subsection shall preclude a defendant from offering evidence concerning the accuracy of such testing device.

(h) No law enforcement officer shall enter upon any private property within the Town to investigate any violation of this Section without probable cause.

(i) Any person convicted of violating the provisions of Subsection (a) above shall be punished as provided in Section 1-72 of this Code. The Court, upon sentencing a defendant for a violation of Subsection (a) above, may, in addition to any fine, order that the defendant perform up to twenty-four (24) hours of useful public service and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at such defendant's own expense. (Ord. 12-1992 §1)

Sec. 10-203. Unlawful purchasing of alcoholic beverage by underage person.

It shall be unlawful for any underage person to purchase, procure or obtain any alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense. (Ord. 12-1992 §1)

Sec. 10-204. Unlawful solicitation of alcoholic beverage by underage person.

It shall be unlawful for any underage person to engage or utilize the service of any other person, whether for remuneration or not, to purchase, procure or obtain for such underage person an alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense. (Ord. 12-1992 §1)

Sec. 10-205. Permitting use of false identification by underage person.

It shall be unlawful for any person to intentionally or knowingly permit, or to fail to prevent, the use of any person's identification in connection with the purchase, or attempted purchase, of an alcoholic beverage by an underage person. (Ord. 12-1992 §1)

Sec. 10-206. Unlawful purchasing of alcoholic beverage for underage person.

It shall be unlawful for any person to intentionally or knowingly purchase, procure or obtain an alcoholic beverage for any underage person. (Ord. 12-1992 §1)

Sec. 10-207. Unlawful sale of alcoholic beverage to underage person.

It shall be unlawful for any person to sell, serve, give away, dispose of, exchange or deliver, or permit the sale, service, giving away, delivery or procuring of any alcoholic beverage to or for any underage person. This offense is a strict liability offense. (Ord. 12-1992 §1)

Sec. 10-208. Unlawful sale of alcoholic beverage by unlicensed person.

It shall be unlawful for any person to sell or possess for sale any malt, vinous or spirituous liquor or fermented malt beverage, unless licensed to do so pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., and unless all required licenses are in full force and effect. (Ord. 12-1992 §1)

Sec. 10-209. Illegal removal of alcoholic beverage from licensed premises.

(a) It shall be unlawful for any licensee, manager or employee to intentionally, knowingly or recklessly permit the removal of any alcoholic beverage from the licensed premises.

(b) It shall be unlawful for any person to remove any alcoholic beverage from a licensed premises. This offense is a strict liability offense.

(c) This Section shall not apply to a duly licensed package liquor store or vendor. (Ord. 12-1992 §1)

Sec. 10-210. Duty of licensee to report.

A licensee shall immediately report to the Police Department any unlawful act, conduct or disturbance committed on the licensed premises. Failure to comply with the requirements of this Section may be considered by the licensing authority in any action relating to revocation, suspension or renewal of a license. Proof of failure on at least three (3) occasions within the licensing period to comply with the requirements of this Section shall constitute prima facie grounds for the suspension, revocation or denial of renewal of a license. (Ord. 12-1992 §1)

Sec. 10-211. Open containers prohibited.

It is unlawful for any person to possess an alcoholic beverage in an open container in any motor vehicle or public place within the Town, except within establishments licensed by the Town to sell such beverages for consumption upon the premises. (Ord. 12-1992 §1)

Secs. 10-212—10-230. Reserved.

ARTICLE X

Offenses Relating to Weapons

Sec. 10-231. Concealing deadly weapons.

(a) It is unlawful for any person to knowingly carry a knife or firearm concealed on or about his or her person; provided, however, that this Article shall not apply to persons in their domiciles or places of business or on property owned or under their control at the time of the act of carrying, or to persons in private automobiles or other private means of conveyance, who are carrying such a weapon for the lawful protection of their or another's person or property or for any other legal purpose.

(b) Nothing in this Section shall apply to peace officers or members of the Armed Forces of the United States or Colorado National Guard acting in the lawful discharge of their duties.

(c) Nothing in this Section shall apply to persons who possess a valid permit or license to conceal such weapon or weapons, which license or permit was duly issued pursuant to applicable state or federal law. (Prior code 9.50.020)

Sec. 10-232. Discharging firearms.

