

CHAPTER 10

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ARTICLE I

Offenses and Miscellaneous Provisions

Sec. 10-1. Definitions generally.

The terms used in this Chapter shall be as defined in the Colorado Criminal Code, or if not defined in said code, as used in their ordinary, usual and accepted sense and meaning. In this Chapter, public place shall be taken to include any place commonly or usually open to the general public, or accessible to members of the general public, whether it is privately or publicly owned. By way of illustration, 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. (Ord. 435 §1, 1996)

Sec. 10-2. Legislative intent.

It is the intent and purpose of this Chapter not to cover and include those offenses which are felonies under state statute, and this Chapter shall be so construed, notwithstanding any language contained in the Chapter which might otherwise be construed to the contrary. (Ord. 435 §1, 1996)

Sec. 10-3. Affirmative defenses.

The affirmative defenses available in Sections 18-1-701 to 18-1-710 and 18-2-101, C.R.S., shall be available as affirmative defenses to prosecutions in the Municipal Court under those provisions covered by this Chapter. (Ord. 435 §1, 1996)

Sec. 10-4. Penalty.

Failure to comply with the terms of this Chapter shall constitute a criminal violation. Any person who is found guilty of, or pleads guilty or nolo contendere to the violation of, a criminal violation shall be subject to the criminal penalties set forth in Section 1-72 of this Code. (Ord. 435 §1, 1996)

Sec. 10-5. Parental responsibility for acts of minor children.

(a) It is hereby made the duty of parents, guardians or persons having the charge, custody or control of minor children to actively prevent all minor children lawfully under their direction, control or custody from violating any section of this Chapter.

(b) Any parent, guardian or person issued a citation under Section 10-142 of this Chapter shall not be issued a citation under this Section for the same offense. (Ord. 435 §1, 1996)

Sec. 10-6. Attempts; aiding, abetting or advising.

(a) It is unlawful for any person to knowingly engage in conduct constituting a substantial step toward the commission of an offense which would constitute a violation of any section of this Chapter. A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

(b) It is unlawful for any person to knowingly aid another in a commission of an offense which would constitute a violation of this Chapter. A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the person aids, abets or advises the other person in planning or committing the offense, even if the other person is not guilty of committing or attempting the offense. (Ord. 435 §1, 1996)

Sec. 10-7. Accessory to crime.

It is unlawful for any person to knowingly hinder, delay or prevent the discovery, detention, apprehension, prosecution, conviction or punishment of another for the commission of a violation of any section of this Chapter by:

- (1) Harboring or concealing the other;
- (2) Warning 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) Providing such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;
- (4) Using force, intimidation or deception, obstructing anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person; or
- (5) Concealing, destroying or altering any physical evidence that might aid in discovery, detection, apprehension, prosecution, conviction or punishment of such person. (Ord. 435 §1, 1996)

Secs. 10-8—10-20. Reserved.

ARTICLE II

Property

Sec. 10-21. Trespass.

(a) It is unlawful to enter or remain on the premises of another without permission of a person with a possessory interest in the property.

(b) As used in this Section, premises shall mean real property, buildings and other improvements thereon, and the stream banks and beds of any non-navigable freshwater streams flowing through such real property. (Ord. 118 §1-22, 1971; Ord. 196 §6, 1981; Ord. 435 §1, 1996)

Sec. 10-22. Interference with use of public property.

(a) No person without legal privilege shall knowingly obstruct vehicular or pedestrian movement in a public place. For the purpose of this Section:

Legal privilege includes, without limitation, awaiting public transportation in areas designated therefor and acting in accordance with a license or permit used by the Town of construction or other work in, over, on or under the public way or place.

Obstruct means to interfere with or prevent, whether alone or with others, convenient or reasonable passage for use.

Public place means in or upon any public highway, street, alley, walk, parking lot, building, park or other public property, or in or upon those portions of any private property upon which the public has an express or implied license to enter or remain.

(b) No person shall be deemed to have violated this Section solely because of a gathering of persons for the purpose of hearing such person speak or solely because of being a member of such a gathering. Such person commits a violation by refusing to obey a reasonable request or order by a police officer to move:

(1) To prevent obstruction of a public street, alley, sidewalk, public way, place or building, or entrance or doorway into or out of a building open to the public, if compliance with that order at the same time permits the gathering or continue to satisfy its communicative purpose; or

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or hazard. (Ord. 319 §4, 1990; Ord. 435 §1, 1996)

Sec. 10-23. Parking on private premises.

It is unlawful for any person to park or stand a vehicle, whether or not such vehicle is occupied, unless 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. (Ord. 435 §1, 1996)

Sec. 10-24. Littering.

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

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

(c) It shall be an affirmative defense that:

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

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

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

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

(e) It is in the discretion of the court, upon the conviction of any person and the imposition of a fine under this Section, to suspend any or all of the fine in excess of the mandatory minimum fine upon the condition that the convicted person gather and remove from specified public property any litter found thereon, or upon the condition that the convicted person pick up litter at the time prescribed by and at a place within the jurisdiction of the court for not less than eight (8) hours upon a second or subsequent conviction.

(f) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this Section, the operator of said motor vehicle is presumed to have caused or permitted the litter to be so thrown, deposited, dropped or dumped therefrom. (Ord. 118 §1-49, 1971; Ord. 196 §14, 1981; Ord. 435 §1, 1996)

Secs. 10-25—10-40. Reserved.

ARTICLE III

Damage or Destruction

Sec. 10-41. Public property generally.

(a) It is unlawful for any person to intentionally, knowingly, recklessly or negligently destroy public real property or improvements thereto, or movable or personal public property or property which the Town maintains.

(b) It is unlawful for any unauthorized person to intentionally, knowingly, recklessly, negligently or willfully remove, deface, injure, damage or destroy any street sign or traffic control or warning sign or device erected or placed in or adjacent to any street.

(c) It is unlawful for any vehicles equipped with treads 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.

(d) This Section shall not apply when the aggregate value of the property damaged in any one (1) criminal episode is valued at five hundred dollars (\$500.00) or more. (Ord. 435 §1, 1996; Ord. 500 §1, 1999)

Sec. 10-42. Criminal mischief.

A person commits the crime of criminal mischief if he or she knowingly damages or defaces the real or personal property of another person. (Ord. 118 §1-14, 1971; Ord. 196 §4, 1981; Ord. 435 §1, 1996)

Sec. 10-43. Posters.

It is unlawful for any person to intentionally, knowingly, recklessly or negligently tear down, deface or cover up any lawfully posted advertisement or bill of any person; provided that this Section shall not apply to any person having the lawful right to tear down, deface or cover up any such advertisement or bill. (Ord. 435 §1, 1996)

Secs. 10-44—10-60. Reserved.

ARTICLE IV

Theft and Related Offenses

Sec. 10-61. Theft generally.

(a) It is unlawful for any person knowingly to obtain or exercise possession of or control over anything of value of another without authorization, or by threat or deception, and if such person:

- (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 not apply when the aggregate value of the item taken in any one (1) criminal episode is valued at one thousand dollars (\$1,000.00) or more, nor where the item taken is a motor vehicle, trade secret or credit device. (Ord. 418 §1, 1996; Ord. 500 §2, 1999; Ord. 638 §1, 2007)

Sec. 10-62. Bad checks.

(a) It is unlawful for any person to issue or pass a check as payment for any goods, service or other thing of value, or in exchange for cash, when the person knew that, at the time of the issuance of the check, insufficient funds existed in the account being drawn upon to cover this and all other checks outstanding at the time of issuance.

