

ORDINANCE NO. 1105

AN ORDINANCE REPEALING IN ITS ENTIRETY THE EXISTING CHAPTER 20, “OFFENSES; MISCELLANEOUS” AND ADOPTING NEW CHAPTER 20, “OFFENSES; MISCELLANEOUS” CODE OF THE CITY OF FORT MORGAN, (1994)

WHEREAS, this Ordinance is intended to repeal and restate Chapter 20 of the Fort Morgan Municipal Code, (1994)

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN,

Section 1. Chapter 20, “Offenses; Miscellaneous” is hereby repealed in its entirety.

Section 2. New Chapter 20, “Offenses; Miscellaneous” is hereby added to the *Code of the City of Fort Morgan*, (1994), as follows:

CHAPTER 20

OFFENSES; MISCELLANEOUS

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Article 5 Offenses Involving Public Authorities

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Division 3
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Sec. 20-6-303	Noise
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Sec. 20-6-309	Loitering
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Article 1
General Provisions

Sec. 20-1-101 General definitions.

(1) "Act" means a bodily movement, and includes words and possession of property.

(2) "Intentionally" or "with intent". All offenses defined in this code in which the mental culpability requirement is expressed as "intentionally" or "with intent" are declared to be specific intent offenses. A person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial to the issue of specific intent whether or not the result actually occurred.

(3) "Knowingly" or "willfully". All offenses defined in this code in which the mental culpability requirement is expressed as "knowingly" or "willfully" are declared to be general intent crimes. A person acts "knowingly" or "willfully" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. A person acts "knowingly" or "willfully", with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

(4) "Recklessly" a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

Sec. 20-1-102 Sentencing.

(1) Unless otherwise indicated, all violations under this chapter shall be punishable by a fine of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00)

(2) Unless otherwise indicated when a violation under this chapter is punishable by

imprisonment in jail, the term of imprisonment shall not exceed one (1) year.

Article 2

Crimes Against People

Division 1

General Offenses

Sec. 20-2-101 Definitions.

As used in this part 1, the following definitions shall apply:

(1) "Obscene" means a blatantly offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(2) "Repeated" or "repeatedly" means on more than one occasion.

Sec. 20-2-102 Assault and Battery.

Any person who shall willfully or recklessly uses physical force against another person in a violent or angry manner shall be deemed guilty of the crime of assault and battery a misdemeanor and upon conviction shall be punished by a fine or by imprisonment, or by both such fine and imprisonment.

Sec. 20-2-103 Disorderly conduct.

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

(b) fights with another in a public place except in an amateur or professional contest of athletic skill; or

(c) not being a peace officer, discharges a firearm in a public place in a manner calculated to alarm another person; or

(d) not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

(2) A person found guilty of the crime of disorderly conduct, under paragraph (a) or (b) of subsection (1), a misdemeanor, shall, upon conviction, be punished by a fine.

(3) A person found guilty of disorderly conduct, under paragraph (c) or subsection (d) of subsection (1), a misdemeanor, shall, upon conviction, be punished by a fine or by imprisonment, or by both such fine and imprisonment.

Sec. 20-2-104 Harassment.

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

(a) strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact; or

(b) in a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) follows a person in or about a public place; or

(d) initiates communication with a person, anonymously or otherwise, by telephone, computer, computer network, or computer system 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; or

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

(g) 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

(h) repeatedly insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response.

(2) Any act prohibited by subparagraph (1)(d)(e) or (g) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

(3) A person found guilty of harassment, a misdemeanor, shall, upon conviction, be punished by a fine.

Division 2

Offenses Involving Intimate Relationships And Protected Persons

Sec. 20-2-201 Domestic Violence.

(1) Definitions.

(a) *Domestic violence* means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. *Domestic violence* also includes any municipal ordinance violation against a person or against property, when used as a method of coercion, control, punishment, intimidation or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) *Intimate relationship* means a relationship between spouses, former spouses, past or present unmarried couples or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

(2) Designation. Any person completing or preparing a summons, complaint, summons and complaint or application for an arrest warrant shall indicate on the face of such document whether the facts forming the basis of the alleged criminal act, if proven, could constitute domestic violence as defined in Subsection (1)(a) or (b) above.

(3) Sentencing.

(a) In addition to any sentence which is imposed upon a person for violation of any criminal ordinance under this Code, any person who is convicted of any ordinance violation, the underlying factual basis of which has been found by the Court on the record to include an act of domestic violence, shall be ordered to complete a treatment program which is certified in accordance with Section 18-6-802, C.R.S. If an intake evaluation conducted by a certified treatment program provider discloses that sentencing to a treatment program would be inappropriate, the person shall be referred back to the Court for alternative disposition.

(b) The Court may order an evaluation to be conducted prior to sentencing if an evaluation would assist the Court in determining an appropriate sentence. The person ordered to undergo such evaluation shall be required to pay the cost of the evaluation. If such evaluation recommends treatment, and if the Court so finds, the person shall be ordered to complete a treatment program which is certified in accordance with Section 18-6-802, C.R.S.

(c) Nothing in this Subsection (c) shall preclude the Court from ordering domestic violence treatment in any appropriate case.

(4) Plea agreements.

(a) A person charged with the commission of a crime, the underlying factual basis of which includes an act of domestic violence, shall not be entitled to plead guilty or plead nolo contendere to an offense which does not include the domestic violence designation required in Sections 16-21-103 and 105, C.R.S., unless the prosecuting attorney makes a good faith representation on the record that such attorney would not be able to establish a prima facie case that the person and the alleged victim were

currently or formerly involved in an intimate relationship if the defendant were brought to trial on the original domestic violence offense and upon such a finding by the Court. The prosecuting attorney's record and the Court's findings shall specify the relationship in the alleged domestic violence case which the prosecuting attorney is not able to prove beyond a reasonable doubt and the reasons therefor. The Court shall not accept a plea of guilty or nolo contendere to an offense which does not include the domestic violence designation required in Section 16-21-103, C.R.S., when the facts of the case indicate that the underlying factual basis includes an act of domestic violence as defined above unless there is a good faith representation by the prosecuting attorney that he or she would be unable to establish a prima facie case if the defendant were brought to trial on the original offense.

(b) No person accused or convicted of a crime, the underlying factual basis of which has been found by the Court on the record to include an act of domestic violence, shall be eligible for deferred prosecution pursuant to Section 16-7-401, C.R.S. Nothing in this Subsection (4) is intended to prohibit the Court from ordering a deferred judgment and sentence for a person accused or convicted of a crime, the underlying factual basis of which has been found by the Court on the record to include an act of domestic violence.

Sec. 20-2-202 Restraining Orders and Violations.

(1) As used in this Section:

Protected person means the person or persons identified in the restraining order as the person or persons for whose benefit the restraining order was issued.

Registry means the computerized information system created in Section 18-6-803.7, C.R.S., or the national crime information center created pursuant to 28 U.S.C. Section 534.

Restrained person means the person identified in the order as the person prohibited from doing the specified act or acts.

Restraining order means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, that is issued by the Municipal Court as part of the proceedings concerning a criminal municipal ordinance violation, or any other order of the Court that prohibits a person from contacting, harassing, injuring, intimidating, molesting, threatening or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises. For purposes of this Section only, *restraining order* includes any order that amends, modifies, supplements or supersedes the initial restraining order.

Shelter means a battered women's shelter, a friend's or family member's home or such other safe haven as may be designated by the alleged victim and which is within a reasonable distance from the location at which the peace officer found the victim.

(2) A person commits the crime of violation of a restraining order if such person contacts, harasses, injures, intimidates, molests, threatens or touches any protected person or enters or remains on premises or comes within a specified distance of a protected person or premises and such conduct is prohibited by a restraining order after such person has been personally served with any such order or otherwise has acquired from the Court actual knowledge of the contents of any such order.

(3) Sentencing.

(a) A person found guilty of a violation of a restraining order, a misdemeanor, shall, upon conviction, be punished by a fine or by imprisonment, or by both such fine and imprisonment.

(b) Any sentence imposed for a violation of this section shall run consecutively and not concurrently with any sentence imposed for any crime which gave rise to the issuing of the restraining order.

(4) Process and enforcement.

