

Title 9
PUBLIC PEACE, MORALS AND WELFARE

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9.04 Offenses Relating to Intoxicating Drugs and Alcohol

Section 9.04.010 Purpose

This Chapter shall be construed in such manner as to promote maximum fulfillment of its general purposes, namely, to define offenses, describing adequately the act which constitutes each offense relating to public peace, morals, and welfare, to give fair warning to all persons concerning the nature of the conduct prohibited, and to forbid the commission of offenses.

Section 9.04.020 Definitions

For the purposes of this Chapter the following terms, phrases, and their derivations shall have the meaning given herein:

1. "Alcoholic beverages" or "alcoholic liquors" mean malt, vinous, or spirituous liquors.
2. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designated 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 Colorado Revised Statutes and this Code and shall further mean and include those items described in Section 18-18-426 of said Statutes.
3. "Fermented malt beverage" means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water, containing not less than one-half of one percent (1/2%) and not more than three and two-tenths (3.2) alcohol by weight.
4. "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation or any infusion or decoction of barley, malt, hops, or other similar product, or any combination thereof, in water containing more than three and two-tenths (3.2%) of alcohol by weight.
5. "Marihuana" or "marijuana" means all parts of the plant Cannabis Sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or reparation of the plant, its seeds or its resin. It does not include the mature stalks of the plant, the fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, cake, or sterilized seed of the plant.
6. "Spirituous liquors" means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes, among other things, brandy, rum, whiskey, gin, and every liquid or solid containing alcohol which is fit for use in beverage purposes.
7. "Vinous liquors" means wine and fortified wines not exceeding twenty-one percent (21%) by volume and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

9.04.030 Unlawful acts--Fermented malt beverages.

A. It is unlawful for any person:

1. To sell fermented malt beverages to any person under the age of twenty-one (21) years or to any person between the hours of twelve (12) midnight and five (5) a.m.;

2. To sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of any fermented malt beverage to or for any person under the age of twenty-one (21) years, to a visibly intoxicated person, or to a known habitual drunkard. If a person who, in fact, is not twenty-one (21) years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute a violation of this provision. If a licensee or his employee has reasonable cause to believe that a person is under twenty-one (21) years of age and is exhibiting fraudulent proof of age in an attempt to obtain any fermented malt beverage, the licensee or employee shall confiscate such fraudulent proof of age, if possible, and shall, within twenty-four (24) hours after the confiscation, turn it over to the Town police department;
3. To obtain or attempt to obtain any fermented malt beverage by misrepresentation of age or by any other method in any place where fermented malt beverages are sold if such person is under twenty-one (21) years of age;
4. To have in his possession fermented malt beverages in any store, in any public place including public streets, alleys, roads, or highways, upon property owned by the Town or inside vehicles while upon the public streets, alleys, roads, or highways if such person is under twenty-one (21) years of age;
5. With knowledge, to permit or fail to prevent the use of his identification, including a driver's license, by a person who is under twenty-one (21) years of age for the unlawful purchase of any fermented malt beverage;
6. On or after July 30, 1990, to fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL TO SELL 3.2 BEER TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE, AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME. IDENTIFICATION CARDS, WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS, MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY. IT IS ILLEGAL IF YOU ARE TWENTY-ONE YEARS OR OLDER TO PURCHASE 3.2 BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE. FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

- B. It shall be an affirmative defense to any prosecution for violation(s) of this Chapter if a licensee, proprietor, agent or employee of the licensed establishment can establish, by a preponderance of the evidence, that he required a minor to exhibit a State operator's license, chauffeur's license, or identification card, prior to selling or serving fermented malt beverages to said person, and said proof of age exhibited was fraudulent.