(b) It is unlawful for any person to issue or pass a check as payment for any goods, service or other thing of value, or in exchange for cash when that person, having been notified either by the drawee upon which the check was drawn, or by the person or firm to which the check was originally issued, that the check has been twice refused for insufficiency of funds, and fails to make good the check within fourteen (14) days of that notification. It shall constitute a prima facie violation of this Subsection if the person to whom the check was originally issued:

(1) Obtained at least two (2) forms of nonphoto identification or one (1) form of identification bearing a photograph from the drawer, at the time of acceptance of the check;

(2) Obtained an address of the drawer of the check, at the time of acceptance of the check;

(3) Presented the check to the drawee for acceptance or refusal for the first time within thirty (30) days of the date of issuance of the check;

(4) Upon twice presenting the check to the drawee and having twice received the check returned for insufficiency of funds, the person or firm to whom the check was originally issued shall send a letter notifying the drawer of the refusal of the drawee to accept the check, and requiring restitution within fourteen (14) days. Said letter shall be sent to the address listed in Paragraph (2) above by way of the U.S. Postal Service, certified mail, return receipt requested. Said return receipt, or the letter, envelope or return receipt marked "unclaimed," shall be conclusive proof of compliance with the notice requirements of this Section; and

(5) Fifteen (15) days following the date of delivery, or attempted delivery, of said letter of notification, the drawer has failed to respond and make payment in full for the amount owed on the check and all reasonable charges incurred as a result of the return of the check.

(c) It is unlawful for any person to stop payment or cause payment to be stopped on any check issued or passed as payment for any goods, service or other thing of value, or in exchange for cash, when that person does so with the intent to defraud.

(d) It is unlawful for any person to open a checking account, negotiable order of withdrawal account or share account using false identification or an assumed name, for the purpose of and with the intent of committing theft by check.

(e) Nothing in this Section shall apply where the value of the check exceeds one thousand dollars (\$1,000.00), or where the offender is under accusation or formal criminal filing involving the issuance of two (2) or more checks within any sixty-day period in the State with an aggregate value of one thousand dollars (\$1,000.00) or more, nor shall this Section apply where the offender has been previously convicted under this Section or under any existing or former state statute involving the issuance of bad checks or theft or fraud by check.

(f) 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 the police officers or officer of the court of the Town, the release of which is for the purpose of investigating or prosecuting a violation of this Section.

(g) In imposing a penalty for violation of this Section, the Municipal Court is specifically authorized and empowered to require restitution in full to the person or entity to whom any such check described herein was issued as a portion of, and/or in addition to, any other penalty deemed appropriate by the Court. (Ord. 418 §2, 1996; Ord. 435 §1, 1996; Ord. 500 §3, 1999; Ord. 638 §2, 2007)

Sec. 10-63. Theft of rental property.

(a) It is unlawful for any person knowingly to obtain or exercise temporary or permanent control over the personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without consent of the person providing the personal property.

(b) It is unlawful for any person having obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return said property to the owner thereof or his or her representatives or to the person from whom he or she received it within seventy-two (72) hours after the time at which he or she agreed to return it.

(c) This Section shall not apply where the aggregate value of the items taken in any one (1) criminal episode is valued at one thousand dollars (\$1,000.00) or more. (Ord. 418 §3, 1996; Ord. 435 §1, 1996; Ord. 500 §4, 1999; Ord. 638 §3, 2007)

Sec. 10-64. Joyriding.

It is unlawful for any person knowingly to obtain or exercise control over the motor vehicle of another without authorization or by threat or deception for the purpose of temporarily depriving that person of possession or control of the motor vehicle. (Ord. 418 §4, 1996)

Sec. 10-65. Shoplifting.

(a) It is unlawful for any person to knowingly obtain or exercise control over any goods, wares or merchandise having a total value of less than one thousand dollars (\$1,000.00), held for sale by a store or mercantile establishment with the intention of depriving the store permanently of the use or benefit of such goods, wares or merchandise.

(b) If any person willfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his or her 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 commit the crime of shoplifting. (Ord. 418 §5, 1996; Ord. 500 §5, 1999; Ord. 638 §4, 2007)

Sec. 10-66. Price switching.

It is unlawful for any person willfully to 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; provided, however, that this Section shall not apply to goods, wares or merchandise of value of one thousand dollars (\$1,000.00) or more. (Ord. 418 §6, 1996; Ord. 500 §6, 1999; Ord. 638 §5, 2007)

Sec. 10-67. Theft by receiving.

It is unlawful for any person knowingly to receive, retain or loan money by pawn or pledge on, or dispose of anything having a value of less than one thousand dollars (\$1,000.00), belonging to another, knowing or believing that said 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. (Ord. 418 §7, 1996; Ord. 500 §7, 1999; Ord. 638 §6, 2007)

Sec. 10-68. Questioning of person suspected of theft without liability.

If any person conceals upon his or her person or otherwise carries away any unpurchased goods, wares or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or a police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person 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 the police officer does not render the merchant, merchant's employee or a police officer civilly liable for slander, false arrest, false imprisonment, malicious prosecution or unlawful detention. (Ord. 418 §8, 1996; Ord. 435 §1, 1996)

Secs. 10-69—10-80. Reserved.

ARTICLE V

Public Health and Safety

Sec. 10-81. Abandoned containers.

(a) It is unlawful for any person to abandon or discard in any public or private place accessible to children any chest, closet, piece of furniture, refrigerator, ice box, deep-freeze locker, stove, oven, trunk, motor vehicle or other article having a compartment of a capacity of one and one-half (1½) cubic feet or more, which is no longer in use, and which has not had the door removed or the hinges and such portion of the latch mechanism removed so as to prevent latching or locking of the door; or for any owner, lessee or manager knowingly to permit such a chest, closet, piece of furniture, refrigerator, ice box, deep-freeze locker, stove, oven, trunk, motor vehicle or self-latching container to remain on premises under his or her control without having the door removed or the hinges and such portion of the latch mechanism removed so as to prevent latching or locking of the door.

(b) The provisions of this Section shall not apply to any vendor or seller of chests, closets, pieces of furniture, refrigerators, ice boxes, deep-freeze lockers, stoves, ovens, trunks or motor vehicles, who keeps or stores them for sale purposes in a showroom or salesroom ordinarily watched or attended by sales personnel during business hours and locked to prevent entry when not open for business; or if such vendor or seller takes reasonable precaution to effectively secure the door of any such chest, closet, piece of furniture, refrigerator, ice box, deep-freeze locker, stove, oven, trunk or motor vehicle so as to prevent entrance by children small enough to fit therein. (Ord. 118 §1-28, 1971; Ord. 196 §7, 1981; Ord. 435 §1, 1996)

Sec. 10-82. Storage of flammable liquids in vehicles.

It is unlawful to store or cause to be stored or parked, except for unloading, any vehicle used for the purpose of storing of flammable liquids, gases, explosives or toxicants, upon any streets, ways or avenues of the Town or any private property, except those areas zoned for such uses. (Ord. 435 §1, 1996)

Sec. 10-83. Storage of construction materials.

No person shall keep or store any construction materials unless such materials are covered or secured or in some manner protected so as to prevent such materials from being blown, scattered about or otherwise moved by wind, water or other natural causes. (Ord. 435 §1, 1996)

Sec. 10-84. Contamination of water.

It is unlawful for any person to throw or deposit or cause or permit to be thrown or deposited in any stream, storm or sanitary sewer, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near thereto as to be liable to pollute the water thereof, any offal composed of animal or vegetable substance or both, any dead animal, sewage, excrement or garbage, trash or debris, any water, fuel, oil or other petroleum-based product, paint, chemical, whether liquid or solid, scrap construction material or any other materials that may cause the water to become contaminated. (Ord. 435 §1, 1996)

Sec. 10-85. Poisonous substances.

(a) It is unlawful for any person to put out, spread or distribute poison or any poisonous substance or material of any kind or nature whatsoever, for any purpose whatsoever, at any place or places within the Town, except as hereinafter provided in Subsection (b) of this Section.

(b) Upon application made in writing and signed by the applicant setting out the reason for such application and the purpose thereof, the Board of Trustees may grant to any person who is the owner, lessee or tenant of real estate in the Town a permit to put out, spread or distribute poison on such real estate of which he or she is the owner, tenant or lessee, for such purposes as may be necessary, including the poisoning of grasshoppers, prairie dogs and other destructive animals, insects, birds and pests, but such purposes shall not be deemed to include any domestic bird, fowl, beast, animal, swine or dog.

(c) Such permit shall state the name of the person to whom granted, the purpose of the same, the reason given for the necessity of the same, the description of the premises covered by the permit, the kind and nature of the poison to be spread and the manner of spreading and distributing the same, together with the period of the permit in which to do so.