(a) Whenever a restraining order is issued, the protected person shall be provided with a copy of such order. A peace officer shall use every reasonable means to enforce a restraining order.

(b) A peace officer arresting a person for violating a restraining order or otherwise enforcing a restraining order shall not be held criminally or civilly liable for such arrest or enforcement unless the peace officer acts in bad faith and with malice or does not act in compliance with rules adopted by the Colorado Supreme Court.

(c) A peace officer is authorized to use every reasonable means to protect the alleged victim or the alleged victim's children to prevent further violence. Such peace officer may transport, or obtain transportation for, the alleged victim to shelter. Upon the request of a protected person, the peace officer may also transport the minor child of the protected person, who is not an emancipated minor, to the same shelter if such shelter is willing to accept the child, whether or not there is a custody order or an order allocating parental responsibilities with respect to such child or an order for the care and control of the child and whether or not the other parent objects. A peace officer who transports a minor child over the objection of the other parent shall not be held liable for any damages that may result from interference with the custody, parental

responsibilities, care and control of or access to a minor child in complying with this Subsection (4)(c).

Article 3

Crimes Against Property

Sec. 20-3-101 Defacing Property.

(1) Any person who defaces or causes, aids in or permits the defacing of public or private property without the consent of the owner by any method of defacement including, but not limited to, painting, drawing, writing or otherwise marring the surface of the property by use of paint, spray paint, ink or any other substance or object commits a misdemeanor a crime.

(2) Any person convicted of defacing property pursuant to this Section shall be ordered by the court to personally make repairs to any property damaged, or properties similarly damaged, if possible, or to make restitution for the same.

(3) A person convicted of defacing property shall be punished by a fine.

Sec. 20-3-102 Eradication of Graffiti.

(1) Legislative intent. The City Council finds and declares that the unauthorized inscription, word, figure or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City.

(2) Definitions. The following words, terms and phrases, when used in this Section, shall have the meanings as set forth, except where the context clearly indicates an alternative meaning:

Agent means an individual or entity that is authorized by a business or property owner to act on his or her behalf with regard to the business property.

Deface means to mar the external appearance or injure, impair or destroy by effacing significant details of something by removing, distorting, addition to or covering all or a part thereof.

Graffiti means the unauthorized inscription, word, sign, symbol, marking, design, figure or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, engraved on or otherwise affixed to any surface of public or private property, including but not limited to buildings, structures, fixtures, sidewalks or other improvements, whether permanent or temporary, by any graffiti implement, and which is visible from the City's public right-of-way, to the extent that the graffiti was not

authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

Graffiti implement means an aerosol paint container, paint, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Owner or property owner means any person holding legal title to any property, real or personal, located within the City boundaries.

Property means any structure, building, premises, business, vacant lot, single-family dwelling, multi-family dwelling or any other real or personal property located within the City.

Service means notification by posting upon the property, personal service or delivery by registered, certified and/or first-class letter. The date the notice is posted or the letter is deposited in the mail shall constitute the date of service.

Tenant means any person leasing, renting, using or in any other way occupying the property of another for any term with his or her assent, express or implied.

(3) Prohibited acts.

(a) Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any City-owned property or, without the permission of the owner or occupant, on any non-City-owned property.

(b) Possession of graffiti implements.

(I) It shall be unlawful for any person to possess any graffiti implement while on any school property, grounds, facilities, buildings or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled, if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this Section shall be upon the minor student to establish the need to possess a broad-tipped marker.

(II) It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain or similar types of infrastructure

unless otherwise authorized by the City.

(4) Signage of graffiti implements.

(a) Signage required. Every person who operates a retail commercial establishment selling graffiti implements shall place a sign in clear public view at or near the display of such products stating:

"Graffiti is against the law. Any person who defaces real or personal property, with paint or any other liquid or device, is guilty of a crime punishable by imprisonment of up to thirty (30) days and/or a fine up to one thousand dollars (\$1000.00) for each offense."

(b) Notification of this requirement shall be given to all businesses by the City Clerk.

(5) Penalties.

(a) Fines and imprisonment. Any person violating this Section shall be punished by a fine, by imprisonment for a term not to exceed thirty (30) days, or by both fine and imprisonment at the discretion of the Municipal Court.

(I) In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor for payment of all fines.

(II) Failure of the parents or legal guardian to make payment will result in either a contempt citation enforceable by the Municipal Court or the filing of a lien on the parents' or legal guardian's property that includes the fine and administrative costs.

(b) Restitution. In addition to any punishment specified in this Section, the Municipal Court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the Municipal Court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make the restitution.

(c) Community service. In lieu of, or as part of the penalties specified in this Section, the Municipal Court may order a minor or adult to perform community service which may include the following minimum requirements:

(I) The minor or adult shall perform at least fifteen (15) hours of community service.

(II) At least one (1) parent or guardian of the minor shall be in attendance a minimum of fifty percent (50%) of the period of assigned community service.

(III) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal. If the offender is required to remove graffiti as part of the community service requirement, he or she shall purchase all materials necessary to remove or cover the graffiti. Said materials shall be approved by the public entity or private party for which the removal or cover is being provided.

(d) Any person who pleads or is otherwise found guilty of violating the provisions of this Section or is in violation of, Section 12-3-102 "Defacing property," of this Article 3 shall pay a fifty-dollar graffiti abatement surcharge in addition to any other fine, cost or surcharge. Funds accumulated under the graffiti abatement surcharge shall be used by the City to remove graffiti from public and private property as authorized by the City Manager or his or her designee.

(6) Graffiti as nuisance.

(a) The existence of graffiti on public or private property in violation of this Section is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Section.

(b) It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to, at all times, keep the property clear of graffiti.

(7) Removal or covering of graffiti.

(a) Property owner/tenant responsibility. If graffiti is not removed by the perpetrator as set forth in Subparagraph (4) (b) above, graffiti shall be removed pursuant to the following provisions: (I) It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after receipt of notice of the defacement.

(II) Such notice shall be made as defined in Subsection of this Section. The notice shall contain the following information:

(A) The street address and legal description of the property sufficient for identification of the property;

(B) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;

(C) A statement that the graffiti must be removed within ten (10) days after receipt of the notice. The existence of graffiti on any property after ten (10) days shall be presumed a public nuisance;

(D) A statement indicating that, if additional time is necessary to clean the property, the responsible person must contact the Police Department; and

(E) A statement that failure to clean the identified property nuisance will establish a basis for the City to enter in and upon the property to abate the nuisance by any necessary means.

(b) Right of City to remove.

(I) Use of public funds. Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property, the City Manager or his or her designee shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located.

(II) Right of entry on private property. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Section, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this Paragraph, the City shall have the right to enter upon any property in the City and abate the graffiti nuisance by whatever reasonable means are available to the City, as determined by the City Manager or his or her designee.

Sec. 20-3-103 Advertising on Public Property.

(1) Except for advertising in and upon public use facilities and equipment done under special permit issued by the City Council pursuant to Article VII, Section 16 of the City Charter, it shall be unlawful for any person to paint or print upon or in any manner place or affix to any sidewalk, curb, pavement, street or alley or upon any electric light, standard or poles, or other wiring, pole or poles, or on any tree, public building or property, any letter, character or device stating, referring to or advertising or intending to state, refer to or advertise, the sale or manufacture of any article, goods or property, profession, business, exhibition, amusement or place of amusement or other thing.

(2) The commission of any act or acts prohibited in this Section is hereby declared a nuisance and the City, through its Police Department, shall have the right immediately, upon the commission of any such act, to summarily abate such nuisance by removing and effacing, or causing to be removed and effaced, any such letters, characters, or devices placed or painted as aforesaid upon any street, alley, pavement, curb, electric light standard or pole, public building or property.

(3) Any person found guilty of violating the terms of this Section shall be punished by a fine not to exceed three hundred dollars (\$300.00). Each day of the existence of any violation shall be deemed a separate offense.

(4) Any person convicted of advertising on public property pursuant to this section may be ordered by the court, in addition to any fine, to make restitution. The City shall, in addition to the penalty herein specified, have a right to bring an action at law against the person guilty of such a violation, for the amount of the expenses incident to effacing and removing such advertising matter, together with the costs and expenses incident to such action.

Sec. 20-3-104 Theft.