9.04.040 Unlawful acts--Alcohol beverages

It is unlawful for any person:

1. To sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any malt, vinous, or spirituous liquor to or for any person under the age of twenty-one (21) years, to a visibly intoxicated person, or to a known habitual drunkard;
2. To obtain or attempt to obtain malt, vinous, or spirituous liquor by- misrepresentation of age or by any other method in any place where malt, vinous, or spirituous liquor is sold when such person is under twenty-one (21) years of age;

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3. To have in his possession malt, vinous, or spirituous liquor in any store, in any public place, including public streets, alleys, roads, or highways, or upon property owned by the Town or inside vehicles while upon the public streets, alleys, roads, or highways when such person is under twenty-one (21) years of age;
4. To buy any vinous or spirituous liquor from any person not licensed to sell at retail as provided by the laws of the State except as otherwise provided in this Chapter;
5. To sell at retail any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license issued by the State;
6. With knowledge, to permit or fail to prevent the use of his identification, including a driver's license, by a person who is under twenty-one (21) years of age, for the unlawful purchase of any malt, vinous, or spirituous liquor;
7. For any person licensed pursuant to the laws of the State to sell at retail, to sell malt, vinous, or spirituous liquors to any person under the age of twenty-one (21) years, to a habitual drunkard, or to a visibly intoxicated person, or to permit any malt or vinous liquors to be sold or dispensed by a person under eighteen (18) years of age, or spirituous liquors to be sold or dispensed by a person under twenty-one (21) years of age, or to permit any such person to participate in the sale or dispensing thereof. If a licensee or his employee has reasonable cause to believe that a person is under twenty-one (21) years of age and is exhibiting fraudulent proof of age in an attempt to obtain any malt liquors, vinous liquors, or spirituous liquors, as defined in this article, the licensee or employee shall confiscate such fraudulent proof of age, if possible, and shall, within twenty-four (24) hours after the confiscation, turn it over to a local law enforcement agency;
8. To fail to display at all times in a prominent place a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL TO SELL WHISKEY, WINE, OR BEER TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME. IDENTIFICATION CARDS WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY. IT IS ILLEGAL IF YOU ARE TWENTY-ONE YEARS OF AGE OR OLDER FOR YOU TO PURCHASE WHISKEY, WINE, OR BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE. FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

9.04.050 Minors on premises prohibited—Exceptions

It is unlawful for a minor, defined as someone under the age of twenty-one (21) years of age, to enter, visit, frequent, or be present in any establishment where fermented malt beverages or malt, vinous or spirituous liquors are sold for consumption on the premises. Nothing contained in this Chapter shall prohibit:

1. Minors from entering or remaining in the restaurant portion of a licensed establishment for the limited purpose of consuming meals actually and regularly served; provided, however, a minor must leave the premises after consuming said meal;
2. Minors from passing through the bar portion of an establishment for the necessary ingress and egress to and from restrooms;
3. Owners or necessary maintenance employees from being in the establishment which they own or where they work; and

4. Minors, who are members of an entertainment group paid or employed by the licensee, from being present in a licensed establishment during the period of time they are actually performing.

9.04.060 Possession of open alcoholic or fermented malt beverages container prohibited

- A. It shall be unlawful for any person to intentionally, knowingly, willingly, or negligently have either in his possession or within a motor vehicle under his control, while in or upon any public street, highway, alley, sidewalk, park after eleven (11:00) p.m., elementary or secondary school building or ground, or parking area open to the public, a bottle, can or other receptacle which is open, or which has a broken seal, or the contents or which have been partially removed, and which contains any alcoholic beverage, malt vinous, or spirituous liquor, or fermented malt beverage, as defined herein.
- B. Nothing in this Section shall prohibit the consumption, possession or sale of the foregoing beverages when the Town administrator has issued a permit heretofore; provided, that:
 1. Such permit shall be issued only for a designated area;
 2. Such permit shall not be issued for longer than fifteen (15) calendar days in any calendar year; and
 3. The Town administrator shall have determined that the permit is necessary for conducting a public event or celebration and that adequate provision has been made for police supervision and area maintenance.

9.04.070 Illegal possession or consumption of ethyl alcohol by an underage person

- A. As required in this section, unless the context otherwise requires
 1. "Establishment" means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence, and any real property, including buildings and improvements, connected therewith, and shall also include any members, employees, and occupants associated therewith;
 2. "Ethyl alcohol" means any substance, which is or contains ethyl alcohol;
 3. "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or any ethyl alcohol within his immediate presence and control;
 4. "Private property" means any dwelling and its curtilage, which is being used by a natural person, or natural persons for habitation and which is not open to the public, and privately owned real property which is not open to the public. "Private property" shall not include: (a) any establishment which has or is required to have a license pursuant to Article 46, 47, or 48 of Title 12, CRS; or (b) any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or (c) any establishment, which leases, rents, or provided accommodations to members of the public generally.
- B. Any person under twenty-one (21) years of age who possesses or consumes ethyl alcohol anywhere in the Town commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.
- C. It shall be an affirmative defense to the offense described in subsection B. of this section that the ethyl alcohol was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:
 1. while such person was legally at his place of residence and the ethyl alcohol was possessed or consumed with the consent of his 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

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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 (1/2%) of ethyl alcohol by weight.