(d) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by state or federal law. (Ord. 435 §1, 1996)

Sec. 10-86. Cruelty to animals.

(a) It is unlawful for any person to shoot, capture, harass, injure or destroy any wild bird or animal or 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 this Town.

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

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

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

(f) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by state or federal law. (Ord. 435 §1, 1996)

Sec. 10-87. Hunting and feeding of wildlife prohibited.

(a) Hunting prohibited.

(1) It shall be unlawful for any person to hunt within the limits of the Town, using a gun, rifle, firearm, bow, crossbow, knife, spear or by any other means.

(2) The provisions of this Section shall be in addition to and not in derogation of the provisions of Section 10-163 of this Chapter regulating the use of weapons.

(b) Feeding of wildlife prohibited.

(1) It shall be unlawful for any person to feed, or cause to be fed, wildlife within the Town limits. For purposes of this Subsection, wildlife shall include but not be limited to deer, elk, moose, bear, fox, coyote, badger, mountain lion and "furbearers," as such term is defined by the regulations of the Colorado Division of Wildlife.

(2) To the extent feeding is permitted under this Section, such feeding shall be limited to grains, nuts and nut products and shall not include meat products or human garbage.

(c) Every person convicted of violating this Section shall forfeit to the Town any gun, rifle, firearm, bow, crossbow, knife, spear or other mechanism used, directly or indirectly, in committing such violation.

(d) Any person convicted of violating this Section shall be fined in a sum not more than three hundred dollars (\$300.00). (Ord. 604 §1, 2005; Ord. 648 §2, 2008)

Sec. 10-88. Fire bans.

(a) The Town Marshal is hereby authorized to declare emergency fire bans on open fires, as necessary from time to time, to protect the health, safety and welfare of the citizens of the Town. For the purposes of this Section, an *open fire* shall be defined as any outdoor fire, including but not limited to campfires, warming fires, bonfires or the prescribed burning of fence rows, fields, wild lands, trash and debris. When a fire ban is declared, the Town Marshal shall cause to be posted, at

each location designated by the Board of Trustees for the posting of notices of Board of Trustees meetings, a notice that states as follows:

PUBLIC NOTICE

TOWN OF NEDERLAND OPEN FIRE BAN IN EFFECT PURSUANT TO SECTION 10-88 OF THE
NEDERLAND TOWN CODE

(b) At any time during which a notice is posted in accordance with Subsection (a) above, it shall be unlawful to set, maintain or allow the setting or maintenance of an open fire within the Town.

(c) The following fires shall be exempt from any ban imposed under this Section:

- (1) Fires contained within liquid-fueled or gas-fueled stoves or chimneys;
- (2) Fires in fireplaces or stoves within all buildings;
- (3) Charcoal-fueled fires contained within grills;
- (4) Town-approved public fireworks displays; and

(5) Fires authorized by a Fire Protection District, United States Forest Service or Boulder County pursuant to a properly issued burn permit or equivalent U.S. Forest Service administrative approval.

(d) When the office of Town Marshal is vacant or when the Town Marshal is unavailable to perform the duties authorized by Subsection (a) hereof, such duties may be performed by the Town Administrator. (Ord. 708 §1, 2012)

Secs. 10-89—10-100. Reserved.

ARTICLE VI

Morals

Sec. 10-101. Lewd conduct.

(a) It is unlawful for any person to perform any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public:

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

(b) It is unlawful for any 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. 118 §§1-36, 1-37, 1971; Ord. 196 §10, 1981)

Sec. 10-102. Obscene conduct.

It is unlawful for any person to:

(1) Use abusive, indecent, profane or vulgar language in a public place if such language, by its very utterance, tends to incite an immediate breach of the peace.

(2) Make an offensive gesture or display in a public place, if such gesture or display tends to incite an immediate breach of the peace. (Ord. 319 §3, 1990)

Sec. 10-103. Indecent books or demonstrations.

It is unlawful for any person to possess with intent to exhibit, sell, offer for sale, circulate or distribute any obscene or lewd book, picture or other thing whatever of an immoral or scandalous nature, or to exhibit, perform or present any obscene or lewd play, motion picture, lecture, demonstration or other representation. Obscene shall mean that which appeals solely to the prurient interest, and is utterly without redeeming social value, based upon the contemporary community standards of the Town. (Ord. 118 §1-30, 1971; Ord. 196 §8, 1981)

Secs. 10-104—10-120. Reserved.

ARTICLE VII

Public Peace

Sec. 10-121. Disorderly conduct.

It is unlawful for any person to commit disorderly conduct by intentionally, knowingly or recklessly:

(1) Making a coarse and obviously offensive utterance, gesture or display in a public place calculated to provoke an immediate breach of the peace;

(2) Abusing or threatening a person in a public place in an obviously offensive manner calculated to cause an immediate breach of the peace;

(3) Fighting with another person in a public place, except in an amateur or professional contest of athletic skill;

(4) Not being a peace officer, displaying a deadly weapon in a public place in a manner calculated to alarm other persons. (Ord. 319 §2, 1990; Ord. 435 §1, 1996)

Sec. 10-122. 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 by any other means. (Ord. 435 §1, 1996)

Sec. 10-123. Loitering.

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

(b) It is unlawful for a person to:

(1) Loiter for the purpose of begging;

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

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

(4) Loiter in or about the post office, Town Hall, fire hall, cemetery, churches or other public buildings not having any specific, legitimate reason for being there, or not having written permission from the relevant administrator of the property. It shall be an affirmative defense that the defendant's acts were lawful and he or she was exercising his or her rights of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise; or

(5) Loiter with one (1) or more persons for the purpose of unlawfully using or possessing a narcotic or dangerous drug. (Ord. 118 §1-31, 1971; Ord. 196 §9, 1981; Ord. 435 §1, 1996)

Sec. 10-124. Unlawful assembly.

It is unlawful for any two (2) or more persons to assemble together with an intent to commit a criminal offense under any federal or state law or Town ordinance; or, being assembled, mutually to agree to act in concert, or to commit a criminal offense with force or violence against the property of the Town or the person or the property of another, or against the peace and to the terror of others; or being present at such meeting or assembly, and having knowledge of the intent to commit a criminal offense, to fail to endeavor to prevent the commission of or perpetration of such criminal offenses. (Ord. 319 §1, 1990)

Sec. 10-125. Unlawful interference; 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 facility being used by any educational institution to willfully impede the staff or faculty of such institution in the lawful performance of their duties or to willfully impede a student of such institution in the lawful pursuit of his or her education 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 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 and the Chief Administrative Officer charged with maintaining order on the school premises and in its facilities has requested such person to leave.

(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, or any contractor or subcontractor of any employee thereof. (Ord. 435 §1, 1996)

Sec. 10-126. Unlawful interference; public buildings and proceedings.

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. (Ord. 435 §1, 1996)

Sec. 10-127. Harassment.

(a) It is unlawful to harass any person. A person commits harassment if, with the intent to harass, annoy or alarm another person, he or she:

(1) Strikes, shoves, kicks or otherwise touches a person or subject 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) Communicates with a person, anonymously or otherwise by oral or written communication or by telephone, in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone which is obscene;

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

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

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

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

(c) Any act under Paragraph (a)(5) or (6) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received. (Ord. 118 §1-42, 1971; Ord. 196 §11, 1981; Ord. 435 §1, 1996; Ord. 510 §1, 1999)

Sec. 10-128. Harassment by stalking.

(a) It is unlawful to harass any person by stalking. A person commits harassment by stalking if such person:

(1) Makes a credible threat to another person and, in connection with such threat, repeatedly follows that person; or

(2) Makes a credible threat to another person and, in connection with such threat, repeatedly makes any form of communication with that person, whether or not a conversation ensues.

(b) For the purposes of this Section, *credible threat* means a threat that would cause a reasonable person to be in fear for the person's life or safety, and repeatedly means on more than one (1) occasion.

(c) If a person is convicted of stalking more than once within a seven-year period, there shall be a minimum mandatory sentence of thirty (30) days' imprisonment. (Ord. 435 §1, 1996)

Sec. 10-129. Acts prohibited in public.