(1) A person commits theft when he or she knowingly obtains or exercises control over a thing of value, which is equal to or less than one thousand (\$1000.00) dollars, of another without authorization, or by threat or deception; and

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

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

(c) 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;

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

(e) 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 own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft.

(2) Every person who obtains control over any stolen thing of value, knowing the property to have been stolen by another, shall also be guilty of theft and may be tried, convicted and punished therefor whether or not the principal is charged, tried or convicted.

(3) For the purposes of this Section, thing of value is that "of another" if anyone other than the defendant has a possessory or proprietary interest therein.

(4) Any person convicted of a violation of theft, a misdemeanor, shall be punished for each violation by a fine.

Sec. 20-3-105 Theft by Lessee.

(1) A lessee shall be presumed to have committed theft if, having lawfully obtained

possession for temporary use of the personal property, which is equal to or less than one thousand (\$1000.00) dollars, of another, which is available only for hire, he or she shall fail to return the same within ten (10) days after actual written notice has been given by or on behalf of the lessor and actually received by the lessee. Such notice shall not be given until after the expiration of the term of the original lease. The provisions of this Section shall not apply to unlawful occupancy of land or of a building.

(2) For the purposes of this section, thing of value is that "of another" if anyone other than the defendant has a possessory or proprietary interest therein.

(3) any person convicted of theft by lessee, a misdemeanor, shall be punished for each violation by a fine.

Sec. 20-3-106 Interfering or Tampering with a Utility Meter.

(1) Definitions.

Bypassing means the act of attaching, connecting or in any manner affixing any wire, cord, socket, motor, pipe or other instrument, device or contrivance to the utility supply system, or any part thereof, in such a manner as to transmit, supply or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining or limiting the amount of electricity, gas or water consumed.

Customer means the person responsible for payment for utility service for the premises, and such term includes employees and agents of the customer.

Person means any individual, firm, partnership, corporation, company, association, joint-stock association or other legal entity.

Tampering means the act of damaging, altering, adjusting or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining or limiting the amount of electricity, gas or water consumed.

Unauthorized metering means the act of removing, moving, installing, connecting, reconnecting or disconnecting a meter or metering device for utility service by a person other than an authorized contractor, employee or agent of such utility.

(2) Violations.

(a) It shall be unlawful for any person to interfere with, tamper with or bypass any meter provided for measuring or registering the quantity of gas, water or electricity passing through said meter without the knowledge and consent of the utility supplying such gas, water or electricity.

(b) If any evidence of interference, tampering or bypassing with any meter or startup of service is found, the utility may terminate service immediately. All costs for gas, water or electricity received and expenses related to terminating services pursuant to this Section, including costs of labor and materials and specified fees, shall be paid by the person responsible for such interference, tampering or bypass.

(3) Presumption.

(a) There is rebuttable presumption that the customer or occupant of any premises where interference, tampering or bypass is proven to exist caused or permitted such interference, tampering or bypass if the tenant or occupant has access to the part of the utility supply system on the premises where the interference, tampering or bypass is proven to exist and if said customer or occupant was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services provided for the premises.

(b) The presumption provided in this Subsection (4)(a) shall only shift the burden of going forth with evidence and shall in no event shift the burden of proof to the defendant in any action brought pursuant to this Section.

(4) Penalties.

(a) Any person, whether as principal, agent, employee or otherwise, violating the provisions of this Chapter shall, upon conviction thereof, be punished by a fine, imprisonment or by both such fine and imprisonment. In addition to any penalties imposed by the Court upon conviction for violation of this Chapter, the Court shall order restitution for the stolen service and the costs to repair or replace the utilities connection.

(b) Each day of any violation shall be deemed a separate offense.

(c) The remedy provided herein shall be cumulative and not exclusive and shall be in addition to any other remedy provided by law, including, without limitation, that of injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any condition or facilities or equipment constituting the violation.

Sec. 20-3-107 Trespass.

(1) It is an offense for any person to unlawfully enter or remain in or upon any real property or any building or other improvements upon real property, whether or not the same are enclosed in a manner designed to exclude intruders or are fenced.

(2) It is unlawful as a trespass, for any person to take down any fence or let down any bars or to open any gate in or on the property of another without the consent of the owner, occupant or person in charge thereof.

(3) Any person convicted of trespass, a misdemeanor, shall, upon conviction, be

punished by a fine.

Article 4

Minors And Underage Persons

Sec. 20-4-101 Minor Defined.

A minor under the age of eighteen (18) years is defined as any person who shall not yet have attained his or her eighteenth birthday.

Sec. 20-4-102 Curfew Imposed on Certain Minors.

(1) It shall be unlawful for any minor under the age of eighteen (18) years of age to loiter, idle, wander, drive, ride, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places after to hour of 11:00 p.m., any day except Friday and Saturday when such time shall be extended to 1:00 a.m. the following day; provided, however, that the provisions of this Section do not apply to a minor accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the minor.

(2) Any minor convicted of a violation of this section shall be punished by a fine.

Sec. 20-4-103 Curfew Responsibility of Parents.

(1) It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit such minor to loiter, idle, wander, drive, ride, stroll or play in or upon the public streets, highways, road, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, after the hours designated in Section 12-4-102; provided, however, that such provisions do not apply when the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the minor.

(2) Any person convicted of a violation of this section shall be punished by a fine.

Sec. 20-4-104 Illegal possession or use of Tobacco Products by a Minor.

(1) Any minor who possesses or uses any tobacco product anywhere in the City commits illegal possession or use of a tobacco product by a minor. Illegal possession

or use of a tobacco product by a minor is a strict liability offense.

(2) As used in this section, unless the context otherwise requires:

A minor means a person under eighteen (18) years of age.

Possession means that a person has or holds any amount of a tobacco product anywhere on his or her person, or that a person owns or has custody of a tobacco product, or has a tobacco product within his or her immediate presence and control, including presence and control within a motor vehicle which is being driven by such person.

Use means the lighting, chewing and smoking of any tobacco product.

Tobacco product means cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking.

(3) Prima facie evidence of a violation of Subsection (1) of this Section shall consist of evidence that the defendant was under the age of eighteen (18) years and possessed or used a tobacco product anywhere in the City.

(4) During any trial for a violation of Subsection (1) of this Section, any package or container with labeling indicating the contents of such package or container shall be admissible into evidence, and the information contained on any label on such package or container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the package or container were composed in whole or in part of a tobacco product. A label which identifies the contents of any package or container as *cigarettes*, *cigars*, *chewing tobacco* or *smokeless tobacco* shall constitute prima facie evidence that the contents of the package or container were composed in whole or in part of a tobacco product.

(5) Penalties.

(a) Illegal possession or use of a tobacco product by a minor in the City is a petty offense. The Court, upon sentencing a defendant pursuant to this Subsection (a) may, in addition to any fine or penalty imposed pursuant to Subsection (5), order that the defendant perform up to twenty-four (24) hours of useful public service or community service, subject to the conditions and restrictions of Section 18-1.3-507, C.R.S., and may further order that the defendant complete a Tobacco Education Program at the defendant's own expense. If useful public service or community service is ordered, the defendant shall be granted credit against the fine and court costs imposed at the rate of

five dollars (\$5.00) for each hour of such service performed.

(b) Any person convicted for the first time of violating this Section shall be punished by a fine of not less than thirty-five dollars (\$35.00) and not more than one hundred dollars (\$100.00).

(c) Any person convicted more than once of violating this Section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred fifty dollars (\$250.00). In the discretion of the Court, upon a second or any subsequent violation of this Section by a minor, the parents or guardians of the minor may also be fined in an amount not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

(d) Whenever the Court requires that a person complete any amount of useful public service or community service pursuant to Subsection (a) of this Section, the Court shall also impose upon that person, in addition to any other fine, cost or penalty, a public service fee in an amount approved by the Court.

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

Sec. 20-4-105 Unlawful Sale to or Procurement of Tobacco Products to a Minor.

(1) It is unlawful for any person, eighteen (18) years of age or older, to assist a minor in obtaining tobacco by buying for, transferring, delivering or selling to such minor any tobacco product. This is a strict liability offense.

(2) Any person found guilty of the unlawful sale to or procurement of tobacco products to a minor, a misdemeanor offense, shall, upon conviction, be punished by a fine.