- D. The possession or consumption of ethyl alcohol shall not constitute a violation of this section if such possession or consumption takes place for religious purposes protected by the first amendment to the United State Constitution.
- E. Prima facie evidence of a violation of subsection B. of this section shall consist of: (1) evidence that the defendant was under the age of twenty-one years (21) 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.
- F. During any trial for a violation of subsection B. of this Section, 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 on such label in determining whether the contents of the bottle, can, or other container were composed in whole or part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as “beer”, “ale”, “malt beverage”, “fermented malt beverage”, “malt liquor”, “wine”, “champagne”, “whiskey” or “whisky”, “gin”, “vodka”, “tequila”, schnapps”, “brandy”, “cognac”, “liqueur”, “cordial”, “alcohol”, or “liquor” shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.
- G. A parent or legal guardian of a person under twenty-one (21) years of age may give or permit the possession and consumption of ethyl alcohol to or by a person described in paragraph (1) of subsection C. of this section. This section G. shall not be construed to permit any establishment, which is or required to be licensed pursuant to Article 46, 47, or 48 of Title 12, C.R.S., or any members, employees, or occupants of any such establishment to give, provide, make available, or sell ethyl alcohol to a person under twenty-one (21) years of age.
- H. Nothing in this section shall be construed to limit or preclude prosecution for any offense pursuant to Article 46, 47, or 48 of Title 12, C.R.S., except as provided in such articles.
- I. The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection B. of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the executive director of the department of health.
- J. Official records of the department of health relating to the certification of breath test instruments, certification of operators, and operator instructors of breath test instruments, certification of standard solutions, certification of laboratories shall be official records of the State. Copies of such records, attested by the executive director of the department of health or his deputy and accompanied by a certificate bearing the official seal for said department, which state that the executive director of the department has custody of said records, shall be admissible in all courts of records and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this subsection J. may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.
- K. In any judicial proceedings in the municipal court concerning a charge under subsection B. of this Section, the court shall take judicial notice of methods of testing a person’s blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the department of health for testing a person’s blood, breath, saliva, or urine for the presence of alcohol. This subsection K. shall not prevent the necessity of establishing during a trial that the testing devices were working and properly operated. Nothing in this subsection K. shall preclude a defendant from offering evidence concerning the accuracy or testing devices.

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L. No law enforcement officer shall enter upon any private property to investigate any violation of this Section without probable cause.

9.04.080 Possession of marijuana prohibited

It shall be unlawful for any person to knowingly possess marijuana in the amount of not more than one (1) ounce of marijuana.

9.04.090 Drug paraphernalia--Determination—Considerations

- A. In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:
 - 1. Statements by an owner or by anyone in control of the object concerning its use;
 - 2. The proximity of the object to controlled substances;
 - 3. The existence of any residue of controlled substances on the object;
 - 4. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he knows or reasonably should know could use the object to facilitate a violation of this Section;
 - 5. Instructions, oral or written, provided with the object concerning its use;
 - 6. Descriptive materials accompanying the object, which explain or depict its use;
 - 7. National or local advertising concerning its use;
 - 8. The manner in which the object is displayed for sale;
 - 9. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;
 - 10. The existence and scope of legal uses for the object in the community; and
 - 11. Expert testimony concerning its use.
- B. In the event a case brought pursuant to this Section is tried before a jury, the court shall hold an evidentiary hearing on issues raised pursuant to this Section. Such hearing shall be conducted in camera.

9.04.100 Possession of drug paraphernalia

It shall be unlawful for any person to possess drug paraphernalia as defined in this Chapter.

9.04.110 Manufacture, sale, or delivery of drug paraphernalia

It shall be unlawful for any person to sell or deliver, possess with intent to sell or deliver, or manufacture with intent to sell or deliver equipment, products, or material knowing, or under circumstances where one reasonably should know, that such equipment, products, or materials could be used as drug paraphernalia.