It is unlawful for any person, other than a peace officer or a member of the Armed Forces of the United States or the Colorado National Guard acting in lawful discharge of his or her duties, to discharge or cause to be discharged any firearm within or into the limits of the Town; provided, however, that this Section shall not apply to persons discharging firearms in recognized shooting galleries or at shooting ranges, when Town written consent is obtained in advance, where such firearms may be discharged so as not to endanger persons or property and the projectile or projectiles from such firearms are prevented from traversing any grounds or space outside the limits of such gallery or range, or to the discharge of a firearm in lawful defense of person or property. (Prior code 9.50.030)

Sec. 10-233. Displaying deadly weapons.

(a) It is unlawful for any person to intentionally, knowingly or recklessly display, brandish or flourish a deadly weapon in a public place in a manner calculated to alarm or for any person to intentionally and without lawful excuse, justification or purpose aim or point a firearm at another person; provided, however, that the provisions of this Section shall not apply to any situation that constitutes a felony under state law.

(b) As used in this Section, *deadly weapon* includes, but is not necessarily limited to, firearms, knives, hatchets and dangerous clubs.

(c) Nothing herein shall apply to peace officers or members of the Colorado National Guard or Armed Forces of the United States acting in lawful discharge of their duties. (Prior code 9.50.040)

Sec. 10-234. Confiscation of deadly or illegal weapons.

It shall be the duty of every police officer, upon making any arrest and seizing a weapon carried or used in violation of any provisions of this Article, to keep and place the same in such place of safekeeping as may be directed by the Chief of Police until the final determination of the prosecution for the offense or any offense in the prosecution of which such weapon may be evidence. In the event of entry of a final judgment of guilt, the Chief of Police shall make such disposition of such weapon as may be ordered by the Municipal Court or other court having jurisdiction, and in the absence of such order, such disposition shall be as provided by Chapter 1, Article VI of this Code or by law. (Prior code 9.50.050)

Sec. 10-235. Carrying weapons where liquor is sold.

(a) It is unlawful for any person to carry, conceal or display any dangerous or deadly weapon while such person is on the premises of any establishment where malt, vinous or spirituous liquors are sold for consumption on the premises.

(b) The provisions of this Section shall not apply to peace officers or any other person duly licensed or authorized under applicable state or federal law to carry such weapon concealed, or to persons carrying such weapons in their place of business or having control of the premises at the time of the act of carrying. (Prior code 9.50.060)

Sec. 10-236. Dangerous missiles.

It is unlawful for any person to intentionally, knowingly and recklessly throw, shoot or project any stone, arrow, pellet, dart, ball bearing or other dangerous missile at or against the person, animal, building, structure, personal property or fixture or vehicle of another, except that the provisions of this Section shall not apply to persons throwing, projecting or shooting any such dangerous missile at any animal in order to protect his or her person or property or the person or property of another from physical injury. (Prior code 9.50.070)

Secs. 10-237—10-250. Reserved.

ARTICLE XI

Offenses Relating to Minors

Sec. 10-251. Wrongs to children.

It shall be unlawful for any person having the care, custody, control or confidence of or influence over any child to willfully cause or permit the life of such child to be endangered, the health of such child to be injured or the morals of such child to be impaired, or to willfully cause or permit such child to be placed in such a situation, business or occupation that such child's life, health or morals shall be endangered; to willfully abandon such child; or to torture, torment, cruelly punish or willfully or negligently deprive such child of necessary food, clothing or shelter or in any other manner injure such child unnecessarily. (Ord. 26-1992 §1)

Sec. 10-252. Parental liability.

It shall be unlawful for the parent or legal guardian of any underage person to intentionally, knowingly or under conditions which an average parent or guardian should have knowledge of, permit or allow such underage person to violate any of the provisions of this Article. (Ord. 12-1992 §1)

Sec. 10-253. Encouraging delinquency.

It shall be 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. 26-1992 §1)

Sec. 10-254. False statement; false credentials.

It shall be 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. (Ord. 26-1992 §1)

Sec. 10-255. Services of others.

It shall be 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. 26-1992 §1)

Sec. 10-256. Loitering and other acts in or about schools.

It shall be 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. 26-1992 §1)

Secs. 10-257—10-270. Reserved.

ARTICLE XII

Noise

Sec. 10-271. Sirens, whistles, gongs and red lights.

It shall be 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. 26-1992 §1)

Secs. 10-272—10-290. Reserved.

ARTICLE XIII

Domestic Abuse

Sec. 10-291. Definitions.