(a) It is unlawful for any person to perform any of the following acts in any public place, as defined herein:

(1) Urination;

(2) Defecation.

(b) As used in this Section the term *public place* means and includes any street, alley, sidewalk, thoroughfare or parking lot; any lobby, corridor, elevator, stairway, recreation room or common room in a hotel, motel, office building, apartment building or condominium; any public or municipal building or premises; any vacant lot, park or public recreation facility; any church, school, library, theater, auditorium or building frequented by members of the public; any business or industrial

premises; except that the term public place shall not include that portion of any public place which is designed and commonly used for the acts of human urination and/or defecation.

(c) Violations of the provisions of this Section shall be punishable as follows:

(1) If the defendant is eighteen (18) years of age or older at the time of the commission of the offense, by a fine as set forth in Section 1-72 of this Code.

(2) If the defendant is less than eighteen (18) years at the time of the commission of the offense, by a fine not to exceed three hundred dollars (\$300.00). (Ord. 319 §5, 1990; Ord. 435 §1, 1996)

Sec. 10-130. Fighting by agreement.

(a) It is unlawful for two (2) or more persons to fight by agreement in a public place except in a sporting event authorized by law.

(b) This Section shall not apply to persons who by agreement engage in a fight with deadly weapons, whether public or private. (Ord. 435 §1, 1996)

Secs. 10-131—10-140. Reserved.

ARTICLE VIII

Alcohol and Drugs

Sec. 10-141. Definitions.

(a) For purposes of this Article, *fermented malt beverage* has the same meaning as its meaning under the Colorado Beer Code.

(b) For purposes of this Article, *malt, vinous and spirituous liquor* has the same meaning as its meaning under the Colorado Liquor Code.

(c) For purposes of this Article, *vehicle* has the same meaning as its meaning under the Model Traffic Code as adopted in Section 8-1 of this Code.

(d) For the purposes of this Article, the terms *cannabis* shall include all parts of the plant *Cannabis sativa L.*, whether growing or not; the seed thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture, residue or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake, or the sterilized seed of such plant, which is incapable of germination.

(e) The term *cannabis concentrate* means hashish, tetrahydrocannabinols or any alkaloid, salt derivative, preparation, compound or mixture, whether natural or synthesized, or tetrahydrocannabinols. (Ord. 376 §1, 1994; Ord. 435 §1, 1996)

Sec. 10-142. Possession and consumption in public.

(a) No person within the Town limits shall possess an opened container of or consume any malt, vinous or spirituous liquor or fermented malt beverage in public, except upon premises licensed for consumption of the liquor or beverage involved.

(b) For the purposes of this Section, *opened container* means any container other than an original closed container as sealed or closed for sale to the public by the manufacturer or bottler of the liquor or beverage. If an original container has been unsealed, undone or opened in any manner it is an opened container for the purposes of this Section.

(c) For the purposes of this Section *in public* means:

(1) In or upon any public highway, public street, public alley, public walk, public parking lot, public building, public park, public ball fields, public trails, public open space or other public property or public place, whether in a vehicle or not;

(2) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain; or

(3) In or upon any other private property without the express or implied permission of the owner or person in possession and control of such property or his or her agent.

(d) It is an affirmative defense to a charge of violating this Section that the premises were licensed by the Town or by the State for the consumption of the liquor or beverage involved, and any judge shall take judicial notice of the official records of such license and dismiss forthwith any charge to which this defense applies. If such dismissal is *ex parte*, the judge shall notify the Town Attorney, who may petition the court for permission to refile the charge.

(e) It is a specific defense to a charge of violating this Section that:

(1) The owner of the property involved or the owner's agent gave express permission to the accused or to members of the accused's class to perform the acts complained of; or

(2) The accused was transporting the liquor or beverage from one (1) place where it could be lawfully consumed directly and without delay to another such place, and the container was at all times during the transportation capped, corked or otherwise reclosed with a firmly affixed waterproof lid. When the liquor or beverage was being transported in a motor vehicle, this defense is only available if the container was in the trunk or was not otherwise immediately accessible to the driver or any passenger.

(f) No person shall drive or sit in the driver's seat of any motor vehicle, other than one carrying passengers for hire, in which a violation of Subsection (a) above is occurring. (Ord. 376 §2, 1994)

Sec. 10-143. Regulations concerning malt, vinous and spirituous liquors.

(a) No person shall sell, deliver or give away any malt, vinous or spirituous liquor to any person then under the age of twenty-one (21) years or purchase such liquor for such minor.

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

(c) No person under the age of twenty-one (21) years shall possess, or have under such person's control, or request that any other person purchase for such minor person or sell, serve, give away or offer for sale any malt, vinous or spirituous liquor in any container of any kind, whether opened or unopened. It is a specific defense to a charge of violating this Subsection that the acts complained of were performed by a person eighteen (18) years of age or older in the course of such person's employment in an establishment holding a beer and wine license.

(d) It is unlawful for any minor under twenty-one (21) years of age to have in his or her possession malt, vinous or spirituous liquors in public places, including but not limited to, public streets, alleys, roads or highways. (Ord. 376 §§3, 4, 1994; Ord. 435 §1, 1996)

Sec. 10-144. Possession of cannabis.

(a) It is unlawful for any person under the age of twenty-one (21) years to possess one (1) ounce or less of cannabis or cannabis concentrate and, upon conviction thereof or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine of not more than one hundred dollars (\$100.00).

(b) It is unlawful for any person under the age of twenty-one (21) years to openly and publicly to display or consume one (1) ounce or less of cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, shall be punished by a fine of one hundred dollars (\$100.00), and/or by imprisonment not exceeding fifteen (15) days.

(c) The provisions of this Section shall not apply to any person who possesses or uses cannabis or cannabis concentrate pursuant to the Dangerous Drugs Therapeutic Research Act. (Ord. 435 §1, 1996; Ord. 681A §1, 2010)

Sec. 10-145. Violations.

(a) It is unlawful for any person to violate any of the provisions stated or adopted in this Article.

(b) Unless otherwise provided in this Article, any person found guilty of intentionally violating the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in Section 1-72 of this Code. (Ord. 376 §5, 1994; Ord. 435 §1, 1996)

Sec. 10-146. Possession of drug paraphernalia.

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

Controlled substance means a controlled substance, as that term is defined in Section 18-18-102(5), C.R.S., which term shall include controlled substance analog, as defined in Section 18-18-102(5)(A), C.R.S.

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, possessing, 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 or in violation of the laws of the 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 or 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, used 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 storage or concealing controlled substances;

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, meaning pipes made of any substance with bowls large enough to hold water used for filtering the smoke to be inhaled;

3. Carburetor tubes and devices;

4. Smoking and carburetor 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; and
13. Ice pipes or chillers.

(b) Drug paraphernalia determination, considerations. 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) Statement 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 or 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 would 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 or scope of legal uses for the object in the community.
- (11) Expert testimony concerning its use.

(c) Unlawful acts.

(1) It is unlawful for any person to possess any drug paraphernalia relating to a controlled substance *other than* cannabis or cannabis concentrate, as those terms are defined by this Code, if such person knows or reasonably should have known that the drug paraphernalia could be used in a manner which would violate the laws of the State or the Town.

(2) It is unlawful for any person under the age of twenty-one (21) years to possess any drug paraphernalia relating to cannabis or cannabis concentrate, as those terms are defined by this Code, if such person knows or reasonably should have known that the drug paraphernalia could be used in a manner which would violate the laws of the State or the Town.

(d) Penalty. Any person who possesses drug paraphernalia in violation of this Section commits a violation of this Code and, upon conviction thereof shall be punished by a fine of not more than one hundred dollars (\$100.00). (Ord. 567 §1, 2003; Ord. 681A §2, 2010)

Secs. 10-147—10-160. Reserved.

ARTICLE IX

Weapons

Sec. 10-161. Definitions.

(a) For the purposes of this Article and except as is provided herein, all words shall be defined according to the Colorado Criminal Code.

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

Throwing star means a disk having sharp radiating points or any disk-shaped bladed object which is handheld and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense. (Ord. 435 §1, 1996)

Sec. 10-162. Carrying concealed weapons.