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9.08 Offenses Relating to Property

9.08.010 Purpose

This Chapter shall be construed in such manner as to promote maximum fulfillment of its general purposes, namely, to define offenses, describing adequately the act which constitutes each offense relating to public health, to give fair warning to all persons concerning the nature of the conduct prohibited, and to forbid the commission of offenses.

9.08.020 Definitions

For the purposes of this Chapter the following terms, phrases, and their derivations shall have the meaning given herein:

1. "Agreement with such public establishment" means any written or verbal agreement as to the price to be charged for, and the acceptance of, food, beverage, service, or accommodations where the price to be charged therefore is printed on a menu or schedule of rates shown to or made available by a public establishment to the patron and includes the acceptance of such food, beverage, service, or accommodations for which a reasonable charge is made.
2. "Coin machine" means a box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination or token made for the purpose and, in return for the insertion of deposit thereof, to offer, to provide, to assist in providing, or to permit the acquisition of some property or some public or private service.
3. "Public establishment" means any establishment selling or offering for sale prepared food or beverages to the public generally, or any establishment leasing or renting overnight sleeping accommodations to the public generally, including, but not exclusively, restaurants, cafes, dining rooms, lunch counters, coffee shops, boarding houses, hotels, motor hotels, and rooming houses, unless the rental thereof is on a month-to-month basis or a longer period of time.
4. "Slug" means any object or article which, by virtue of its size, shape, or any other quality, is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective for a genuine coin, bill, or token and of thereby enabling a person to obtain without valid consideration the property or service sold throughout the machine.

9.08.030 Petty theft

- A. A person commits the offense of petty theft when he knowingly obtains or exercises control over anything with a value of less than five hundred dollars (\$500.00) belonging to another without authorization, or by threat or deception or, if applicable, without paying the purchase price therefore or, and
 1. Knowingly uses, conceals or abandons the thing of value in such a manner as to deprive the other person permanently of its use or benefit; or
 2. Intends to deprive the other person permanently of the use or benefit of the thing of value.
- B. If any person willfully conceals un-purchased goods, wares, or merchandise owned or held by and offered or displayed for sale by any store or mercantile establishment, whether the concealment be on his own person or otherwise, and whether on or off the premises of said store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to obtain control over a thing of value and intended to deprive the owner permanently of its use or benefit without paying the purchase price therefore.
- C. For purposes of this Section, when theft occurs from a store, evidence of the retail value of the thing involved shall be prima facie evidence of the value of the thing involved. Evidence offered to prove

retail value may include, but shall not be limited to, affixed labels and tags, signs, shelf tags, and notices. Evidence of the value of the thing involved may be established through the sale price of other similar property and may include, but shall not be limited to, testimony regarding affixed tags and labels, signs, shelf tags, and notices tending to indicate the price of the thing involved. Hearsay evidence shall not be excluded in determining the value of the thing involved.

- D. If any person conceals upon his person or otherwise carries away any un-purchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace officer acting in good faith and upon probable cause based upon reasonable grounds thereof or may detain and question such persons, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant's employee, or peace officer does not render the merchant, merchant's employee or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

9.08.040 Injuring or destroying public property

- A. No person shall intentionally, knowingly, negligently, or recklessly injure, deface, destroy or remove real property or improvements thereto or moveable or personal property belonging to the Town.
- B. No person shall intentionally, knowingly, negligently, or recklessly tamper with, injure, deface, destroy, or remove any sign, notice, marker, fire alarm box, fire plug, topographical survey monument or any other personal property owned, erected or placed within the Town by the Town or any other governmental agency or district.

9.08.050 Criminal mischief

It shall be unlawful for any person to knowingly damage, or remove real property or improvements thereto, or personal property of one or more other persons where, in the course of a single criminal episode, the aggregate damage to the real or personal property is less than five hundred dollars (\$500.00).

9.08.060 Criminal trespass

A person commits the crime of criminal trespass if he intentionally, knowingly, or willfully:

1. Unlawfully enters or remains in or upon premises which are enclosed in a manner designed to exclude intruders, or are fenced, or if he unlawfully enters or remains in or upon the premises of a hotel, motel, bar, lounge, restaurant, condominium, or apartment building;
2. Unlawfully enters or remains in or upon any other premises or a motor vehicle;
3. A person "unlawfully enters or remains" in or upon premises when he is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person or unless notice forbidding entry is given by posting with signs at intervals of not more than four hundred forty (440) yards, or, if there is a readily identifiable entrance to the land, by posting with signs at such entrance to the private land or the forbidden part of the land. In the case of a designated access road not otherwise posted, said notice shall be posted at the entrance to private land and shall be

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substantially as follows: “Entering Private Property - Remain on Roads. As used in this section, “premises” means real property, buildings, and other improvements thereon.