Sec. 20-4-106 Parents and Guardians of Minors Responsible for Court Appearances and Compliance with Orders of Municipal Court.

(1) When a summons, complaint or other Municipal Court order of any type is issued to any person under the age of eighteen (18) years, then notice of the issuance of the summons, complaint or other order shall be provided to the parent or guardian of the minor by personal service or by mailing a notice by certified mail, return receipt requested, at least ten (10) days prior to the scheduled court appearance. The notice

shall include the alleged violation, date of violation and the date, time and place of the scheduled court appearance, and shall provide notice that the parent or guardian is required to appear in Municipal Court on the specified date and time with the minor. The parent or guardian of any minor who is required to appear in Municipal Court shall have the duty to make sure and see to it that the minor appears as ordered, and it shall be unlawful for any parent or guardian to fail to appear at each and every court appearance with the minor. The Municipal Judge, in addition to any other penalty, may issue a warrant for the arrest of any parent, guardian or minor who fails to appear as provided herein or may find the parent or guardian guilty of contempt of court, if notice has been given to the parent or guardian by personal service or by certified mail, return receipt requested.

(2) When a minor, as a result of the violation of any section of this Code, is sentenced or otherwise ordered by the Municipal Judge to pay a fine, court costs, restitution or any other fee or cost, is sentenced or otherwise ordered to perform useful public service (UPS), attend counseling, attend classes or perform any other action, then the parent or guardian of the minor shall be jointly responsible for payment of any amounts ordered to be paid and shall have a duty to make sure and see to it that the minor defendant performs any ordered useful public service (UPS) or other action, and the failure of any parent or guardian to make sure and see to it that the minor defendant complies with any order of the Municipal Court shall be a separate offense for which a summons and complaint may be issued, or which may be punishable as contempt of court.

(3) The provisions of this Section 12-3-106 shall not be applicable to any parent or guardian who demonstrates to the satisfaction of the Municipal Judge that the minor defendant is emancipated, which shall mean any minor who is over the age of sixteen (16) and under the age of eighteen (18) years old and who does not reside with the parent or guardian and who is solely responsible for his or her own support, or who is married or who is in the military service of the United States.

Sec. 20-4-107 Illegal Possession or Consumption of Alcohol by an Underage Person.

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

(2) Upon sentencing a defendant pursuant to this Subsection (2), the Court may, in addition to any fine or penalty imposed , order that the defendant perform up to twenty-four (24) hours of useful public service, subject to the conditions and restrictions of Section 18-1.3-507, C.R.S., and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program or an alcohol treatment program at such defendant's own expense.

(3) It shall be an affirmative defense to the offense described in Subsection (1) of this Section that the ethyl alcohol was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

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

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

(4) The possession or consumption of ethyl alcohol shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the first amendment to the United States Constitution.

(5) Prima facie evidence of a violation of Subsection (1) of this Section shall consist of:

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

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

(6) During any trial for a violation of Subsection (1) of this Section, any bottle, can or any other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container was composed in whole or in part of ethyl alcohol.

(7) A parent or legal guardian of a person under twenty-one (21) years of age or any

natural person who has the permission of such parent or legal guardian may give or permit the possession and consumption of ethyl alcohol to or by a person under twenty-one (21) years of age under the conditions described in Subsection (5)(a). This Subsection (7) shall not be construed to permit any establishment which is or is required to be licensed pursuant to Article 46, 47 or 48 of Title 12, C.R.S., or any members, employees or occupants of any such establishment to give, provide, make available or sell ethyl alcohol to a person under twenty-one (21) years of age.

(8) The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of Subsection (1) of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the Executive Director of the Department of Public Health and Environment.

(9) Official records of the Department of Public Health and Environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions and certification of laboratories shall be official records of the State. Copies of such records, attested by the Executive Director of the Department of Public Health and Environment or his or her deputy and accompanied by a certificate bearing the official seal for said Department, which state that the Executive Director of the Department has custody of such records, shall be admissible in the Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the Department described in this Subsection may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

(10) In any judicial proceeding in the Municipal Court concerning a charge under Subsection (2), the Court shall take judicial notice of methods of testing a person's blood, breath, saliva or urine for the presence of alcohol and of the design and operation of devices certified by the Department of Public Health and Environment for testing a person's blood, breath, saliva or urine for the presence of alcohol. This Subsection (10) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this Subsection (10) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

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

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

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

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

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

(a) Any establishment which has or is required to have a license pursuant to state statutes or this Code for the sale or dispensing of alcoholic beverages; (b) Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or (c) Any establishment which leases, rents or provides accommodations to members of the public generally.

(12) Penalties.

(a) Any person convicted of violating this Section shall be punished by a fine. (b) If the underage person has no prior convictions under section 20-4-107, then upon a plea of guilty or no contest (except when such plea is entered in conjunction with a deferred judgment and sentence), or a verdict of guilty by the court or jury, to a violation of subsection (1) of this section, in addition to any other penalty, the court shall require the offender to immediately surrender his or her driver's, minor driver's or provisional driver's license to the court. The court shall forward to the Colorado department of revenue a notice of conviction, together with the offender's license, not later than ten (10) days after the conviction becomes final.

(b) The Court may, at its discretion and as a part of the sentence to be imposed, require a person convicted of possession or consumption of alcohol within the City or in any other jurisdiction, to complete twenty-four (24) hours of Court-approved public service.

(c) Whenever the Court requires that a person complete any amount of public service pursuant to Subsection (2) of this Section, the Court shall also impose upon that person, in addition to any other fine, cost or penalty, a public service fee in an amount approved by the Court.

(d) In addition to any penalty imposed under this section, the court may order a person to complete an alcohol evaluation or assessment, or attend an alcohol education program in connection with a conviction under this section. If the person so ordered fails to complete the evaluation or assessment or education program, the court shall require the offender to immediately surrender his or her driver's, minor driver's or provisional driver's license to the court. The court shall forward to the Colorado department of revenue a notice of conviction, together with the offender's license, not later than ten (10) days after the conviction becomes final.

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

Sec. 20-4-108 The Unlawful Sale to or Procurement of Alcohol to an Underage Person.

(1) It is unlawful for an adult, twenty-one (21) years of age or older, to assist an underage person to violate Section 12-4-107, by buying for, transferring, delivering, serving or selling to such underage person ethyl alcohol. This is a strict liability offense.

(2) Any person found guilty of the unlawful sale or procurement of alcohol to an underage person, a misdemeanor, shall, upon conviction, be punished by a fine.

Article 5

Offenses Involving Public Authorities

Sec. 20-5-101 False Reporting to Authorities.

(1) A person commits false reporting to authorities, if:

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

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

(c) He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false; or

(d) He or she knowingly provides false identifying information to law enforcement

authorities.

(2) For purposes of this Section, identifying information includes a person's name, address, birth date, social security number, driver's license or Colorado identification number.

(3) A person convicted of false reporting to authorities shall be punished by a fine.

Sec. 20-5-102 Resisting Arrest.

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

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

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

(2) It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest which in fact was unlawful if he or she was acting under color of his or her official authority and in attempting to make the arrest he or she was not resorting to unreasonable or excessive force giving rise to the right of self-defense.

(3) As used in this Section, a peace officer acts "under color of his or her official authority" when, in the regular course of assigned duties, he or she is called upon to make and does make a judgment in good faith, based upon surrounding facts and circumstances, that an arrest should be made by him or her.

(4) The term *peace officer* as used in this Section means a peace officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted.

(5) A person convicted of resisting arrest under this Section shall be punished by a fine or by imprisonment, or by both such fine and imprisonment.

Sec. 20-5-103 Obstructing Police.

(1) Any person who shall knowingly and willfully obstruct, resist, interfere with or oppose any peace officer or other person duly authorized to serve as a special or extra officer, when such officer is engaged in the performance of his or her duties, shall be deemed guilty of a misdemeanor.

(2) To ensure that animals used in law enforcement activities are protected from harm, no person shall knowingly obstruct, impair or hinder any such animal in performing its law enforcement activities by using or threatening to use violence, force,

physical interference or obstacle.

(3) The term *peace officer* as used in this section means a peace officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person.

(4) Any person convicted of violating Subsection (1) or (2) of this Section shall be punished by a fine or by imprisonment, or by both such fine and imprisonment.