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

- (1) *Adult* means an individual eighteen (18) years of age or over.
- (2) *Domestic abuse* means any act or threatened act of violence which is committed by an adult or emancipated minor against another adult or emancipated minor who is a current or former relation or who is living in the same domicile.
- (3) *Emancipated minor* means an individual under eighteen (18) years of age who is married and living away from his or her parents or guardians.
- (4) *Act of violence* means any harmful physical contact or the destruction of property as a method of coercion, control, revenge or punishment. (Ord. 2-1993 §1)

Sec. 10-292. Domestic abuse prohibited.

It shall be unlawful for a person to intentionally, knowingly or recklessly commit domestic abuse. (Ord. 2-1993 §1)

Secs. 10-293—10-310. Reserved.

ARTICLE XIV

Offenses Relating to Marijuana and Drug Paraphernalia

Sec. 10-311. Definitions.

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

- (1) *Controlled substance* shall have the same meaning set forth in Section 18-18-102(5), C.R.S.

(2) *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 the State or the Town. *Drug paraphernalia* includes, but is not limited to:

a. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances under circumstances in violation of the laws of this State or the Town;

b. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

c. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

d. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

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

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

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

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; or

13. Ice pipes or chillers.

(3) *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 *marijuana* in this Section. *Marijuana* does not include marijuana concentrate as defined below.

(4) *Marijuana concentrate* means hashish, tetrahydrocannabinols or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols. (Ord. 26-1994 §1)

Sec. 10-312. Possession of marijuana prohibited; penalty.

(a) It shall be unlawful and a municipal offense for any person to possess not more than one (1) ounce of marijuana. Upon conviction for such offense, such person 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) of this Section, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in court. The written notice or summons shall contain the name and address of such arrested or detained person, the date, time and place where such person shall appear, and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One (1) copy of said notice or summons shall be given to the person arrested or detained, one (1) copy shall be sent to the Municipal Court and such other copies as may be required by the Town's Police Department shall be sent to the places designated by the Town's 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 Municipal 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 separate offense of Failure to Obey Summons or Notice as provided in Section 10-85, and upon conviction for such separate offense shall be punished as provided in Article IV of Chapter 1 of this Code.

(c) It shall be unlawful and a municipal offense for any person to openly and publicly display, consume or use not more than one (1) ounce of marijuana. Upon conviction for such offense, such person shall be punished, at a minimum, by a fine of not less than one hundred dollars (\$100.00) or, at a maximum, by a fine of not more than one hundred dollars (\$100.00) and by fifteen (15) days in jail. (Ord. 26-1994 §1)

Sec. 10-313. Drug paraphernalia; determination; considerations.

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

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) The proximity of the object to controlled substances;

- (3) The existence of any residue of controlled substances on the object;
- (4) Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he or she knows or reasonably should know, could use the object to facilitate a violation of Section 10-314 through Section 10-316, inclusive;
- (5) Instructions, oral or written, provided with the object concerning its use;
- (6) Descriptive materials accompanying the object which explain or depict its use;
- (7) National or local advertising concerning its use;
- (8) The manner in which the object is displayed for sale;
- (9) Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;
- (10) The existence and scope of legal uses for the object in the community; or
- (11) Expert testimony concerning its use.

(b) In the event a case brought pursuant to Section 10-314 through Section 10-316, inclusive, is tried before a jury, the Municipal Court shall hold an evidentiary hearing on issues raised pursuant to this Section. Such hearing shall be conducted in camera. (Ord. 26-1994 §1)

Sec. 10-314. Possession of drug paraphernalia; penalty.

It shall be unlawful and a municipal offense for a person to possess drug paraphernalia if such person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this State or the Town. Upon conviction for such offense, such person shall be punished by a fine of not more than one hundred dollars (\$100.00). (Ord. 26-1994 §1)

Sec. 10-315. Manufacture, sale or delivery of drug paraphernalia; penalty.

It shall be unlawful and a municipal offense for any person to sell or deliver, possess with intent to sell or deliver, or manufacture with intent to sell or deliver, equipment, products or materials if such person knows or reasonably should know that such equipment, products or materials could be used as drug paraphernalia. Upon conviction for such offense, such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 26-1994 §1)

Sec. 10-316. Advertisement of drug paraphernalia; penalty.

It shall be unlawful and a municipal offense for any person to place an advertisement in any newspaper, magazine, handbill or other publication if such person intends thereby to promote the sale within the Town of equipment, products or materials designed and intended for use as drug paraphernalia. Upon conviction for such offense, such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 26-1994 §1)

Sec. 10-317. Defenses.

The common law defense known as the *procuring agent defense* is not a defense to any violations of this Article. (Ord. 26-1994 §1)

Secs. 10-318—10-330. Reserved.