9.08.070 Posting of handbills and circulars

- A. It shall be unlawful for any person to knowingly place, post, erect or paint any handbill, placard, circular, notice, advertising device or matter of any kind upon any public building, structure, or upon any tree, post, pole or other improvement located within a Town right-of-way, park or open space without the prior written permission of the town administrator.
- B. It shall be unlawful for any person to knowingly place, post, erect or paint any handbill, placard, circular notice, advertising device or matter of any kind upon any private residence, fence, tree, store, building, or other private premises without permission from the owner, tenant, or occupant of the same.

9.08.080 Defacing property

It shall be unlawful for any person to deface or cause, aid in, or permit the defacing of public or private property without the consent of the owner, by painting, drawing, or writing, by use of paint, spray paint or ink, or by any other method.

9.08.090 Fraud by check--Definitions—Penalties

- A. As used in this Section unless the context otherwise requires:
 - 1. “Check” means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer. “Check”, for the purposes of this section only, also includes a negotiable order of withdrawal and a share draft.
 - 2. “Drawee” means a 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 be that of himself or of a person authorized to draw the check on himself.
 - 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 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, or industrial bank, or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

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- B. Any person commits the offense of fraud by check if:
 - 1. Knowing he has insufficient funds with the drawee, he issues a check for the payment of services, wages, salary, commissions, labor, rent, money property, or other thing of value;
 - 2. He opens a checking account, negotiable order of withdrawal account, or share draft account using false identification or an assumed name; or
 - 3. The fraudulent check was drawn on an account which did not exist or which has been closed for a period of thirty (30) days or more prior to the issuance of said check.
- 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 is the payee, holder, or bearer of the check.
- D. If deferred prosecution or probation is ordered, the court as a condition thereof 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 period of probation additional to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.
- E. A bank, a savings and loan association, an industrial bank, or a credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a police officer or prosecuting attorney investigating or prosecuting a charge under this section.
- F. This section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of this section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:
 - 1. He has no account upon which the check or order drawn with the bank or other drawee at the time he issues the check or order; or
 - 2. He has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty (30) days after issue.
- G. In the case of any amount billed by or due the Town and a drawer has insufficient funds as defined herein, a person may avoid prosecution under this Section by making payment satisfactory to the Town within a certain time established by the Town manager, such payment to include a penalty of twenty (\$20) dollars to any such amount billed by or due the Town.

9.08.100 Unlawfully using slugs

A person commits the offense of unlawfully using slugs if with intent to defraud the vendor of property or a service sold by means of a coin machine, he knowingly inserts, deposits, or uses a slug in such machine or causes the machine to be operated by any other unauthorized means, or he makes, possesses or disposes of a slug or slugs with intent to enable a person to use it or them fraudulently in a coin machine.

9.08.110 Tampering

- A. A person commits the offense of tampering if:
 - 1. He tampers with property of another with intent to cause injury, inconvenience, or annoyance to that person or to another or if he knowingly makes an unauthorized connection with property of a utility;
 - 2. In any manner knowingly destroys, breaks, removes, or attempts to destroy, break, remove or otherwise tamper with any equipment associated with oil or gas gathering operations;
 - 3. Without the consent of the owner or operator knowingly alters, obstructs, interrupts, or interferes with or attempts to alter, obstruct, interrupt, or interfere with the action of any equipment used or associated with oil or gas gathering operations;
 - 4. Connects any pipe, tube, stopcock, wire, cord, socket, motor, or other instrument or contrivance with any main, service pipe, or other medium conducting or supplying gas, water, or electricity to

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any building without the knowledge or consent of the person supplying such gas, water, or electricity; or

5. In any manner alters, obstructs, or interferes with the action of any meter provided for the 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.
- B. 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.

9.08.120 Defrauding an innkeeper

Any person who, with intent to defraud, procures food or accommodations from any public establishment, without making payment therefore in accordance with his or her agreement with such public establishment, is guilty of a misdemeanor if the total amount due is five hundred dollars (\$500) or less.