ARTICLE 6

Offenses Involving the Public

Division 1

Offenses Involving Drugs And Alcohol

Sec. 20-6-101 Definitions

For purposes of this section, the following definitions shall apply:

(1) “Controlled substance” means a drug or other substance or an immediate precursor which is declared to be a controlled substance, and also includes marijuana and marijuana concentrate.

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

(3) For purposes of this article 6 “marijuana” or “marihuana” means all parts of the plant *cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant or sterilized seed of the plant which is incapable of germination if these items exist apart from any other item defined as “marijuana” in this article 6. Marijuana does not include marijuana concentrate as defined in section 12-22-303, C.R.S., as amended.

Sec. 20-6-102 Possession of Marijuana.

(1) It shall be a violation of this section for any person to knowingly:

(a) posses a quantity of marijuana of not more than one (1) ounce, or

(b) to openly or publicly consume a quantity of marijuana of not more than one (1) ounce.

(2) The provisions of this section shall not apply to any person who possesses or uses marijuana pursuant to sections 18-18-406(10) and (11), C.R.S.

(3) Transferring or dispensing not more than one (1) ounce of marijuana from one (1) person to another for no consideration shall be deemed possession and not dispensing or sale of marijuana except as provided in section 18-18-106(7), C.R.S. as amended.

(4) Any person found guilty of possession of marijuana, a misdemeanor, shall, upon conviction, be punished by a fine.

Sec. 20-6-103 Possession, sale, or promotion of paraphernalia.

(1) It shall be a violation of this section for any person who knowingly commits the following:

(a) possess drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this city.

(b) to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver equipment, products or materials knowing, or under circumstances where one reasonably should know, that such equipment, products or materials could be used as drug paraphernalia

(c) to place an advertisement in any newspaper, magazine, handbill or other publication and who intends thereby to promote the sale in the city of equipment, products or materials designed and intended for use as drug paraphernalia.

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

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

(b) the proximity of the object to a controlled substances;

(c) the existence of any residue of controlled substances on the object;

(d) direct or circumstantial evidence of the knowledge of an owner or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he/she knows or reasonably should know, could use the object to facilitate a violation of this section;

(e) instructions, oral or written, provided with the object which explain or depict its use;

(f) descriptive materials accompanying the object which explain or depict its use;

(g) national or local advertising concerning its use;

(h) the manner in which the object is displayed for sale;

(i) 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;

(j) the existence and scope of legal uses for the object in the community; and

(k) expert testimony concerning its use.

(3) Any person found guilty of possession, sale, or promotion of paraphernalia, a misdemeanor, shall, upon conviction, be punished by a fine.

Sec. 20-6-104 Intoxication.

(1) When any person is intoxicated or incapacitated by alcohol and clearly dangerous to the health and safety of himself, herself or others, such person shall be taken into protective custody by law enforcement authorities or emergency service personnel acting with probable cause, and placed in an approved treatment facility. If no such facilities are available, such person may be detained in an emergency medical facility or jail, but only for so long as may be necessary to prevent injury to himself, herself or others, or to prevent a breach of the peace. A law enforcement officer or emergency service patrolman, in detaining the person, is taking the detainee into protective custody. In so doing, the detaining officer may protect himself or herself by reasonable methods, but shall make every reasonable effort to protect the detainee's health and safety.

(2) A taking into protective custody under this Section is not an arrest, and no entry or other record shall be made to indicate that the person has been arrested or charged with a crime. Law enforcement or emergency service personnel who act in compliance with this Section are acting in the course of their official duties and are not criminally or civilly liable therefor. Nothing shall preclude an intoxicated or incapacitated person who is not dangerous to the health and safety of himself, herself or others from being assisted to his or her home or like location by the law enforcement officer or emergency service patrolman.

Sec. 20-6-105 Open Containers of Alcoholic Beverages.

(1) Except as permitted by Section 12-47-421, C.R.S., it shall be unlawful for any person to possess or carry any open container of any fermented malt beverage, malt,

vinous or spirituous liquor in any public park or on any public street, sidewalk, alley or other public way in the City or in any vehicle or conveyance thereon or on the grounds of any public school in the City.

(2) Any person found guilty of violating this Section shall be punished for each violation by a fine.

(3) It shall be an affirmative defense to a charge under this Section that the person charged was in possession of one (1) opened, but resealed container of not more than seven hundred fifty (750) milliliters of partially consumed vinous liquor which was lawfully removed from the licensed premises of a hotel and restaurant licensee pursuant to Section 12-47-421, C.R.S., or Subsection (3) below.

(4) A hotel and restaurant licensee who permits a customer to remove a partially consumed bottle of vinous liquor from the licensed premises shall reseal the bottle with the original cork or other commercially manufactured stopper, and shall package the resealed bottle in another sealable container (bag or box).

Division 2

Dangerous Weapons

Sec. 20-6-201 Discharge of or use of Firearms or Dangerous Weapons.

(1) It shall be unlawful for any person to shoot, explode, discharge, fire or use a revolver or pistol of any description or shotgun or rifle or other firearm or weapon or instrument which may be used for the explosion of powder or cartridges.

(2) The provisions of Subsection (1) of this Section shall not, however, be construed to prevent or restrict the use of any firearms or weapons by peace officers lawfully engaged in training or the discharge of their duties or the use thereof in shooting galleries, or to prevent or restrict the use of blank cartridges in theater and sporting and like events.

(3) Further, except as provided in this paragraph, it shall be unlawful for any person to shoot, discharge, fire or use any air gun, gas-operated gun, spring gun or BB gun, pellet gun or any bow made for the purpose of throwing an arrow or bolt or projecting missiles of any kind by any means whatsoever, whether such instrument is called any name set forth herein or by any other name. The provisions of this paragraph shall not be construed to prevent or restrict the use of any such gun, device or instrument in any range or gallery, under circumstances when the same can be discharge or operated:

- (a) With permission of the owner or person in charge of the grounds;
- (b) In such manner as not to endanger persons or property; and
- (c) In such manner as to prevent a projectile from traversing any grounds or

space outside the limits of the range or gallery.

(4) Any person found guilty of the discharge of or use of firearms or dangerous weapons, a misdemeanor, shall, upon conviction, be punished by a fine.

Sec. 20-6-202 Selling Weapons to Intoxicated Persons

(1) It shall be unlawful for any person to purchase, sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, to any person in a condition of agitation and excitability, or to any minor.

(2) Any person found guilty of selling weapons to intoxicated persons shall, upon conviction, be punished by a fine.

Sec. 20-6-203 Shooting, Throwing Stones or Missiles

(1) Any person who shall throw or cause to be thrown by means of any peashooter, beanshooter, beany, rubber shooter, slingshot or by means of any other device, machine or contrivance, any stone or other missile or thing at or toward or against any person or animal, or at or toward or against any building, tree or other public or privately owned property, shall be deemed guilty of a misdemeanor crime.

(2) Any person found guilty of shooting, throwing stones or missiles shall, upon conviction, be punished by a fine.

Division 3

Offense Against The Public

Sec. 20-6-301 Excreting in Public Places.

(1) It shall be unlawful for any person to urinate or defecate on any public street, upon any public sidewalk, in any other public place, in any public vehicle or in any store, assembly hall, corridor or other place open to or used by the public except rest rooms and toilets which are provided for this purpose.

(2) Any person found guilty of excreting in public places, a misdemeanor, shall, upon conviction, be punished by a fine.

Sec. 20-6-302 Indecent Exposure.

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

- (a) an act of sexual intercourse; or
- (b) an act of deviate sexual intercourse; or
- (c) a lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
- (d) a lewd fondling or caress of the body of another person; or
- (e) an act of masturbation.

(2) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

(3) Any person found guilty of indecent exposure, a misdemeanor, shall, upon conviction, be punished by a fine.

Sec. 20-6-303 Noises.

(1) It shall be unlawful for any person within the City to continue or cause to be made or continued any unreasonably loud, disturbing or unnecessary noise or noise of such character, intensity or duration as to be unnecessarily annoying or detrimental to the comfort, repose, health, peace or safety of others.

(2) Without limiting the generality of the preceding paragraph, the following shall be unlawful acts in the City, the violation of which shall subject any offender to punishment as provided in Section 1-10 of this Code.