(a) It is unlawful for any person knowingly to carry a knife or firearm concealed on or about his or her person; provided that this Section shall not apply to persons in their own domiciles or places of business or on property owned by or under their control at the time of the act of carrying; to persons in private automobiles or other private means of conveyance who are carrying a weapon for the lawful protection of their or another's person or property while travelling; to a person who prior to the time of carrying a concealed weapon has been issued a written permit pursuant to Section 18-12-105.1, C.R.S.; to a peace officer, Level I or Ia as defined in Section 18-1-901(3)(1)(I) or (3)(1)(II)(A) or a peace officer, Level II as defined in Section 18-1-901(3)(1)(III) while on duty; or for any other legal purposes.

(b) It is unlawful for any person to knowingly carry, conceal or cause to be concealed in any vehicle or to use any blackjack, gravity knife, multi-fixed blade, stiletto, throwing knife, switchblade knife or brass or metallic knuckles. Nothing in this Section shall apply to any police officers or members of the armed forces of the United States or the Colorado National Guard acting in the lawful discharge of their duties. (Ord. 435 §1, 1996)

Sec. 10-163. Prohibited use of weapons.

(a) Except as provided in Subsection (b) of this Section, it is unlawful for any person other than any police officers 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 that this Section shall not apply to persons discharging firearms in shooting galleries or at shooting ranges, 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 persons or property.

(b) The Town Marshal may grant written permission to persons within the Town to permit the discharge of weapons at a certain locality within the Town at a fixed time or times.

(c) Except as provided in Subsection (b) of this Section, it is unlawful for any parent, guardian or other person having the care and custody of any minor child under the age of eighteen (18) years to allow or permit any such minor to fire or discharge any cannon, anvil, gun, pistol, rifle, shotgun or other firearm of any kind or nature, or to fire, explode or set off any other such device manufactured or contrived for the purpose of throwing or propelling lead, pellets or other hard substances, powered by compressed air, springs or otherwise, or to fire, set off or explode anything containing powder, gasoline or other combustible or explosive material within the Town.

(d) It is unlawful to knowingly and unlawfully aim a firearm at another person; to recklessly or with criminal negligence discharge a firearm or shoot a bow and arrow; to knowingly set a loaded gun, trap or device designed to cause an explosion upon being tripped or approached and leave it unattended by a competent person immediately present; to possess a firearm while under the influence of intoxicating liquor or of a controlled substance (possession of a permit issued under Section 18-12-105.1, C.R.S., is no defense); or to carry, conceal or display any dangerous or illegal weapon, when such person is on the premises where alcoholic beverages are sold.

(e) It is unlawful to knowingly and unlawfully aim, swing or throw a throwing star or nunchaku as defined in this subsection at another person, or knowingly possess a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, nonaccessible container. (Ord. 435 §1, 1996)

Sec. 10-164. Furnishing to certain persons prohibited.

It is unlawful for any person to purchase, sell, loan or furnish any gun, pistol, rifle, shotgun or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or controlled substance, to any person in a condition of agitation and excitability, or to any minor person under the age of eighteen (18) years. (Ord. 435 §1, 1996)

Sec. 10-165. Throwing missiles prohibited.

It is unlawful for any person to throw any stone, snowball or any other missile upon or at any vehicle, building, tree or other public or private property, or upon or at any person in any public way or place, or on any enclosed or unenclosed ground. (Ord. 118 §1-32, 1971)

Sec. 10-166. Confiscation and disposition.

It shall be the duty of the police officers, upon making any arrest and seizing a weapon carried or used in violation of any section of this Article, to keep and place such weapon in such place of safekeeping as may be directed by the police officers, until the final determination of the prosecution

for any offense in the prosecution of which such weapon may be evidence. Upon entry of a final plea of guilty or nolo contendere or judgment of guilt, the person so pleading or found guilty shall forfeit to the Town any weapon carried or used in violation of any section of this Article. Upon entry of a final plea of guilty or nolo contendere or judgment of guilt, it shall then be the duty of the Municipal Judge to deliver said weapon forthwith to the police officers who shall make disposition of the weapon. (Ord. 435 §1, 1996)

Secs. 10-167—10-180. Reserved.

ARTICLE X

Offenses Against the Person

Sec. 10-181. Assault.

(a) It is unlawful for any person intentionally, recklessly or with criminal negligence to cause bodily injury to another person; provided that this Section shall not apply to injury caused by means of a deadly weapon.

(b) It is unlawful to strike, shove, kick, or otherwise touch the body of another person or subject him or her to physical contact without permission of the person. (Ord. 118 §1-9, 1971; Ord. 196 §3, 1981; Ord. 435 §1, 1996)

Sec. 10-182. Menacing.

It is unlawful for any person knowingly to place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided that if such menacing is with the use of a deadly weapon, this Section shall not apply. (Ord. 118 §1-8, 1971; Ord. 196 §2, 1981; Ord. 435 §1, 1996)

Sec. 10-183. Reckless endangerment.

It is unlawful for any person recklessly to engage in conduct which creates substantial risk of serious bodily injury to another person. (Ord. 435 §1, 1996)

Secs. 10-184—10-200. Reserved.

ARTICLE XI

Minors

Sec. 10-201. Harboring prohibited; exceptions.

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

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

(c) The provisions of this Section shall not apply to persons working in their official capacities as employees or members of the staffs or agencies licensed by the State and financed by the United States to harbor minors, nor shall said provisions apply to such agencies; provided that such agencies shall at all times comply with all applicable laws and order of courts with jurisdiction over the minor. (Ord. 435 §1, 1996)

Sec. 10-202. Curfew.

(a) No person under eighteen (18) years of age shall be or remain on any public street, sidewalk, alley or other public place in the Town after 10:00 p.m. or prior to 5:00 a.m. on Sunday through Thursday of each week or after 12:00 midnight on Friday and Saturday and prior to 5:00 a.m., except as provided in Subsection (b) below.

(b) In the following exceptional cases, a minor may be or remain in a public place beyond the hours set forth in Subsection (a) above:

(1) When accompanied by a parent, legal guardian, person between eighteen (18) and twenty-one (21) years of age with written parental authorization, or person twenty-one (21) years of age or older with parental authorization;

(2) For thirty (30) minutes before or after employment hours when commuting directly to and from such employment and when carrying an employer's certification of time and place of employment.

(3) When conducting an errand directed by the parent or legal guardian;

(4) When returning home from events such as movies, theater or sporting events;

(5) Until 12:30 a.m. if the person is on the property or a sidewalk directly adjacent to a building in which such person resides or to buildings immediately adjacent to the building in which such person resides; or

(6) When engaged in religious or scholastic activities.

(c) A police officer who has probable cause to believe that a child is in violation of this Section shall take such child into custody and immediately contact the child's parent or guardian. If, after this contact, there is still probable cause to believe that the child was violating this Section, the child shall be turned over to the custody of the juvenile authorities until a parent or guardian can take custody of the child.

(d) Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined as provided in Section 1-72 of this Code.

(e) A police officer who has probable cause to believe that a child is in violation of this Section is hereby authorized to detain and take such child into custody until the parent or guardian of the child

shall take him or her into custody; but such officer shall immediately, upon taking custody of the child, contact the child's parent or guardian.

(f) It is unlawful for any parent, guardian or other person having care or custody of any child under the age of eighteen (18) years to allow or to permit any such child to be in violation of Subsection (a) above. Furthermore, if a child under the age of eighteen (18) years has been twice convicted of violating Subsection (a) above, it shall be presumed that the parent, guardian or other person having the care or custody of said child at the time of the offense allowed or permitted the child to violate Subsection (a) above. (Ord. 319 §6, 1990; Ord. 435 §1, 1996)

Sec. 10-203. Distribution of cigarettes and tobacco products to minors.

(a) It is unlawful for any person eighteen (18) years of age or older to furnish to any person who is under eighteen (18) years of age, by gift, sale or other means any cigarettes or tobacco products as defined by Section 39-28.5-101(5), C.R.S.