9.08.130 Theft of rental property

A person commits theft of rental property if he obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without the consent of the person providing the personal property; or having lawfully obtained possession for temporary use of the personal property of another which is available only for hire knowingly fails to reveal the whereabouts of or to return said property to the owner thereof or his representative or to the person from whom he has received it within seventy-two hours after the time he agreed to return it. Theft of rental property is a class three (3) misdemeanor where the value of the property involved is less than one hundred (100) dollars. Theft of rental property is a class five (5) misdemeanor where the value of the property is one hundred dollars (\$100) or more and is less than five hundred dollars (\$500).

9.08.140 Arson

A person who knowingly or recklessly starts or maintains a fire or causes an explosion on his own property or that of another and by so doing places any building or occupied structure of another in danger of damage commits the offense of arson.

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9.12 Offenses Relating to Government Operations

9.12.010 Purpose

This Chapter shall be construed in such manner as to promote maximum fulfillment of its general purposes, namely, to define offenses, describing adequately the act which constitutes each offense relating to public health, to give fair warning to all persons concerning the nature of the conduct prohibited, and to forbid the commission of offenses.

9.12.020 Obstructing government operations

- A. A person commits the offense of obstructing government operations if he 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. "Public servant" as used herein, means any officer or employee of the Town, whether elected or appointed, and any person participating as an advisor or consultant or otherwise performing a governmental function of the Town, but does not include peace officers.
- B. It shall be an affirmative defense that:
 - 1. The obstruction, impairment, or hindrance was of a lawful action by a public servant; or
 - 2. The obstruction, impairment or hindrance of a governmental function was by lawful activities in connection with a labor dispute with the government.

9.12.030 Resisting or interfering with a peace officer

- A. It is unlawful to resist arrest or interfere with a peace officer. "Resisting arrest": a person resists arrest if he knowingly prevents or attempts to prevent a peace officer, acting under color of his official authority, from affecting an arrest of the actor or another, by:
 - 1. Using or threatening to use physical force or violence against the peace officer; or
 - 2. Using any other means, which creates a risk of physical injury to the peace officer or another.
- B. "Interfering with a Peace Officer": a person interferes with a peace officer if he knowingly prevents or attempts to prevent a peace officer, acting under the color of his official authority, from effecting an arrest or pursuing an investigation, by:
 - 1. Using or threatening to use physical force or violence against the peace officer or another;
 - 2. Refusing or disobeying a request by the peace officer to withdraw from the immediate area of the peace officer to a reasonable distance from the officer to allow the peace officer to effect the arrest or pursue the investigation; or
 - 3. Using any other means, which create a risk or physical injury to the peace officer or another.
- C. It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest or pursue an investigation, which in fact was unlawful, if he was acting under color of his official authority. A peace officer acts under the color of his official authority when, in the regular course of his assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest or investigation should be made by him.
- D. The term "peace officer", as used in this Section, means the chief of police or any police officer in uniform or if out of uniform, one who has identifies himself to the actor by exhibiting his credentials as a member of the Town police department, or one whom the actor knew was a Town peace officer at the time of the alleged offense.

9.12.040 Obstructing a peace officer or fireman

- A. A person commits the offense of obstructing a peace officer or fireman when, by using or threatening to use violence, force, or physical interference, or obstacle, he 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 official authority, or knowingly obstructs, impairs, or hinders the prevention, control, or abatement of fire by a fireman, acting under color of his official authority.
- B. It is no defense to a prosecution under this Section that the peace officer or fireman was acting in an illegal manner, if he was acting under color of his official authority.
- C. This section does not apply to the interference with a peace officer making an arrest or pursuing an investigation.

9.12.050 Accessory to crime

- A. A person commits the offense of accessory to crime if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of an offense under this Code, he renders assistance to such person.
- B. "Render assistance" means to:
 - 1. Harbor or conceal the other, or
 - 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 or
 - 3. Provide such person with money, transportation, weapon(s), 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.

9.12.060 Refusal to permit inspection

- A. A person commits an offense if, knowing that a public servant, as defined in Section 9.12.020 Obstructing government operations, of this Chapter is legally authorized to inspect property:
 - 1. He refuses to produce or make available the property for inspection at a reasonable hour, or
 - 2. If the property is available for inspection, he refuses to permit the inspection at a reasonable hour.
- B. For the purpose 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 that is authorized by any provision of this Code or lawful regulatory provision.