(a) The sounding of any horn or other signal device on any vehicle except as a danger warning; or the sounding of any such signaling device for an unnecessary and unreasonable period of time and the use of any such horn or signaling device when traffic is held up for any reason;

(b) The discharge into the air of the exhaust of any internal combustion engine, except through a muffler in good working order and so designed and constructed as to prevent excessive or unusual noise;

(c) The using, operating or permitting to be played any radio, phonograph, electronic tape player, television set or any other sound-amplification device, or musical instrument in such manner or with such volume as to disturb the peace, quiet and comfort of neighboring inhabitants or of any person in the vicinity or at any time with louder volume than is necessary for convenient hearing for the person or persons in the room, vehicle or chamber in which such instrument, machine or device is operated. The operation of any such set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 7:00 a.m. in such manner to be plainly audible at a distance of

fifty (50) feet from the room, building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this Section;

(d) The yelling, shouting, hooting, whistling or singing on the public streets or alleyways, particularly between the hours of 10:00 p.m. and 7:00 a.m. or any time or place loudly enough to disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence or any persons in the vicinity;

(e) The use of any automobile, truck, bus or motorcycle so out of repair or so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise;

(f) The erection, demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 10:00 p.m. except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the City Manager or his or her duly authorized deputy or appointee;

(g) The use of any drum, loudspeaker or other instrument or amplification device for the purpose of attracting attention, by the creation of noise or the playing of music, to any performance, show, sale or display of merchandise without special permission from the City Council. Special permission from the City Council shall be construed to include, but is not limited to, any authorization from the City Council or City Staff to use the City's portable stage (show mobile) or such authorization to use sound amplification devices at any park facilities within the City or issuance of a permit pursuant to Section 20-6-308 for any auction sale on public or private property.

(3) Any person found guilty of violating this section shall, upon conviction, be punished by a fine.

Sec. 20-6-304 Fireworks.

(1) Purpose. The purpose of this Section is to eliminate harm to health and property within the City and is designed to safeguard the health, safety and welfare of the citizens and protect property.

(2) Scope of authority. Unless exempted by provisions contained herein, the provisions of this Section shall apply to all persons within the City.

(3) Definitions. As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

City means the City of Fort Morgan.

Fire Chief means the Fire Chief of the City.

Fireworks means any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or

an audible effect by combustion, explosion, deflagration or detonation and shall include: blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which any such explosives are used; the type of unmanned balloons which require fire underneath to propel the same; firecrackers; lady fingers; torpedoes; skyrockets; Roman candles; Day-Glo bombs; sparklers or other devices containing any such explosive substance. The term *fireworks* shall not include model rockets and model rocket engines which are designed, sold and used for the purpose of propelling recoverable aero models, when actually used for that purpose and used under the supervision of a science instructor or other competent adult; and when the place and time of firing the sky rockets or missiles has been approved by the Fire Chief. The term fireworks shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and such toy paper or plastic caps are manufactured as provided therein, except that no toy paper or plastic cap shall contain more than twenty-five hundredths (.025) of a grain of explosive composition per cap. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap. The sale and use of these toy paper or plastic caps shall be permitted at all times. Nothing in this Section shall be construed as applying to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, or applying to the military or naval forces of the United States or of this State or to peace officers. Nothing in this Section shall be construed as forbidding the sale and use of blank cartridges for ceremonial, theatrical or athletic events.

Person means any individual, firm, organization, partnership, unincorporated association or corporation.

Sell or display means selling, offering to sell, exhibiting or possessing with intent to give away, sell or offer to sell within the City.

Use means purchasing, possessing, setting off or otherwise causing to explode or discharge or burn, any firecrackers, torpedo, rocket or other fireworks or explosives of inflammable material, or to discharge them or throw them from land, air or highway into any area of the City. This prohibition includes any substance, compound, mixture or article that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This provision shall also mean and include casting, throwing, lighting or firing any squib, rocket, cracker, torpedo, grenade, gun, revolver, pistol, cap or cartridge or other fireworks or combustible firecrackers of any kind. 20-5

(4) Prohibitions; unlawful acts. Except as provided herein, it shall be unlawful for any person to sell or display, offer to sell, possess, give away, store or use fireworks within the City. It shall be unlawful for a person to allow or permit fireworks to be used or exploded on his or her premises or premises under his or her control. It shall be unlawful for any person to mishandle or misuse fireworks. The following constitute unlawful mishandling or misuse of fireworks:

(a) It shall be unlawful to throw any firework, whether such firework is burning or not.

(b) It shall be unlawful to throw or otherwise use fireworks from an automobile or other motor vehicle, whether the vehicle is moving or standing still.

(c) It shall be unlawful to store, keep, sell or use any fireworks within fifty (50) feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon.

(d) It shall be unlawful to discharge or use any fireworks within one thousand (1,000) feet of any hospital, sanitarium, nursing home or infirmary.

(e) It shall be unlawful to discharge or use any fireworks in, under or on an automobile or other motor vehicle, whether moving or standing still.

(f) It shall be unlawful to discharge or use fireworks within fifty (50) feet of any retail fireworks stand or facility where fireworks are sold.

(g) It shall be unlawful to mishandle or misuse fireworks in any other way.

(h) It shall be unlawful for anyone under the age of sixteen (16) to purchase fireworks.

(i) It shall be unlawful for any person to sell fireworks to anyone under the age of sixteen (16).

(5) Exceptions. The following exceptions shall apply:

(a) It shall be lawful for a person to possess the fireworks specified in Paragraph (3) below on and between the dates of June 1 and July 15 of each year; provided that nothing in this provision shall be construed to allow the sale or display of any fireworks.

(b) Between the dates of June 1 and July 15, excluding July 4, it shall be lawful for a person to use fireworks herein specified between the hours of 8:00 a.m. and 10:00 p.m. On July 4, it shall be lawful for a person to use fireworks specified herein between the hours of 8:00 a.m. and 11:59 p.m.

(c) The following fireworks may be possessed or used, as listed in this Subparagraph, provided that nothing in this Subparagraph shall be construed to allow the possession or use of any firework that is not a Class 1.4G, formally known as Class C, firework as defined by federal law or as prohibited under state law:

(l) Cylindrical fountains with total pyrotechnic composition not exceeding seventy-five (75) grams in weight and an inside tube diameter not exceeding three-fourths ($\frac{3}{4}$) inch.

(II) Cone fountains with total pyrotechnic composition not exceeding fifty (50) grams each in weight.

(IV) Wheels, with total pyrotechnic composition not exceeding sixty (60) grams for each driver unit or two hundred forty (240) grams for each wheel, and with inside tube diameters or driver units not exceeding one-half (½) inch.

(V) Illuminating torches and colored fire in any form with total pyrotechnic composition not exceeding one hundred (100) grams each.

(VI) Dipped sticks, the pyrotechnic composition of which contains any chlorate or perchlorate not exceeding five (5) grams, and all sparklers.

(VII) Smoke devices known as smoke balls, or tubes containing a pyrotechnic mixture, which, upon ignition, produce a visible cloud of black, white or colored smoke.

(d) Nothing in Subsection (f) below shall be construed as forbidding the possession or use of any fireworks by those in charge of a public exhibition. Such an exhibition may be held on any day or days of the year; provided that it is held at a location which does not endanger persons or property; and provided that a pyrotechnic expert is used; and provided that those in charge of the exhibition obtain a permit and comply with Subsections (h) and (i) herein and all applicable state laws or regulations. As used in this Paragraph, pyrotechnic expert means an individual who, by experience and training, has demonstrated the required skill and ability for safely setting up and discharging displays of fireworks or as otherwise defined by state law.

(6) Use of fireworks in public parks and on public land. It shall be unlawful for any person to discharge or possess any fireworks upon public land or in any public park owned by the City; provided, however, that such use shall be permitted under the following circumstances:

(a) This provision shall not apply to possession of fireworks in the otherwise lawful use of public rights-of-way such as sidewalks and planting strips. This Subsection shall not be a defense to a charge of obstructing traffic or otherwise obstructing a public right-of-way.