(b) It is unlawful for any person under the age of eighteen (18) years to attempt to purchase or obtain, either directly or through an intermediary, any cigarette or tobacco products as defined by Section 39-28.5-101(5), C.R.S.

(c) It is unlawful for any person to sell or offer to sell any smokeless tobacco product as defined by Section 18-13-121 (4)(a) C.R.S., by use of a vending machine or other coin-operated machine.

(d) It is unlawful for any person to sell or offer to sell any cigarette or tobacco products as defined by Section 39-28.5-101(5) C.R.S., other than a smokeless tobacco product as defined by Section 18-13-121(4)(a), C.R.S., by use of a vending machine or any coin-operated machine, that does not display a warning sign placed in a prominent place on such machine. The warning sign shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN (18) YEARS OF AGE TO PURCHASE
CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A FIFTY-DOLLAR FINE MAY
BE IMPOSED.

(e) Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (a), (c) or (d) shall be punished by a fine of two hundred dollars (\$200.00). Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (b) shall be punished by a fine of fifty dollars (\$50.00). (Ord. 435 §1, 1996)

Secs. 10-204—10-220. Reserved.

ARTICLE XII

Government

Sec. 10-221. Law enforcement officer defined.

Law enforcement officer or *law enforcement officers*, as used in this Article, means any person defined as a peace officer by Section 18-1-901, C.R.S., who is in uniform or who has displayed his or her credentials to the person whose arrest is attempted. (Ord. 435 §1, 1996)

Sec. 10-222. False alarms to agencies of public safety by alarm devices.

(a) An alarm device is a device which is designed to cause police, fire or another emergency response, investigation and safeguarding of property at the location of an event reported:

(1) By a signal transmitted, telephoned, radioed or otherwise relayed to any organization, official or volunteer which deals with emergencies involving danger to life or property, by an alarm device or by any person acting in response to a signal activated by such device; or

(2) By an audible or visible signal designed to notify a person within audible or visible range or the signal.

(b) It is unlawful for any person other than qualified and licensed installers and maintenance persons to install, work on or maintain an alarm device or the components thereof.

(c) The owner or occupant of property that maintains an alarm device shall designate a person or company to be responsible for the monitoring and maintenance of the alarm device.

(d) The business license of a designated person or company doing business in the Town for the purpose of installing or maintaining alarm devices may be revoked for cause. Cause for license revocation includes:

(1) Failure to notify the Town's communications center of alarm systems that are temporarily out of service.

(2) Failure to notify the Town's communications center of a legitimate alarm system activation.

(3) Failure to correct problems within an alarm system that prohibit the system from operating properly within ten (10) working days. Extensions may be granted in writing by the Town Administrator or the Town Marshal.

(4) Failure to install an alarm system properly or according to code.

(5) Failure of the alarm company, installer, maintenance person or company responsible to respond within a reasonable time (usually one [1] hour) to restore an alarm system to proper working order or remove it from service temporarily.

(e) When the Police Department, or any other Town organization or agency responsible for emergency responses, responds to a signal activated by an alarm device, as defined above, and it appears after proper investigation that a false alarm did occur, then the owner or occupant of the premises to which the response is made, the designated person or company responsible for monitoring, and the person or company responsible for the installation and maintenance of the alarm device, shall each be subject to a false alarm service warning or charge.

(1) False alarms during the first thirty (30) days after the installation of a new alarm device shall result in a warning.

(2) The first five (5) false alarms at a particular location in each calendar year shall result in a warning. The owner, occupant, person or company found responsible for said premises shall each be subject to a service charge of fifty dollars (\$50.00) for the sixth, seventh, eighth, ninth and tenth occurrence thereafter, and a charge of one hundred dollars (\$100.00) for each occurrence thereafter. This charge shall be payable to the Town and the Town may maintain an action for said charge and all costs of collection. The notice of assessment of the service charge shall state that the charge may be appealed to the Board of Trustees within ten (10) days of the date of the assessment pursuant to this Subsection (e), provided that the charge is first paid to the Town Clerk.

(3) Upon receipt of a written notice that a service charge is due, the owner, occupant, person or company found responsible for the premises or the false alarm may appeal the assessment of the service charge to the Board of Trustees. Such appeal shall be written and shall be filed with the Town Clerk within ten (10) days of the date of the assessment. The appeal shall state:

- a. The name of the appellant;
- b. The location of the premises where the false alarm occurred;
- c. The dates and circumstances of all false alarms occurring on the same premises within the previous twelve (12) months;
- d. The name of the agency within the Town assessing the service charge; and
- e. The appellant's grounds for believing that the service charge is not due under this Section.

(4) If the service charge is not paid within ten (10) days of the assessment, any appeal shall be denied. If the appeal is upheld by the Board of Trustees, the service charge shall be refunded.

(5) The Board of Trustees shall have no jurisdiction to review an appeal unless it is timely filed and the service charge timely paid. If an appeal is not timely filed, the Board of Trustees shall deny it, stating the reason therein.

(6) The decision of the Board of Trustees to deny or grant the relief requested in an appeal shall be final.

(7) Upon a finding of unusual hardship, the Board of Trustees may grant a waiver of the future application of this Section to an owner or occupant of a premises or a person or company doing business within the Town. Such a waiver shall not be applied retroactively.

(8) All service charges and costs of collecting such charges shall be a debt due and owing the Town, which shall be collected in any manner permitted by state law or local ordinance.

(f) It is unlawful for a person knowingly to cause a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property. (Ord. 435 §1, 1996)

Sec. 10-223. False reports, generally.

(a) It is unlawful for any person to report the commission of a crime or existence of a fire or other emergency to the Town Marshal 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.

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

(1) Such person knows that no such offense or other incident has occurred; or

(2) Such person knows the information is false or that he or she has no such information.

(c) It is unlawful for any person to make telephone calls to the Town Marshal and emergency telephone numbers, including 911, when such person makes the call knowingly and for no legitimate purpose. This Subsection shall apply regardless of whether the person who makes the call speaks or in any way communicates to the Town employee answering the call.

(d) 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. (Ord. 435 §1, 1996)

Sec. 10-224. False information to law enforcement authorities.

(a) Falsely incriminating another. It is unlawful for a person knowingly to give false information to any law enforcement officer with the purpose of implicating another.

(b) Fictitious reports. It is unlawful for a person to:

(1) Report to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretend to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

(c) Fictitious names and addresses. It is unlawful for a person to give a false name or address to a law enforcement officer with the intent of concealing or hiding one's own real name and/or address and/or age. (Ord. 435 §1, 1996)

Sec. 10-225. Impersonation of Town employees.

(a) It is unlawful for any person who is not a law enforcement officer to impersonate or represent to others that he or she is a law enforcement officer.

(b) It is unlawful for any person not a Town officer or Town employee to willfully or fraudulently represent himself or herself to be a Town officer or an employee of the Town.

(c) It is unlawful for any person to purport to perform the duties of any Town officer or employee if he or she is not an authorized officer or employee of the Town. (Ord. 435 §1, 1996)

Sec. 10-226. Resisting or assaulting police officers.

(a) It is unlawful for any person to resist any law enforcement officer, police officer, any member of the Town Marshal's office or any person duly empowered with police authority while in the discharge or apparent discharge of his or her duty, or in any way to interfere with or hinder him or her in the discharge or apparent discharge of his or her duty.

(b) It is unlawful for any person to assault in any manner any law enforcement officer, police officer, any member of the Town Marshal's office, or any person duly empowered with police authority, while in the discharge or apparent discharge of his or her duty. (Ord. 124 §§1, 4, 1973; Ord. 435 §1, 1996)

Sec. 10-227. Assisting person in custody.

It is unlawful for any person to offer or endeavor to assist any person in the custody of a law enforcement officer, police officer, a member of the Town Marshal's office or a person duly empowered with police authority to escape or to attempt to escape from such custody. (Ord. 124 §§2, 5, 1973; Ord. 435 §1, 1996)

Sec. 10-228. Rescuing person in custody.

It is unlawful for any person to rescue or to attempt to rescue any person in the custody of a law enforcement officer, police officer, a member of the Town Marshal's office or a person duly empowered with police authority. (Ord. 124 §§ 3, 6, 1973; Ord. 435 §1, 1996)

Sec. 10-229. Disobeying officer.