9.12.070 Refusing to aid a peace officer

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

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9.12.080 Compounding

- A. A person commits the offense of compounding if he accepts or agrees to accept any pecuniary benefit as consideration for:
 - 1. Refraining from seeking prosecution of an offender; or
 - 2. Refraining from reporting to law enforcement authorities information relating to the commission or suspected commission of any offense under any provision of this Code.
- B. It is an affirmative defense to prosecution under this Section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the offense.

9.12.090 False reporting to authorities

A person commits the offense of false reporting to authorities, if:

- 1. He knowingly causes a false alarm of fire or other emergency to be transmitted to or within a volunteer fire department, ambulance service, or any other government agency which deals with emergencies involving danger to life or property; or
- 2. He knowingly 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 knows that it did not occur; or
- 3. He knowingly 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 knows that he has no such information or knows that the information is false.

9.12.100 Impersonating a peace officer

A person who knowingly and falsely pretends to be a peace officer and performs an act in that pretended capacity commits the offense of impersonating a peace officer.

9.12.110 Impersonating a public servant

- A. A person commits the offense of impersonating a public servant if he knowingly and falsely pretends to be a public servant, as defined in Section 9.12.020 Obstructing government operations of this Chapter, other than a peace officer, and performs any act in that pretended capacity.
- B. It is no defense to a prosecution under this Section that the office the actor pretended to hold did not in fact exist.

9.12.120 Aiding escape

- A. Any person who knowingly aids, abets, or assists another person in custody or confinement and charged with, held for, or convicted of a violation of any provision of this Code, 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 defined as “rendering assistance” in Section 9.12.050 Accessory to crime of this Chapter.

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9.12.130 Escape

- A. A person commits the offense of escape if, while being in custody or confinement and held for or charged with a violation of any provision of this Code, or while being in custody or confinement under a sentence following conviction of such a violation, he knowingly escapes from said place of custody or confinement.
- B. Any sentence imposed following conviction of this offense shall run consecutively and not concurrently with any sentence which the offender was serving at the time of the escape.

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9.16 Offenses Relating to Public Peace and Order

9.16.010 Purpose

This Chapter shall be construed in such manner as to promote maximum fulfillment of its general purposes, namely, to define offenses, describing adequately the act which constitutes each offense relating to public health, to give fair warning to all persons concerning the nature of the conduct prohibited, and to forbid the commission of offenses.

9.16.020 Harassment

- A. A person commits harassment if, with intent to harass, annoy or alarm another person, he:
1. Strikes, shoves, kicks, or otherwise touches a person or subjects him 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. Engages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose;
 5. Initiates communication with a person, anonymously or otherwise, by telephone in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion, or proposal by telephone which is obscene;
 6. Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
 7. Makes repeated communications at inconvenient hours or in offensively coarse language; or
 8. Repeatedly insults, taunts, or challenges 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, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.
- C. As used in this Section, unless the context otherwise requires, "annoy" means to irritate with a nettling or exasperating effect.
- D. As used in this Section, unless the context otherwise requires, "alarm" means to arouse to a sense of danger, to put on the alert, to strike with fear, to fill with anxiety as to threaten danger or harm.
- E. Any act prohibited by paragraphs 5., 6., and 7. of subsection A. 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.

9.16.030 Disorderly conduct

- A. It shall be unlawful for any person to commit disorderly conduct. A person commits disorderly conduct if he intentionally, knowingly, or recklessly:
1. Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture or display tends to incite an immediate breach of the peace;
 2. Makes unreasonable noise in a public place or near a private residence that he has no right to occupy;
 3. Abuses or threatens a person in a public place in an obviously offensive manner;
 4. Urinates or defecates in any public place not designed for such purpose;
 5. Exposes his genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person;
 6. Fights with another in a public place except in an amateur or professional contest of athletic skill;

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- 7. Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting; or
 - 8. Not being a peace officer displays a deadly weapon in a public place in a manner calculated to alarm.
- B. It is an affirmative defense to prosecution under subsection A. 3. of this Section that the actor had significant provocation for his abusive or threatening conduct.