(b) The Superintendent of Parks may designate limited areas for use during the hours permitted by this Section for the discharge of fireworks as allowed by this Subsection. Otherwise, lawful discharge and possession of fireworks as allowed by this Subsection in such areas shall not be a violation of this Subsection. In doing so, the Superintendent shall consider:

(I) The sensitivity of the area's environment, wildlife and wildlife habitat;

(II) The inconvenience and nuisance to abutting property owners;

(III) The safety and suitability of the area as a place for the discharge of fireworks; and

(IV) Danger of fire or other destruction of public property and improvements from the use of the fireworks.

(c) Upon designation of any area, a permit may be signed by the City Manager or his or her designee and posted by July 1 of each year for use on July 4 between the hours of 8:00 a.m. and 11:59 p.m.

(d) Nothing in this Section shall be deemed to limit the authority of the City Manager or the Police Chief to allow public exhibitions or display of fireworks under a permit issued in accordance with the provisions of this Section.

(e) The use of fireworks permitted under this Section may be suspended at any time by order of the Fire Chief or his or her designee when it is determined that the use of fireworks poses a threat to the community as the result of drought or any other condition. (See Sections 11-65—11-67 of this Code subject to change).

(7) Public exhibitions; permit applications; content. An applicant for a permit for a public exhibition or display of fireworks shall file with the City Clerk a written application therefor, duly subscribed and sworn to by the applicant. Such application shall set forth the following:

(a) The name of the association, organization or corporation sponsoring the display, together with the names of the persons to be in charge of the display.

(b) The date and time of day when the display is to be held.

(c) The exact location planned for the display.

(d) A description setting forth the name, age, address and experience of the persons who are to do the actual firing and discharging of the fireworks.

(e) The number and kinds of fireworks to be discharged.

(f) The manner and place of the storage of such fireworks between the date of purchase and the date of display.

(g) A diagram or sketch of the grounds on which the display is to be held, showing the point at which the fireworks are to be discharged, the location of all buildings, streets, trees, telephone or telegraph lines or overhead obstructions within a distance of fifty (50) yards of the point of discharge and the lines behind which the public will be restrained.

(8) Public exhibitions; permit applications; filing. An application for a permit for a public exhibition or display of fireworks shall be filed with the City Clerk at least twenty

(20) days before the date set for the display. A copy of such application shall be sent at once to the Fire Chief or his or her designee, who shall make or cause to be made an investigation of the site of the proposed display and investigate the competence and skill of the persons in charge of the firing and discharge of the fireworks. If satisfied that the display will be conducted lawfully and in accordance with this Section, he or she shall so advise the City Clerk within ten (10) days, who shall issue the permit. The applicant for a permit shall, at the time of filing the application, pay to the City Clerk a fee in accordance with the fee schedule set by resolution of the city council, which shall be refundable in the event the application for such permit is denied. Each applicant shall also pay to the City Clerk a nonrefundable investigation fee in accordance with the fee schedule set by resolution of the city council.

(a) The City Manager may sign the application/permit if he or she finds that the display proposed in the application meets all safety requirements and obtains the recommendation of the Fire Chief.

(b) The applicant shall have a valid and current license issued by the State authorizing the holder to engage in public fireworks display.

(c) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State in the following minimum amounts: five hundred thousand dollars (\$500,000.00) for injuries to any one (1) person in one (1) accident or occurrence; one million dollars (\$1,000,000.00) for injuries to two (2) or more persons in any one (1) accident or occurrence; five hundred thousand dollars (\$500,000.00) for damage to property in any one (1) accident or occurrence; one million dollars (\$1,000,000.00) combined single limit for any one (1) accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.

(9) Application for seller's permit; conditions for issuance. Applications for seller's permits shall be made to the City Clerk at least twenty (20) days prior to the start of any permitted activities. Applications shall be signed by the retail seller, if an individual, or by the duly authorized officer, if an association or corporation. It is unlawful for a fireworks manufacturer, wholesaler or supplier to make application for, or to obtain a retail sales permit on behalf of, any retailer. Seller's permits for the sale of those fireworks allowed pursuant to Subsection (f) above shall be issued only to applicants meeting the following conditions:

(a) The retailer or person in charge and responsible for the retail operation shall be eighteen (18) years of age or older, of good moral character and of demonstrated responsibility.

(b) The applicant shall have a valid and current license issued by the State authorizing the holder to engage in the retail sale of fireworks.

(c) The applicant shall own or have the right to possess a temporary fireworks stand complying with the requirements of this Section.

(d) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State in the following minimum amounts: five hundred thousand dollars (\$500,000.00) for injuries to any one (1) person in one (1) accident or occurrence; one million dollars (\$1,000,000.00) for injuries to two (2) or more persons in any one (1) accident or occurrence; five hundred thousand dollars (\$500,000.00) for damage to property in any one (1) accident or occurrence; one million dollars (\$1,000,000.00) combined single limit for any one (1) accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.

(e) The permit holder's location or place of business shall be only in those areas or zones within the City where commercial activities are authorized under applicable zoning law.

(f) The applicant shall post with the City a performance bond or a cash deposit in an amount not less than two hundred dollars (\$200.00) conditioned upon the prompt removal of the temporary fireworks stand and the cleaning up of all debris from the site of the stand, which deposit shall be returned to the applicant only in the event that the applicant removes the temporary stand and cleans up all debris to the satisfaction of the City. In the event the applicant fails to do so, the performance bond or cash deposit shall be forfeited. In no event shall the applicant be entitled to the return of the performance bond or cash deposit if he or she has failed to remove the stand and clean up all debris by July 10 following the sales period.

(g) No seller's permit shall be issued for a location that fails to meet the criteria set forth in Subsection (10) below, including the minimum stand separation requirement. When necessary, in order to determine priority as to a proposed location, the earliest date and time of filing of an application for a seller's permit with the City Clerk shall be controlling.

(h) The application fee for a permit described in this Section shall be in accordance with the fee schedule set by resolution of the city council, which shall remain in effect until such resolution is amended by action of the city council.

(10) Standards for firework vending facilities. The facilities of all sellers' permit holders shall conform to the following minimum standards and conditions:

(a) Temporary firework stands.

(l) Temporary fireworks stands need not comply with all provisions of the Building Code; provided, however, that all such stands be erected under the supervision of the City Building Inspector, who shall require all stands to be constructed in a safe

manner ensuring the safety of attendants and patrons. In the event any temporary stand is wired for electricity, the wiring shall conform to the Electrical Code.

(II) No temporary fireworks stand shall be located within fifty (50) feet of any other building or structure, nor within one hundred (100) feet of any gasoline station, oil storage tank or premises where flammable liquids or gases are kept or stored.

(III) Each temporary fireworks stand must have at least two (2) exits that shall be unobstructed at all times.

(IV) Each temporary fireworks stand shall have, in a readily accessible place, at least two (2) 2A-rated pressurized-water fire extinguishers that are in good working order.

(V) All weeds, grass and combustible material shall be cleared from the location of the temporary fireworks stand and the surrounding area to a distance of not less than twenty-five (25) feet, measured from the exterior walls of the temporary fireworks stand.

(VI) No smoking shall be permitted in or near a temporary fireworks stand for a distance of not less than fifty (50) feet, measured from the exterior walls of the temporary fireworks stand. Signs stating:

"No smoking within 50 feet"

shall be posted on the exterior of each wall of the temporary fireworks stand.

(VII) Each temporary fireworks stand shall have a person who is eighteen (18) years old or older in attendance at all times the stand is stocked. Stock from the stand shall not be removed and stored in any other building during the sales period without the express approval of the Fire Chief.

(VIII) All unsold stock and accompanying litter shall be removed from the temporary fireworks stand by 12:00 p.m. on July 15 of each year.

(IX) No temporary fireworks stand shall be located within five hundred (500) feet of any other temporary fireworks stand.

(X) Each temporary fireworks stand shall have provisions for sufficient off-street parking, at least fifteen (15) spaces, to avoid impeding a continuous flow of traffic at entrances and exits from the premises.

(XI) No person shall discharge any fireworks within two hundred fifty (250) feet of the exterior walls of any temporary fireworks stand. Signs stating:

"No discharge of fireworks within 250 feet"

shall be posted on the exterior of all walls of the temporary fireworks stand.

(XII) Signs shall be posted stating that no person under the age of sixteen (16) can legally purchase or possess fireworks within the City limits.