It is unlawful for any person over the age of eighteen (18) years knowingly to disobey the lawful or reasonable order of law enforcement officers given incident to the discharge of the official duties of such law enforcement officers when coping with an emergency explosion or other disaster. (Ord. 435 §1, 1996)

Secs. 10-230—10-240. Reserved.

ARTICLE XIII

Fireworks

Sec. 10-241. Applicability of Article.

The provisions of this Article apply to the possession, sale or use by any person of any fireworks or pyrotechnic displays, as those terms are defined in Section 10-242, within the Town limits; provided, however, that none of the provisions of this Article shall be construed to apply to or to prohibit any of the following:

- (1) The possession of fireworks for the sole purpose of immediate shipment or removal of the same by the person, partnership, association or corporation possessing the same to a location outside the Town;
- (2) The sale, possession, storage or use of flashlight composition by photographers or dealers in photographic supplies;
- (3) The sale to, use by or possession of any person, association, partnership or corporation duly licensed by the Town in accordance with this Article to put on a supervised public display within the Town;
- (4) The sale to, use by or possession of any person, partnership, association or corporation employed by the school system for use solely in organized athletic events;
- (5) The manufacture, sale, use or possession of educational rockets and toy propellant device type engines used in such rockets, when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two (2) ounces of propellant when such engine or model cartridge is designed to be ignited by electrical means. (Ord. 435 §1, 1996)

Sec. 10-242. Definitions.

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

Fireworks includes:

- a. Any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonation, including, without limitation, the following articles and devices commonly known and used as fireworks: blank cartridges, toy pistols, toy cannons, toy canes, toy guns, in which explosives are used; fire balloons (balloons of the type which have a burning material of any kind attached thereto or which require fire underneath to propel them); firecrackers, torpedoes, skyrockets, rockets, Roman candles, Day-Glo bombs, torches or other fireworks of like construction and any fireworks containing any explosive or flammable compound, any tablets or other device containing any explosive substance.
- b. The term *fireworks* does not include toy pistols, toy cannons or toy guns in which paper caps containing not more than twenty-five one-hundredths (.25) of a grain of explosive

compound per cap are used whether such caps are of single roll or tape type; nor shall the term fireworks be construed to include sparklers, trick matches, cigarette loads, trick noise makers, toy smoke devices, novelty auto alarms, highway flares, railway fuses, ship distress signals, smoke candles or other emergency signal devices.

Pyrotechnic display refers to a public display of fireworks by persons, organizations or governmental entities permitted to make such displays under applicable state law and under the terms of this Article. (Ord. 435 §1, 1996)

Sec. 10-243. Fireworks prohibited.

(a) It is unlawful for any person to sell, use or possess fireworks within the Town limits.

(b) Anyone convicted of violating the provisions of this Section shall be fined up to one thousand dollars (\$1,000.00) and/or imprisoned for up to one hundred eighty (180) days. The minimum penalty for any violation of this Section shall be five hundred dollars (\$500.00). (Ord. 558 §1, 2002)

Secs. 10-244—10-259. Reserved.

ARTICLE XIV

Noise

Sec. 10-260. Declaration of policy.

It is hereby declared to be the policy of the Town to prohibit unnecessary, excessive and annoying sounds from all sources subject to its police power. At certain levels sounds are detrimental to the health and welfare of the citizenry and, in the public interest, shall be forbidden. (Ord. 693 §1, 2011)

Sec. 10-261. Definitions.

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

"A" band level means the total sound level of all sound as measured with a sound level meter using A-weighting network. The unit is the dB(A).

Amplified sound means sound emanating from any musical instrument, loudspeaker, public address system, radio, tape player, disc player, MP3 player, television set or other sound that has been made louder through the use of an electronic amplifier.

"C" band level means the total sound level of all sound as measured with a sound level meter using C-weighting network. The unit is the dB(C).

Decibel means a sound pressure that is ten (10) times the logarithm to the base ten (10) of the ratio of the pressure of sound to the reference pressure, 2×10^{-5} Newton/meter².

Emergency work means work made necessary to restore property to a safe condition following a public calamity or work required to protect the health, safety or welfare of persons or property, or work by private or public utilities when restoring utility service.

Impulse sound means a sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay.

Motor vehicles means any self-propelled vehicle operated within the Town, including but not limited to licensed or unlicensed vehicles, automobiles, minibikes, golf carts, go-carts and motorcycles.

Noise means any excessive or unusually loud sound or any sound that is shrill, impulsive or continuous or that creates vibrations or is emitted at levels which unreasonably annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others within the Town, except when it is made in compliance with a permit issued pursuant to this Article.

Sound level means, in decibels (dB), the sound measured with the A-weighting, C-weighting and fast response and slow response by a sound level meter.

Sound level meter means an instrument including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels which satisfies the pertinent requirements in American Standard Specifications for Sound Level Meters S1.4-1971 or the most recent revision thereof. (Ord. 693 §1, 2011)

Sec. 10-262. Animals.

It is unlawful for any person to use, keep, have in his or her possession or harbor any animals which, by frequent or habitual howling, barking, meowing, squawking or otherwise, shall cause annoyance or disturbance to persons in the neighborhood. (Ord. 693 §1, 2011)

Sec. 10-263. Sirens, whistles, gongs and red lights.

It is unlawful for any person to carry or use upon a vehicle, other than Police Department vehicles, vehicles authorized by the Nederland Fire Protection District or emergency vehicles for public use, any gong, siren, whistle or red light similar to that used on ambulances or vehicles of the Police Department. (Ord. 693 §1, 2011)

Sec. 10-264. Violation established.

It is unlawful to violate any of the provisions of this Article. Any person violating this Article shall be subject to enforcement action pursuant to the provisions of this Article and other applicable provisions of this Code. (Ord. 693 §1, 2011)

Sec. 10-265. Unnecessary, excessive or offensive sound.

(a) Notwithstanding any other provision of this Article, and in addition thereto, it shall be unlawful for any person without justification to make, continue, cause to be made or continued or assist another to make, any unreasonable and/or excessive noise in a public place or near a private

residence which, under all of the circumstances presented, causes a person of ordinary sensitivities annoyance and irritation.

(b) For the purposes of this Section, a determination as to whether noise is unreasonable and/or excessive shall be based upon all attendant circumstances, including but not limited to the following:

- (1) The volume of the sound;
- (2) The intensity of the sound;
- (3) Whether the nature of the sound is usual or unusual;
- (4) Whether the origin of the sound is natural or unnatural;
- (5) The volume and intensity of the background sound, if any;
- (6) The proximity of the sound to residential sleeping facilities;
- (7) The nature and zoning of the area within which the sound emanates;
- (8) The density of the inhabitation of the area within which the sound emanates;
- (9) The time of the day or night that the sound occurs;
- (10) The day of the week that the sound occurs;
- (11) The time of the year that the sound occurs (e.g., warm weather, when windows are open; during the school year for small children);
- (12) The duration of the sound;
- (13) Whether the sound is recurrent, intermittent or constant;
- (14) Whether the sound is produced by a commercial or noncommercial activity;
- (15) Whether it is a pure tone sound; or
- (16) Whether it is an impulse sound. (Ord. 693 §1, 2011)

Sec. 10-266. Exemptions.

The following uses and activities shall be exempt from sound level regulations:

- (1) Lawn maintenance equipment when it is functioning in accord with manufacturer's specifications and with all mufflers and sound-reducing equipment in use and in proper operating condition;
- (2) Nonamplified sounds resulting from the activities such as those planned by school, governmental or community groups;

- (3) Sounds of safety signals, warning devices and emergency pressure relief valves;
- (4) Sounds resulting from any authorized emergency vehicle when responding to an emergency call or acting in the time of an emergency;
- (5) Sounds resulting from emergency work as defined in Section 10-261 of this Article;
- (6) Sounds of church chimes;
- (7) Utility plant equipment during normal operation;
- (8) Sounds made on property belonging to, or leased or managed by, a federal, state or county governmental body, and was made by an activity of the governmental body or by others pursuant to a contract, lease or permit granted by such governmental body;
- (9) Sounds made within the terms and conditions of the noise variance permit granted by the Town Administrator or a designated representative per Section 10-275 of this Article.
- (10) Sounds generated by property owners employing wildfire or beetle kill mitigation techniques, including the use of chainsaws for these purposes. (Ord. 693 §1, 2011)

Sec. 10-267. Amplified sound, special events, music festivals.