9.5.107 Assault and battery

- A. It shall be unlawful for any person to intentionally, knowingly, or recklessly assault, strike, fight, or injure the person of another, except in an amateur or professional contest of athletic skill.
- B. “Assault” as used in this Section shall mean an attempt, coupled with a present ability, to commit a bodily injury upon the person of another.

9.16.050 Hazing

- A. It shall be unlawful for any person to engage in hazing. “Hazing” means any activity by which a person recklessly endangers the health or safety of or causes a risk of bodily injury to an individual for purposes of initiation or admission into or affiliation with any student organization; except that “hazing” does not include customary athletic events or other similar contests or competitions, or authorized training activities conducted by members of the armed forces or the State or the United States.
- B. Hazing includes but is not limited to:
 - 1. Forced or prolonged physical activity,
 - 2. Forced consumption of any food, beverage, medication, or controlled substance, whether or not prescribed, in excess of the usual amounts for human consumption or forced consumption of any substance not generally intended for human consumption; or
 - 3. Prolonged deprivation of sleep, food, or drink.

9.16.060 Menacing

A person commits the offense of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury.

9.16.070 Reckless endangerment

A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits the offense of reckless endangerment.

9.16.080 Criminal use of a noxious substance

It shall be unlawful for any person to deposit on the land or in the building or vehicle of another, without his consent, any stink bomb or device, irritant, or offensive smelling substance with the intent to interfere with another’s use or enjoyment of the land building, or vehicle. It shall be an affirmative defense that a peace officer in the performance of his duties reasonably used a noxious substance.

9.16.090 Aiding or abetting a minor

It shall be unlawful for any person to knowingly permit, aid, abet, or encourage any minor or child in the violation of any of the provisions of this Code.

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9.16.100 Other offenses

In addition to the offenses described in this Chapter, other offenses within the Town relating to public peace and order shall include any place where people congregate which encourages the disturbance of the peace, or where the conduct of persons in or about that place is such as to annoy or disturb the peace of the occupancy of or persons attending such place or the residences in the vicinity or the passers-by on the public streets or highways; any public or private place or property which encourages professional gambling, unlawful use of drugs, unlawful sale and distribution of drugs, furnishing or selling intoxicating liquor to minors, solicitation for prostitution, or trafficking in stolen property; and all loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities.

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9.20 Optional Premises Licenses--Standards

9.20.010 Definitions

Optional premises means the premises specified in an application for a hotel and restaurant license with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel or restaurant within which such licensee is authorized to sell or serve alcoholic beverages or the premises specified in an application for an optional premises license located on an applicant's outdoor sport or recreational facility. Outdoor sports and recreational facility means a facility which charges a fee for the use of such facility.

9.20.020 Standards adopted

The standards adopted herein and the procedures therefore shall be considered in addition to all other standards and procedures applicable to the issuance of licenses under the State Liquor Code for optional premises licenses or for optional premises for a hotel and restaurant license. These two types of licenses for optional premises will be collectively referred to as "optional premises" in these standards unless otherwise provided.

9.20.030 Eligible facilities

An optional premises may only be approved when that premises is located on or adjacent to an outdoor sports and recreational facility. The types of outdoor sports and recreational facilities which may be considered for an outdoor premises license shall be country clubs and golf courses.

9.20.040 Minimum size of facility

The Town council may consider the size of the particular outdoor sports or recreational facility in relationship to the number of optional premises requested for the facility and may deny an optional premises application if it finds the related facility to be too small to justify an optional premises.

9.20.050 Number of optional premises

The Town council may restrict the number of optional premises which any one (1) licensee may have. Any licensee requesting approval of more than one (1) optional premises shall explain the reason for each optional premises requested, demonstrate how the optional premises relate to each other from an operational viewpoint, show the need for each optional premises in relationship to the outdoor sports and recreational facility and its guests, and demonstrate that the optional premises will not adversely affect the neighborhood in which it is located.

9.20.060 Submittal Requirements

Along with the application for a optional premises license the applicant shall submit local and state application fees in the amount as established by the State, a map or other drawing showing the outdoor sports or recreational facility boundaries and the approximate location and area of each optional premises requested, a description of the provisions made for the secure storage of vinous and spirituous liquors on or off the optional premises for future use in the optional premises, and a description of the methods, such as fencing, signs, notices, or barriers, to be used to identify and control the optional premises when in use.

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