(b) Retail vending facilities.

(I) Any retail establishment that obtains a permit to sell fireworks must comply with all federal, state and local fire codes with regard to the construction and maintenance of its building and storage of fireworks.

(II) All public safety notice requirements found in the temporary fireworks requirements set forth above shall apply to retail vending facilities.

(11) Standards for public fireworks displays. All public fireworks displays shall conform to the following minimum standards and conditions:

(a) All public fireworks displays must be planned, organized and discharged by a pyrotechnician. Pyrotechnician means an individual who, by experience and training, has demonstrated the required skill and ability for safely setting up and discharging displays of special fireworks or as otherwise defined by state law.

(b) A permit must be obtained from the City as required by Subsection (8) above.

(c) When, in the opinion of the Chief of Police or Fire Chief, such requirement is necessary to preserve the public health, safety and welfare, the permit may require that a City Fire Department pumper and a minimum of two (2) trained City firefighters shall be on site thirty (30) minutes prior to and after the shooting of the event. The exhibitor shall repay the City for all costs and wages due to firefighters for such time. All compensation for City Fire Department apparatus will be set by the Fire Chief and shall be designated to the City's General Fund.

(d) All combustible debris and trash shall be removed from the area of discharge for a distance of three hundred (300) feet in all directions.

(e) All unfired or "dud" fireworks shall be disposed of in a safe manner.

(f) A minimum of two (2) 2A-rated pressurized-water fire extinguishers and one (1) fire blanket shall be required to be at the fireworks discharge site.

(g) The permit shall be immediately revoked at any time the Chief of Police or Fire Chief or a designee deems such revocation is necessary due to noncompliance, weather conditions such as, but not limited to, extremely low humidity or high winds. The display shall also be cancelled by accidental ignition of any form of combustible or flammable material in the vicinity due to falling debris from the display.

(h) Areas of public access shall be determined by the Chief of Police, Fire Chief

or a designee and maintained in an approved manner.

(12) Penalty. Any person, firm or corporation violating any provision of this Section shall be fined for each offense, and, a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Sec. 20-6-305 Flying Model Airplane Prohibited.

(1) For the purpose of this Section, *model airplane* shall be defined as any model of an airplane or any other flying structure or contrivance which is powered by any fuel or fuel-driven motor, including, but not limited to a combustion engine.

(2) The flying and operating of model airplanes as defined in Section (1) within the City is hereby declared as a nuisance and prohibited within the City, except that the City Council may hereafter, by resolution, designate specific locations wherein such flying or operating of such model airplanes may be permitted within the City.

(3) Any person found guilty of violating this section shall, upon conviction, be punished by a fine.

Sec. 20-6-306 Riding Skateboards.

(1) Required to yield right-of-way to pedestrians. Whenever any person is riding or using a skateboard or similar device upon a sidewalk or within a pedestrian crosswalk, such person shall yield the right-of-way to any pedestrian using the sidewalk or crosswalk.

(2) Reckless or careless skateboarding. No person shall ride or use a skateboard anywhere within this municipality in such manner as to indicate either a willful or wanton disregard to the safety of persons or property, or in a careless or imprudent manner, without due regard for the width, grade, curves, corner, traffic or use of the sidewalks and streets by others.

(3) Trespass upon property. Without express permission of the owner or occupant to do so, no person shall ride or use a skateboard upon the driveways, lots, buildings, fixtures, furniture or any other real or personal private property of the others, wherever located and of whatever kind or nature. Further, without the express permission of the City Council, no person shall ride or use a skateboard upon the driveways, lots, buildings, fixtures, furniture or personal public property appurtenant to any municipal building or facility or upon the furniture, fixtures, equipment and other property located in or upon any public park or municipally owned lands or upon any other public property or place, except upon the streets and sidewalks of the City in keeping with the provisions of this Section.

(4) Any person found guilty of violating this section shall be punished by a fine.

Sec. 20-6-307 Garage Sales.

(1) Garage sales, patio sales, yard sales, porch sales and similar sales shall be permitted in and upon residential premises within the boundaries of the City, subject to the following conditions, limitations and restrictions:

(a) All such sales shall be limited to the principal and accessory buildings and to the yard and driveway of the dwelling;

(b) All such sales shall be limited in duration to forty-eight (48) hours each and to two (2) nonconsecutive sales per year;

(c) No person shall hold any such sale without first obtaining a permit to do so from the Police Department or from any duly authorized police officer or employee of the Police Department. No charge shall be made for any such permit unless the City Council, by resolution duly adopted for such purpose, shall impose a permit fee to defray the actual costs of issuing the permit.

(d) Any person violating the provisions of this Section shall be punished by a fine not exceeding three hundred dollars (\$300.00).

Sec. 20-6-308 Auction Sales.

(1) Auction sales shall be permitted upon private property within the boundaries of the City, subject to the following conditions, limitations and restrictions:

(a) All such sales, including any food service offered in conjunction therewith, shall be limited to private property; no sales activities shall be permitted in the street, street right-of-way, any adjacent alley or on the sidewalk, unless specifically approved by the Police Department;

(b) All such sales shall be limited in duration to twelve (12) hours each day for a maximum of two (2) consecutive days and to only one (1) sale per calendar year per address;

(c) No person shall hold or conduct any such public auction sale without first obtaining a permit to do so from the Police Department or from any duly authorized police officer or employee of the Police Department. The application for permit shall identify the auctioneer, the location, date and time of the auction, the owner of the property on which the auction will be conducted, and shall identify a food server, if food service will be provided at the auction. Both the auctioneer and any food server or food service must possess a current state sales tax license, and a copy of any such license shall be included with the application for permit. No charge shall be made for any such permit unless the City Council, by resolution duly adopted for such purpose, shall impose a permit fee to defray the actual costs of issuing the permit; and

(d) The foregoing conditions, limitations and restrictions shall not apply to permanent auction sales and sites conducted on a regular basis in a proper zoning district, nor shall they apply to foreclosure sales conducted by government officials as

authorized by law or any person required by law to sell real or personal property at auction.

(2) Any person violating the provisions of this Section shall be punished by a fine.

Sec. 20-6-309 Loitering.

(1) 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.

(2) A person commits a municipal offense if he or she, with intent to interfere with or disrupt the school program or with intent to interfere with or endanger school children, loiters in a school building or on school grounds or within one hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in the building or on the grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific, legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer; or

(3) It is an affirmative defense that the defendant's acts were lawful and he or she was exercising a right 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.

(4) The City Council finds and declares that Fort Morgan, as a political subdivision of the State, has a special interest in the protection of children and, particularly, in protecting children who attend schools because required to do so by the *School Attendance Law of 1963*, Article 33, Title 22, C.R.S., and the prohibition of loitering in Subsection (b)(4) of this Section is enacted in furtherance of these interests.

Section 3. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part hereof irrespective of the fact that any one part or parts be declared invalid.

Section 4. Repeal. All or parts of Ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any Ordinance hereby repealed prior to the effective date of this Ordinance.

Section 5. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Article and section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any Article or Section thereof.

Section 6. Certification. The City Clerk shall certify to the passage of this Ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

Section 7. Severability. In the event any part of this Ordinance is found to be unenforceable by a Court of competent jurisdiction, it shall not affect the enforceability of the other portions of the Ordinance.

Section 8. Safety Clause and Effective date. The City Council hereby finds, determines, and declares that this ordinance is necessary for the immediate preservation of the public peace, health, and safety. This Chapter 20, "Offenses; Miscellaneous" shall be effective as to all violations of the Code committed five (5) days after final publication.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED the 1st day of June, 2010.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

ATTEST:

/s/ Terry McAlister, Mayor

/s/ Andrea Strand, City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED the 15th day of June, 2010.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

ATTEST:

/s/ Terry McAlister, Mayor

/s/ Andrea Strand, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **ORDINANCE NO. 1104** was, as a proposed Ordinance duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a regular meeting on the 1st day of June, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 4th day of June, 2010, published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed Ordinance was again taken up and read a second time, duly and legally passed, approved and adopted at a regular meeting of the City Council held on the 15th day of June, 2010. Within five (5) days after its final passage, said Ordinance was published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ Andrea Strand, City Clerk