(a) No person shall cause or allow to be made any amplified sound that exceeds seventy-two (72) decibels, absent a noise variance permit issued by the Town.

(b) No person shall cause or allow to be made any amplified sound that exceeds, as measured thirty-five (35) feet from the sound source if the source is on public property or from the property line if the source is on private property, one hundred five (105) decibels, even when in possession of a noise variance permit issued by the Town.

(c) For the purpose of enforcement of the provisions of this Article, sound level shall be measured on the A-weighted and C-weighted scale with a sound level meter satisfying at least the applicable requirement for Type 1 sound- level meters as defined in American National Standards 1.4-1971 or the most recent revisions thereof. The meter shall be set for slow response speed, except that for impulse sounds or rapidly varying sound levels, fast response speed may be used. Prior to measurement, the meter shall be verified, and adjusted to ± 0.3 decibel by means of an acoustical calibrator. The meter shall be calibrated and certified at least once every other calendar year. (Ord. 693 §1, 2011)

Sec. 10-268. Special sound sources.

(a) Except as otherwise provided herein, shall be unlawful for any person to operate any machinery, equipment, pump, fan or similar mechanical device in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any reasonable person of normal sensitiveness residing in the area.

(b) It shall be unlawful for any person to use music, soundmakers or loudspeakers on, or broadcasting to, the streets, sidewalks, parks or other public places of the Town for the sale or

vending of products, advertising or other commercial purposes. For the purposes of this Section, *broadcasting to the streets, sidewalks, parks or other public places of the Town* shall include any sound for the sale or vending of products, advertising or other commercial purposes broadcast from a private property that exceeds sixty-five (65) decibels when measured on the public place. (Ord. 693 §1, 2011)

Sec. 10-269. Construction of buildings and projects.

(a) General provisions. It shall be unlawful for any person to operate equipment or perform any outside construction or repair work on buildings, structures or projects, or to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, chainsaw or any other construction-type device from a private property that exceeds eighty-five (85) decibels, except within the time periods specified herein, or unless prior written authorization has been obtained from the Town Administrator or a duly authorized representative.

(b) Start and stop times. Construction or repair work shall not begin prior to 7:00 a.m. and must stop by 7:00 p.m. each day.

(c) Written authorization. Construction and repair work may be conducted at different times and at higher sound levels than otherwise permitted herein if prior written authorization is obtained from the Town Administrator or an authorized representative. No written authorization shall be required to perform emergency work as defined in Section 10-261 of this Article. The Town Administrator or his or her representative may prescribe such conditions, working times, types of construction equipment to be used and permissible sound emissions as she or he deems necessary to protect the public interest. In granting such written authorization, the Town Administrator or an authorized representative shall consider if:

(1) Construction sound in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population levels or different neighboring activities;

(2) Obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during the daytime;

(3) The kind of work to be performed emits sounds at such a low level as to not cause significant disturbance in the vicinity of the work site;

(4) The neighborhood of the proposed work site is primarily residential in character wherein sleep could be disturbed;

(5) Great economic hardship would occur if the work was spread over a longer time;

(6) The work will abate or prevent hazard to life or property; or

(7) The proposed early morning or night work is in the general public interest.

(d) Revocation of written authorization; appeal. The Town Administrator or an authorized representative may revoke any written authorization granted hereunder upon complaints based upon

substantial evidence that the construction activity causes significant disturbance in the vicinity of the work site. Any person aggrieved by the granting of written authorization, the revocation of written authorization, or the refusal to grant written authorization by the Town Administrator or an authorized representative may appeal the decision to the Board of Trustees who shall hear such appeal no later than thirty (30) days from the appeal date.

(e) Stop orders. Whenever any work on a construction project is in violation of the provisions of this Section, the Town Administrator or an authorized representative may order the construction project stopped by notice in writing served upon any persons responsible for the project or, if such person cannot be located, upon any person performing work on the responsible party's behalf at the work site. Work at the site shall cease immediately after the service of such notice and may not recommence until authorized by the Town Administrator. The Town Administrator may require the implementation of measures designed to ensure no further violations of this Section as a condition of lifting any stop work order. (Ord. 693 §1, 2011)

Sec. 10-270. Abatement remedy.

This Article shall not be construed to conflict with the right of the Town or any person to maintain an action in equity to abate a sound nuisance under the laws of the State. In addition to, or in lieu of, filing a civil citation or criminal complaint, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this Article, which operation or maintenance causes discomfort or annoyance to reasonable persons of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed and is declared to be a nuisance and shall be subject to abatement as set forth in Chapter 7, Article I of this Code. (Ord. 693 §1, 2011)

Sec. 10-271. Separate violation.

Each offense or violation of this Article constitutes a separate and distinct violation. Each contact made by a code enforcement official or a representative of the Town to the offending party under the provisions of this Article shall constitute a separate offense subject to separate citation pursuant to the provisions of this Article. Code enforcement officers shall issue only one (1) warning per event or noise source per day. Code enforcement officers are permitted to issue consecutive citations for a single event every five (5) minutes after the initial contact if the offending party does not rectify the noise violation in accordance with the code enforcement officer's direction. (Ord. 693 §1, 2011)

Sec. 10-272. Commencement of action, citation, contents.

An action under this Article shall be commenced by delivering a citation to the occupant of the property where the violation has occurred, the owner of record of such property, or any other person responsible for the violation. (Ord. 693 §1, 2011)

Sec. 10-273. Civil fines and penalties imposed.

(a) The civil fine/penalty for violating any provision of this Article shall be not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation.

(b) In addition to the amount of the fine imposed under Subsection (a) above, there is imposed a default penalty in the amount of fifty dollars (\$50.00) should the defendant fail to appear and answer for a violation of this Article within the time period stated on the citation, or fails to appear at the time and place set by the Court for a matter arising under this Article.

(c) The Court may enforce collection of delinquent fines, fees, reinspection fees and penalties as may be provided by law. In addition, any judgment for a civil sanction imposed pursuant to this Code shall constitute a lien against the real property of the owner of the property where the violation occurred. The lien may be perfected by recording a copy of the judgment under seal of the Town of Nederland with the Boulder County Clerk and Recorder. Any judgment for civil sanction pursuant to this Code may be collected as any other civil judgment. (Ord. 693 §1, 2011)

Sec. 10-274. Habitual offender.

Three (3) or more violations of this Article shall be grounds for revocation of any special event permit, special use review permit or liquor license, after a notice and hearing. (Ord. 693 §1, 2011)

Sec. 10-275. Noise variance permit; application; grounds for issuance.

(a) Application for a noise variance permit shall be made on forms provided by the Town and available at the Town Hall.

(b) If the noise variance permit is for an ongoing activity, the Town Administrator shall consider the following factors when evaluating an application:

(1) Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or

(2) Compliance will cause an undue hardship, and

(3) The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology, the activity, operation or sound source cannot be done in a manner that would comply with this Section. In either case, the Town Administrator must also find that no reasonable alternative is available to the applicant. If the Town Administrator grants a noise variance permit, he or she shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(c) The Town Administrator shall consider the following factors when evaluating an application:

(1) The type of sound;

(2) The proposed location of the event;

(3) The proposed time of day, day of the week, and time of the year; and

(4) The applicant's history of noise permits and any resident complaints generated by those events and the applicant's willingness to work with Town officials to mitigate future resident complaints.

(d) The Town Administrator or an authorized representative may revoke any permit issued hereunder upon complaints based upon substantial evidence that the sound authorized by the permit causes significant disturbance in the vicinity of the noise source. Any person aggrieved by the granting or denial of a permit application or by the revocation of a permit may appeal the decision to the Board of Trustees who shall hear such appeal no later than thirty (30) days from the appeal date. (Ord. 693 §1, 2011)

Secs. 10-276—10-290. Reserved.